

Title 1

GENERAL PROVISIONS

Chapters

1.16 General definitions.

Chapter 1.16 RCW

GENERAL DEFINITIONS

Sections

- 1.16.050 "Legal holidays and legislatively recognized days."
- 1.16.090 Legislative declaration for civil liberties day of remembrance.

1.16.050 "Legal holidays and legislatively recognized days." The following are legal holidays: Sunday; the first day of January, commonly called New Year's Day; the third Monday of January, being celebrated as the anniversary of the birth of Martin Luther King, Jr.; the third Monday of February to be known as Presidents' Day and to be celebrated as the anniversary of the births of Abraham Lincoln and George Washington; the last Monday of May, commonly known as Memorial Day; the fourth day of July, being the anniversary of the Declaration of Independence; the first Monday in September, to be known as Labor Day; the eleventh day of November, to be known as Veterans' Day; the fourth Thursday in November, to be known as Thanksgiving Day; the day immediately following Thanksgiving Day; and the twenty-fifth day of December, commonly called Christmas Day.

Employees of the state and its political subdivisions, except employees of school districts and except those non-classified employees of institutions of higher education who hold appointments or are employed under contracts to perform services for periods of less than twelve consecutive months, shall be entitled to one paid holiday per calendar year in addition to those specified in this section. Each employee of the state or its political subdivisions may select the day on which the employee desires to take the additional holiday provided for herein after consultation with the employer pursuant to guidelines to be promulgated by rule of the appropriate personnel authority, or in the case of local government by ordinance or resolution of the legislative authority.

If any of the above specified state legal holidays are also federal legal holidays but observed on different dates, only the state legal holidays shall be recognized as a paid legal holiday for employees of the state and its political subdivisions except that for port districts and the law enforcement and public transit employees of municipal corporations, either the federal or the state legal holiday, but in no case both, may be recognized as a paid legal holiday for employees.

Whenever any legal holiday, other than Sunday, falls upon a Sunday, the following Monday shall be the legal holiday.

Whenever any legal holiday falls upon a Saturday, the preceding Friday shall be the legal holiday.

Nothing in this section shall be construed to have the effect of adding or deleting the number of paid holidays provided for in an agreement between employees and employers of political subdivisions of the state or as established by ordi-

nance or resolution of the local government legislative authority.

The legislature declares that the twelfth day of October shall be recognized as Columbus Day but shall not be considered a legal holiday for any purposes.

The legislature declares that the ninth day of April shall be recognized as former prisoner of war recognition day but shall not be considered a legal holiday for any purposes.

The legislature declares that the twenty-sixth day of January shall be recognized as Washington army and air national guard day but shall not be considered a legal holiday for any purposes.

The legislature declares that the seventh day of August shall be recognized as purple heart recipient recognition day but shall not be considered a legal holiday for any purposes.

The legislature declares that the second Sunday in October be recognized as Washington state children's day but shall not be considered a legal holiday for any purposes.

The legislature declares that the sixteenth day of April shall be recognized as Mother Joseph day and the fourth day of September as Marcus Whitman day, but neither shall be considered legal holidays for any purpose.

The legislature declares that the seventh day of December be recognized as Pearl Harbor remembrance day but shall not be considered a legal holiday for any purpose.

The legislature declares that the nineteenth day of February be recognized as civil liberties day of remembrance but shall not be considered a legal holiday for any purpose. [2003 c 68 § 2; 2000 c 60 § 1; 1999 c 26 § 1; 1993 c 129 § 2; 1991 sp.s. c 20 § 1; 1991 c 57 § 2; 1989 c 128 § 1; 1985 c 189 § 1; 1979 c 77 § 1; 1977 ex.s. c 111 § 1; 1975-'76 2nd ex.s. c 24 § 1; 1975 1st ex.s. c 194 § 1; 1973 2nd ex.s. c 1 § 1; 1969 c 11 § 1; 1955 c 20 § 1; 1927 c 51 § 1; RRS § 61. Prior: 1895 c 3 § 1; 1891 c 41 § 1; 1888 p 107 § 1.]

Finding—1993 c 129: "The legislature finds that Washington's children are one of our most valuable assets, representing hope for the future. Children today are at risk for many things, including drug and alcohol abuse, child abuse, suicide, peer pressure, and the economic and educational challenges of a changing world. It is increasingly important for families, schools, health professionals, caregivers, and workers at state agencies charged with the protection and help of children to listen to them, to support and encourage them, and to help them build their dreams for the future.

To increase recognition of children's issues, a national children's day is celebrated in October, with ceremonies and activities devoted to children. Washington state focuses special attention on its children by establishing a Washington state children's day." [1993 c 129 § 1.]

Finding—Declaration—1991 c 57: "The legislature finds that the Washington army and air national guard comprise almost nine thousand dedicated men and women who serve the state and nation on a voluntary basis. The legislature also finds that the state of Washington benefits from that dedication by immediate access to well-prepared resources in time of natural disasters and public emergency. The national guard has consistently and frequently responded to state and local emergencies with people and equipment to provide enforcement assistance, medical services, and overall support to emergency management services.

The legislature further declares that an annual day of commemoration should be observed in honor of the achievements, sacrifices, and dedication of the men and women of the Washington army and air national guard." [1991 c 57 § 1.]

Court business on legal holidays: RCW 2.28.100, 2.28.110.

School holidays: RCW 28A.150.050.

1.16.090 Legislative declaration for civil liberties day of remembrance. The legislature recognizes that on February 19, 1942, the President of the United States issued Exec-

utive Order 9066 which authorized military rule over civilian law and lives; that Executive Order 9066 led to the World War II evacuation and internment of more than one hundred twenty thousand Japanese Americans, most of whom were United States citizens by birth; that Japanese Americans lost their homes and livelihoods and suffered physical and psychological damage; and that, despite widespread hostility and discrimination, Japanese Americans served with distinction in the United States military effort as members of the Military Intelligence Service and in the segregated 100th Infantry Battalion and the 442nd Regimental Combat Team. The legislature further recognizes that in the name of "military necessity," Japanese Americans were deprived of their fundamental constitutional rights and civil liberties; and that the Japanese American experience during World War II tragically illuminates the fragile nature of our most cherished national beliefs and values.

The legislature declares that an annual day of recognition be observed in remembrance of Japanese Americans interned during World War II as a reminder that, regardless of the provocation, individual rights and freedoms must never be denied. [2003 c 68 § 1.]

Title 2

COURTS OF RECORD

Chapters

- 2.08 Superior courts.**
- 2.48 State bar act.**
- 2.56 Administrator for the courts.**

Chapter 2.08 RCW

SUPERIOR COURTS

Sections

- 2.08.062 Judges—Chelan, Douglas, Clark, Grays Harbor, Kitsap, Kittitas, and Lewis counties.
- 2.08.064 Judges—Benton, Franklin, Clallam, Jefferson, Snohomish, Asotin, Columbia, Garfield, Cowlitz, Klickitat, and Skamania counties.
- 2.08.180 Judge pro tempore—Appointment—Oath—Compensation.

2.08.062 Judges—Chelan, Douglas, Clark, Grays Harbor, Kitsap, Kittitas, and Lewis counties. There shall be in the county of Chelan four judges of the superior court; in the county of Douglas one judge of the superior court; in the county of Clark ten judges of the superior court; in the county of Grays Harbor three judges of the superior court; in the county of Kitsap eight judges of the superior court; in the county of Kittitas two judges of the superior court; in the county of Lewis three judges of the superior court. [2003 c 96 § 1; 1998 c 270 § 1; 1996 c 208 § 1; 1995 c 117 § 1; 1992 c 189 § 2; 1990 c 186 § 1; 1987 c 323 § 2; 1985 c 357 § 2; 1979 ex.s. c 202 § 2; 1977 ex.s. c 311 § 2; 1975-'76 2nd ex.s. c 79 § 1; 1971 ex.s. c 83 § 4; 1967 ex.s. c 84 § 2; 1963 c 48 § 2; 1951 c 125 § 4. Prior: 1945 c 20 § 1, part; 1927 c 135 § 1, part; 1911 c 131 § 1; 1907 c 79 § 1, part; 1907 c 178 § 1, part; 1905 c 36 § 1, part; 1895 c 89 § 1, part; 1891 c 68 § 3, part; 1890 p 341 § 1, part; Rem. Supp. 1945 § 11045-1d, part; RRS § 11045-1, part.]

[2003 RCW Supp—page 2]

Effective dates for additional judicial positions—2003 c 96: "(1) The additional judicial positions created by sections 1 and 2 of this act in Clark county, Kitsap county, Kittitas county, and Benton and Franklin counties shall be effective only if each county through its duly constituted legislative authority documents its approval of any additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute.

(2)(a) The additional judicial positions created by section 1 of this act for the county of Clark take effect as follows: One additional judicial position shall be effective no earlier than the second Monday in January 2004, and one additional position shall be effective no earlier than the second Monday in January 2005. The actual starting dates for the positions may be established by the Clark county legislative authority upon request of the superior court and by recommendation of the Clark county executive authority, if any.

(b) The additional judicial position created by section 1 of this act for the county of Kitsap shall be effective no earlier than the second Monday in January 2005. The actual starting date for the position may be established by the Kitsap county legislative authority upon request of the superior court and by recommendation of the Kitsap county executive authority, if any.

(c) The additional judicial position created by section 1 of this act for the county of Kittitas shall be effective no earlier than the second Monday in January 2004. The actual starting date for the position may be established by the Kittitas county legislative authority upon request of the superior court and by recommendation of the Kittitas county executive authority, if any.

(d) The additional judicial position created by section 2 of this act jointly for the counties of Benton and Franklin shall be effective no earlier than July 1, 2003. The actual starting date for the position may be established by the Benton and Franklin county legislative authorities upon request of the superior court and by recommendation of the Benton and Franklin county executive authorities, if any." [2003 c 96 § 3.]

Effective date—1998 c 270: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 1998]." [1998 c 270 § 5.]

Additional judicial positions in Clark, Lewis, and Yakima counties—Start dates—Establishment by county commissioners upon superior court request—1998 c 270: "(1) The additional judicial position created by section 1 of this act for the county of Clark takes effect on April 1, 1998, but the actual starting date for this position may be established by the Clark county commissioners upon the request of the superior court.

(2) The additional judicial position created by section 1 of this act for the county of Lewis takes effect on April 1, 1998, but the actual starting date for this position may be established by the Lewis county commissioners upon the request of the superior court.

(3) The additional judicial positions created by section 2 of this act for the county of Yakima take effect on April 1, 1998, but the actual starting dates for these positions may be established by the Yakima county commissioners upon the request of the superior court." [1998 c 270 § 4.]

Additional judicial positions in Chelan and Douglas counties subject to approval and agreement—1996 c 208: "(1) The three judicial positions serving Chelan and Douglas counties jointly are allocated to Chelan county, effective upon appointment of a judge to the Douglas county superior court. The additional judicial positions created by section 1, chapter 208, Laws of 1996, are allocated one to Chelan county and one to Douglas county and each position becomes effective only if each county, through its duly constituted legislative authority, documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by state law or the state Constitution.

(2) The judicial positions created by section 1, chapter 208, Laws of 1996, shall be effective January 1, 1997." [1998 c 270 § 3; 1996 c 208 § 2.]

Effect—Additional judicial position in Clark county subject to approval and agreement—1995 c 117: "The additional judicial position created by section 1 of this act is effective only if Clark county through its duly constituted legislative authority documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by state law or the state Constitution." [1995 c 117 § 2.]

Effective dates—Additional judicial positions subject to approval and agreement—1992 c 189: See notes following RCW 2.08.061.

Effective dates—Additional judicial positions in Kitsap and Thurston counties subject to approval and agreement—1990 c 186: "(1)(a) One additional judicial position created by section 1 of this act and the addi-

tional judicial position created by section 2 of this act shall be effective July 1, 1990.

(b) The second additional judicial position created by section 1 of this act shall be effective not later than, and at the discretion of the legislative authority may be phased in at any time before, January 1, 1994.

(2) The additional judicial positions created by sections 1 and 2 of this act in Kitsap and Thurston counties shall be effective only if the county through its duly constituted legislative authority documents its approval of any additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities." [1990 c 186 § 4.]

Effective dates—Additional judicial positions in King, Chelan, and Douglas counties subject to approval and agreement—1987 c 323: See note following RCW 2.08.061.

Effective dates—Additional judicial positions in Pierce, Clark, and Snohomish counties subject to approval and agreement—1985 c 357: See note following RCW 2.08.061.

Adjustment in judicial services: See note following RCW 2.08.065.

Effective date—1977 ex.s. c 311: See note following RCW 2.08.061.

2.08.064 Judges—Benton, Franklin, Clallam, Jefferson, Snohomish, Asotin, Columbia, Garfield, Cowlitz, Klickitat, and Skamania counties. There shall be in the counties of Benton and Franklin jointly, six judges of the superior court; in the county of Clallam, two judges of the superior court; in the county of Jefferson, one judge of the superior court; in the county of Snohomish, fifteen judges of the superior court; in the counties of Asotin, Columbia and Garfield jointly, one judge of the superior court; in the county of Cowlitz, four judges of the superior court; in the counties of Klickitat and Skamania jointly, one judge of the superior court. [2003 c 96 § 2; 1997 c 347 § 1; 1993 sp.s. c 14 § 1; 1992 c 189 § 4; 1989 c 328 § 3; 1985 c 357 § 3; 1982 c 139 § 2; 1981 c 65 § 1; 1979 ex.s. c 202 § 3; 1977 ex.s. c 311 § 3; 1974 ex.s. c 192 § 1; 1971 ex.s. c 83 § 3; 1969 ex.s. c 213 § 2; 1967 ex.s. c 84 § 3; 1963 c 35 § 1; 1961 c 67 § 2; 1955 c 19 § 2; 1951 c 125 § 6. Prior: 1945 c 20 § 1, part; 1927 c 135 § 1, part; 1925 ex.s. c 132 § 1; 1917 c 97 §§ 1-3; 1911 c 40 § 1; 1911 c 129 §§ 1, 2, part; 1907 c 79 § 1, part; 1905 c 36 § 1, part; 1895 c 89 § 1, part; 1891 c 68 §§ 1, 3, part; 1890 p 341 § 1, part; Rem. Supp. 1945 § 11045-1d, part; RRS § 11045-1, part.]

Effective dates for additional judicial positions—2003 c 96: See note following RCW 2.08.062.

Starting dates of additional judicial positions in Snohomish county—1997 c 347: "The additional judicial positions created for the county of Snohomish under section 1 of this act are effective January 1, 1998, but the actual starting dates for these positions may be established by the Snohomish county council upon request of the superior court and by the recommendation of the Snohomish county executive." [1997 c 347 § 2.]

Additional judicial position in Cowlitz county subject to approval and agreement—1993 sp.s. c 14: "The additional judicial position created by section 1 of this act shall be effective only if Cowlitz county through its duly constituted legislative authority documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by statute." [1993 sp.s. c 14 § 2.]

Effective dates—Additional judicial positions subject to approval and agreement—1992 c 189: See notes following RCW 2.08.061.

Intent—Additional judicial positions subject to approval and agreement—Effective dates for additional judicial positions—1989 c 328: See notes following RCW 2.08.061.

Effective dates—Additional judicial positions in Pierce, Clark, and Snohomish counties subject to approval and agreement—1989 c 328; 1985 c 357: See note following RCW 2.08.061.

Additional judicial positions in Clallam and Jefferson counties subject to approval and agreement—1982 c 139: "The additional judicial positions created by section 2 of this 1982 act in Clallam and Jefferson counties shall be effective only if, prior to April 1, 1982, each county through its duly constituted legislative authority documents its approval of the additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute." [1982 c 139 § 3.]

Additional judicial positions in Ferry, Stevens, and Pend Oreille district subject to approval and agreement—1982 c 139; 1981 c 65: "The additional judicial position created by this 1981 act in the joint Ferry, Stevens, and Pend Oreille judicial district shall be effective only if each county in the judicial district through its duly constituted legislative authority documents its approval of the additional position and its agreement that it and the other counties comprising the judicial district will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial position as provided by statute. As among the counties, the amount of the judge's salary to be paid by each county shall be in accordance with RCW 2.08.110 unless otherwise agreed upon by the counties involved." [1982 c 139 § 1; 1981 c 65 § 3.]

Effective date—1977 ex.s. c 311: See note following RCW 2.08.061.

2.08.180 Judge pro tempore—Appointment—Oath—Compensation. A case in the superior court of any county may be tried by a judge pro tempore, who must be either: (1) A member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the case; or (2) pursuant to supreme court rule, any sitting elected judge. Any action in the trial of such cause shall have the same effect as if it was made by a judge of such court. However, if a previously elected judge of the superior court retires leaving a pending case in which the judge has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro tempore without any written agreement.

A judge pro tempore shall, before entering upon his or her duties in any cause, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge pro tempore in the cause wherein is plaintiff and defendant, according to the best of my ability."

A judge pro tempore who is a practicing attorney and who is not a retired justice of the supreme court or judge of a superior court of the state of Washington, or who is not an active judge of a court of the state of Washington, shall receive a compensation of one-two hundred fiftieth of the annual salary of a superior court judge for each day engaged in said trial, to be paid in the same manner as the salary of the superior judge. A judge who is an active judge of a court of the state of Washington shall receive no compensation as judge pro tempore. A justice or judge who has retired from the supreme court, court of appeals, or superior court of the state of Washington shall receive compensation as judge pro tempore in the amount of sixty percent of the amount payable to a judge pro tempore under this section, provided that a retired justice or judge may decline to accept compensation. [2003 c 247 § 1; 2002 c 137 § 1; 1987 c 73 § 1; 1971 c 81 § 6; 1967 c 149 § 1; 1890 p 343 § 11; RRS § 40.]

Contingent effective date—1987 c 73: "This act shall take effect January 1, 1988, if the proposed amendment to Article IV, section 7 of the state Constitution, allowing retiring judges to hear pending cases, is validly submitted to and is approved and ratified by the voters at a general election held

in November, 1987. If the proposed amendment is not so approved and ratified, this act shall be null and void in its entirety." [1987 c 73 § 2.] Amendment 80 of the state Constitution, amending Article IV, section 7, was approved by the voters November 3, 1987.

Judges pro tempore: State Constitution Art. 4 § 7.
appointments: RCW 2.56.170.

Chapter 2.48 RCW STATE BAR ACT

Sections

2.48.180 Definitions—Unlawful practice a crime—Cause for discipline—Unprofessional conduct—Defense—Injunction—Remedies—Costs—Attorneys' fees—Time limit for action. (Effective July 1, 2004.)

2.48.180 Definitions—Unlawful practice a crime—Cause for discipline—Unprofessional conduct—Defense—Injunction—Remedies—Costs—Attorneys' fees—Time limit for action. (Effective July 1, 2004.) (1) As used in this section:

(a) "Legal provider" means an active member in good standing of the state bar, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law;

(b) "Nonlawyer" means a person to whom the Washington supreme court has granted a limited authorization to practice law but who practices law outside that authorization, and a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership;

(c) "Ownership interest" means the right to control the affairs of a business, or the right to share in the profits of a business, and includes a loan to the business when the interest on the loan is based upon the income of the business or the loan carries more than a commercially reasonable rate of interest.

(2) The following constitutes unlawful practice of law:

(a) A nonlawyer practices law, or holds himself or herself out as entitled to practice law;

(b) A legal provider holds an investment or ownership interest in a business primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business;

(c) A nonlawyer knowingly holds an investment or ownership interest in a business primarily engaged in the practice of law;

(d) A legal provider works for a business that is primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business; or

(e) A nonlawyer shares legal fees with a legal provider.

(3)(a) Unlawful practice of law is a crime. A single violation of this section is a gross misdemeanor.

(b) Each subsequent violation of this section, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter 9A.20 RCW.

(4) Nothing contained in this section affects the power of the courts to grant injunctive or other equitable relief or to punish as for contempt.

(5) Whenever a legal provider or a person licensed by the state in a business or profession is convicted, enjoined, or found liable for damages or a civil penalty or other equitable relief under this section, the plaintiff's attorney shall provide

written notification of the judgment to the appropriate regulatory or disciplinary body or agency.

(6) A violation of this section is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. Conduct that constitutes a violation of this section is unprofessional conduct in violation of RCW 18.130.180.

(7) In a proceeding under this section it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense, the conduct alleged was authorized by the rules of professional conduct or the admission to practice rules, or Washington business and professions licensing statutes or rules.

(8) Independent of authority granted to the attorney general, the prosecuting attorney may petition the superior court for an injunction against a person who has violated this chapter. Remedies in an injunctive action brought by a prosecuting attorney are limited to an order enjoining, restraining, or preventing the doing of any act or practice that constitutes a violation of this chapter and imposing a civil penalty of up to five thousand dollars for each violation. The prevailing party in the action may, in the discretion of the court, recover its reasonable investigative costs and the costs of the action including a reasonable attorney's fee. The degree of proof required in an action brought under this subsection is a preponderance of the evidence. An action under this subsection must be brought within three years after the violation of this chapter occurred. [2003 c 53 § 2; 2001 c 310 § 2. Prior: 1995 c 285 § 26; 1989 c 117 § 13; 1933 c 94 § 14; RRS § 138-14.]

Rules of court: *RLD 1.1(h).*

Intent—2003 c 53: "The legislature intends by this act to reorganize criminal provisions throughout the Revised Code of Washington to clarify and simplify the identification and referencing of crimes. It is not intended that this act effectuate any substantive change to any criminal provision in the Revised Code of Washington." [2003 c 53 § 1.]

Effective date—2003 c 53: "This act takes effect July 1, 2004." [2003 c 53 § 423.]

Purpose—2001 c 310: "The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting and ranking, without changes, legislation relating to the crime of unlawful practice of law, enacted as sections 26 and 27, chapter 285, Laws of 1995." [2001 c 310 § 1.]

Effective date—2001 c 310: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2001]." [2001 c 310 § 5.]

Effective date—1995 c 285: See RCW 48.30A.900.

Severability—Effective date—1989 c 117: See RCW 19.154.901 and 19.154.902.

Practicing law with disbarred attorney: RCW 2.48.220(9).

Chapter 2.56 RCW ADMINISTRATOR FOR THE COURTS

Sections

2.56.180 Family law handbook.

2.56.190 Legal financial obligations—Collection—Distribution of funds.

2.56.180 Family law handbook. (1) The administrator for the courts will create a handbook explaining the sections

of Washington law pertaining to the rights and responsibilities of marital partners to each other and to any children during a marriage and a dissolution of marriage. The handbook may also be provided in videotape or other electronic form.

(2) The handbook created under subsection (1) of this section will be provided by the county auditor when an individual applies for a marriage license under RCW 26.04.140.

(3) The information contained in the handbook created under subsection (1) of this section will be reviewed and updated annually. The handbook must contain the following information:

(a) Information on prenuptial agreements as contracts and as a means of structuring financial arrangements and other aspects of the marital relationship;

(b) Information on shared parental responsibility for children, including establishing a residential schedule for the child in the event of the dissolution of the marriage;

(c) Information on notice requirements and standards for parental relocation;

(d) Information on child support for minor children;

(e) Information on property rights, including equitable distribution of assets and premarital and postmarital property rights;

(f) Information on spousal maintenance;

(g) Information on domestic violence, child abuse, and neglect, including penalties;

(h) Information on the court process for dissolution;

(i) Information on the effects of dissolution on children;

(j) Information on community resources that are available to separating or divorcing persons and their children. [2003 c 225 § 1; 2002 c 49 § 3.]

Declaration—2002 c 49: "The legislature declares that:

(1) Strong marital relationships result in stronger families, children, and ultimately, stronger communities and place less of a fiscal burden on the state; and

(2) The state has a compelling interest in providing couples, applying for a marriage license, information with regard to marriage and, if contemplated, the effects of divorce." [2002 c 49 § 1.]

2.56.190 Legal financial obligations—Collection—Distribution of funds. By October 1, 2003, and annually thereafter, the administrative office of the courts shall distribute such funds to counties for county clerk collection budgets as are appropriated by the legislature for this purpose, using the funding formula recommended by the Washington association of county officials. The administrative office of the courts shall not deduct any amount for indirect or direct costs, and shall distribute the entire amount appropriated by the legislature to the counties for county clerk collection budgets. The administrative office of the courts shall report on the amounts distributed to counties to the appropriate committees of the legislature no later than December 1, 2003, and annually thereafter.

The administrative office of the courts may expend for the purposes of billing for legal financial obligations, such funds as are appropriated for the legislature for this purpose. [2003 c 379 § 21.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Title 3

DISTRICT COURTS—COURTS OF LIMITED JURISDICTION

Chapters

- 3.34** District judges.
- 3.38** District court districts.
- 3.50** Municipal courts—Alternate provision.
- 3.62** Income of court.
- 3.66** Jurisdiction and venue.

Chapter 3.34 RCW DISTRICT JUDGES

Sections

- 3.34.010 District judges—Number for each county.
- 3.34.020 District judges—Number—Changes.
- 3.34.100 District judges—Vacancies—Remuneration.

3.34.010 District judges—Number for each county.

The number of district judges to be elected in each county shall be: Adams, two; Asotin, one; Benton, three; Chelan, two; Clallam, two; Clark, six; Columbia, one; Cowlitz, two; Douglas, one; Ferry, one; Franklin, one; Garfield, one; Grant, two; Grays Harbor, two; Island, one; Jefferson, one; King, twenty-one; Kitsap, three; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, two; Pend Oreille, one; Pierce, eleven; San Juan, one; Skagit, two; Skamania, one; Snohomish, eight; Spokane, ten; Stevens, one; Thurston, two; Wahkiakum, one; Walla Walla, two; Whatcom, two; Whitman, one; Yakima, four. This number may be increased only as provided in RCW 3.34.020. [2003 c 97 § 1; 2002 c 138 § 1; 1998 c 64 § 1; 1995 c 168 § 1; 1994 c 111 § 1; 1991 c 354 § 1; 1989 c 227 § 6; 1987 c 202 § 111; 1975 1st ex.s. c 153 § 1; 1973 1st ex.s. c 14 § 1; 1971 ex.s. c 147 § 1; 1970 ex.s. c 23 § 1; 1969 ex.s. c 66 § 1; 1965 ex.s. c 110 § 5; 1961 c 299 § 10.]

Effective date—2003 c 97: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 97 § 6.]

Effective date—1995 c 168: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 1, 1995]." [1995 c 168 § 2.]

Intent—1989 c 227: See note following RCW 3.38.070.

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

3.34.020 District judges—Number—Changes. (1)

Any change in the number of full and part-time district judges after January 1, 1992, shall be determined by the legislature after receiving a recommendation from the supreme court. The supreme court shall make its recommendations to the legislature based on an objective workload analysis that takes into account available judicial resources and the caseload activity of each court.

(2) The administrator for the courts, under the supervision of the supreme court, may consult with the board of judicial administration and the district and municipal court judge's association in developing the procedures and methods of applying the objective workload analysis.

(3) For each recommended change from the number of full and part-time district judges in any county as of January 1, 1992, the administrator for the courts, under the supervision of the supreme court, shall complete a judicial impact note detailing any local or state cost associated with such recommended change.

(4) If the legislature approves an increase in the base number of district judges in any county as of January 1, 1992, such increase in the base number of district judges and all related costs may be paid for by the county from moneys provided under RCW 82.14.310, and any such costs shall be deemed to be expended for criminal justice purposes as provided in *RCW 82.14.315, and such expenses shall not constitute a supplanting of existing funding.

(5)(a) A county legislative authority that desires to change the number of full or part-time district judges from the base number on January 1, 1992, must first request the assistance of the supreme court. The administrator for the courts, under the supervision of the supreme court, shall conduct an objective workload analysis and make a recommendation of its findings to the legislature for consideration as provided in this section. Changes in the number of district court judges may only be made by the legislature in a year in which the quadrennial election for district court judges is not held.

(b) The legislative authority of any county may change a part-time district judge position to a full-time position. [2003 c 97 § 2; 2002 c 83 § 1; 1997 c 41 § 3; 1991 c 313 § 2; 1987 c 202 § 112; 1984 c 258 § 8; 1982 c 29 § 1; 1973 1st ex.s. c 14 § 2; 1970 ex.s. c 23 § 2; 1969 ex.s. c 66 § 7; 1961 c 299 § 11.]

*Reviser's note: RCW 82.14.315 expired July 1, 1991.

Effective date—2003 c 97: See note following RCW 3.34.010.

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

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

3.34.100 District judges—Vacancies—Remuneration. If a district judge dies, resigns, is convicted of a felony, ceases to reside in the district, fails to serve for any reason except temporary disability, or if his or her term of office is terminated in any other manner, the office shall be deemed vacant. The county legislative authority shall fill all vacancies by appointment and the judge thus appointed shall hold office until the next general election and until a successor is elected and qualified. However, if a vacancy in the office of district court judge occurs and the total number of district court judges remaining in the county is equal to or greater than the number of district court judges authorized in RCW 3.34.010 then the position shall remain vacant. District judges shall be granted sick leave in the same manner as other county employees. A district judge may receive when vacating office remuneration for unused accumulated leave and sick leave at a rate equal to one day's monetary compensation for each full day of accrued leave and one day's monetary compensation for each four full days of accrued sick leave, the total remuneration for leave and sick leave not to exceed the equivalent of thirty days' monetary compensation. [2003 c 97 § 3; 1992 c 76 § 1; 1984 c 258 § 16; 1961 c 299 § 19.]

Effective date—2003 c 97: See note following RCW 3.34.010.

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

Chapter 3.38 RCW DISTRICT COURT DISTRICTS

Sections

3.38.020 Districting committee—Duties—Districting plan.
3.38.040 Districting plan—Amendment.

3.38.020 Districting committee—Duties—Districting plan. The district court districting committee shall meet at the call of the prosecuting attorney to prepare or amend the plan for the districting of the county into one or more district court districts in accordance with the provisions of chapters 3.30 through 3.74 RCW. The plan shall include the following:

- (1) The boundaries of each district proposed to be established;
- (2) The number of judges to be elected in each district or electoral district, if any. In determining the number of judges to be elected, the districting committee shall consider the results of an objective workload analysis conducted by the administrator for the courts;
- (3) The location of the central office, courtrooms and records of each court;
- (4) The other places in the district, if any, where the court shall sit;
- (5) The number and location of district court commissioners to be authorized, if any;
- (6) The departments, if any, into which each district court shall be initially organized, including municipal departments provided for in chapter 3.46 RCW;
- (7) The name of each district; and
- (8) The allocation of the time and allocation of salary of each judge who will serve part time in a municipal department. [2003 c 97 § 4; 1984 c 258 § 23; 1965 ex.s. c 110 § 1; 1961 c 299 § 26.]

Effective date—2003 c 97: See note following RCW 3.34.010.

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

3.38.040 Districting plan—Amendment. (1) The districting committee may meet for the purpose of amending the districting plan at any time on call of the county legislative authority, the chairperson of the committee or a majority of its members. Amendments to the plan shall be submitted to the county legislative authority not later than March 15th of each year for adoption by the county legislative authority following the same procedure as with the original districting plan. Amendments shall be adopted not later than May 1st following submission by the districting committee. Any amendment which would reduce the salary or shorten the term of any judge shall not be effective until the next regular election for district judge. All other amendments may be effective on a date set by the county legislative authority.

(2) The districting committee shall meet within forty-five days of the effective date of changes in the number of judges to be elected in each district court district, or electoral district, if any. Amendments to the plan concerning the number of judges to be elected in each district court district, or

electoral district, if any, shall be submitted to the county legislative authority not later than ninety days after the effective date of changes in RCW 3.34.010, and the amendments shall be adopted not later than one hundred eighty days after the effective date of changes in RCW 3.34.010. [2003 c 97 § 5; 1984 c 258 § 27; 1969 ex.s. c 66 § 3; 1961 c 299 § 28.]

Effective date—2003 c 97: See note following RCW 3.34.010.

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

Chapter 3.50 RCW

MUNICIPAL COURTS—ALTERNATE PROVISION

(Formerly: Municipal departments—Alternate provision)

Sections

3.50.440 Penalty if no other punishment prescribed. (*Effective July 1, 2004.*)

3.50.440 Penalty if no other punishment prescribed. (*Effective July 1, 2004.*) Every person convicted by the municipal court of a violation of the criminal provisions of an ordinance for which no punishment is specifically prescribed in the ordinance is guilty of a gross misdemeanor and shall be punished by a fine of not more than five thousand dollars or imprisonment in the city jail for a period not to exceed one year, or both such fine and imprisonment. [2003 c 53 § 3; 1984 c 258 § 120; 1961 c 299 § 93.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

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

Chapter 3.62 RCW

INCOME OF COURT

Sections

3.62.060 Filing fees in civil cases—Fees allowed as court costs.
3.62.090 Public safety and education assessment—Amount.

3.62.060 Filing fees in civil cases—Fees allowed as court costs. Clerks of the district courts shall collect the following fees for their official services:

(1) In any civil action commenced before or transferred to a district court, the plaintiff shall, at the time of such commencement or transfer, pay to such court a filing fee of thirty-one dollars plus any surcharge authorized by RCW 7.75.035. No party shall be compelled to pay to the court any other fees or charges up to and including the rendition of judgment in the action other than those listed.

(2) For issuing a writ of garnishment or other writ, or for filing an attorney issued writ of garnishment, a fee of six dollars.

(3) For filing a supplemental proceeding a fee of twelve dollars.

(4) For demanding a jury in a civil case a fee of fifty dollars to be paid by the person demanding a jury.

(5) For preparing a transcript of a judgment a fee of six dollars.

(6) For certifying any document on file or of record in the clerk's office a fee of five dollars.

(7) For preparing the record of a case for appeal to superior court a fee of forty dollars including any costs of tape duplication as governed by the rules of appeal for courts of limited jurisdiction (RALJ).

(8) For duplication of part or all of the electronic tape or tapes of a proceeding ten dollars per tape.

The fees or charges imposed under this section shall be allowed as court costs whenever a judgment for costs is awarded. [2003 c 222 § 15; 1992 c 62 § 8; 1990 c 172 § 2; 1987 c 382 § 2; 1984 c 258 § 309; 1981 c 330 § 1; 1980 c 162 § 9; 1969 c 25 § 1; 1965 c 55 § 1; 1961 c 299 § 110.]

Effective date—1992 c 62: See RCW 27.24.900.

Effective date—1990 c 172: See note following RCW 7.75.035.

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

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

Severability—1981 c 330: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 330 § 11.]

Effective dates, savings—Severability—1980 c 162: See notes following RCW 3.02.010.

3.62.090 Public safety and education assessment—

Amount. (1) There shall be assessed and collected in addition to any fines, forfeitures, or penalties assessed, other than for parking infractions, by all courts organized under Title 3 or 35 RCW a public safety and education assessment equal to seventy percent of such fines, forfeitures, or penalties, which shall be remitted as provided in chapters 3.46, 3.50, 3.62, and 35.20 RCW. The assessment required by this section shall not be suspended or waived by the court.

(2) There shall be assessed and collected in addition to any fines, forfeitures, or penalties assessed, other than for parking infractions and for fines levied under RCW 46.61.5055, and in addition to the public safety and education assessment required under subsection (1) of this section, by all courts organized under Title 3 or 35 RCW, an additional public safety and education assessment equal to fifty percent of the public safety and education assessment required under subsection (1) of this section, which shall be remitted to the state treasurer and deposited as provided in RCW 43.08.250. The additional assessment required by this subsection shall not be suspended or waived by the court.

(3) This section does not apply to the fee imposed under RCW 46.63.110(7) or the penalty imposed under RCW 46.63.110(8). [2003 c 380 § 1; 2001 c 289 § 1; 1997 c 331 § 4; 1995 c 332 § 7; 1994 c 275 § 34; 1986 c 98 § 4; 1984 c 258 § 337.]

Effective date—1997 c 331: See note following RCW 70.168.135.

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

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

Effective date—1986 c 98 § 4: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1986." [1986 c 98 § 5.]

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

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

Public safety and education account: RCW 43.08.250.

Chapter 3.66 RCW

JURISDICTION AND VENUE

Sections

3.66.020	Civil jurisdiction.
3.66.040	Venue—Civil action.
3.66.060	Criminal jurisdiction.

3.66.020 Civil jurisdiction. If the value of the claim or the amount at issue does not exceed fifty thousand dollars, exclusive of interest, costs, and attorneys' fees, the district court shall have jurisdiction and cognizance of the following civil actions and proceedings:

(1) Actions arising on contract for the recovery of money;

(2) Actions for damages for injuries to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property when no issue raised by the answer involves the plaintiff's title to or possession of the same and actions to recover the possession of personal property;

(3) Actions for a penalty;

(4) Actions upon a bond conditioned for the payment of money, when the amount claimed does not exceed fifty thousand dollars, though the penalty of the bond exceeds that sum, the judgment to be given for the sum actually due, not exceeding the amount claimed in the complaint;

(5) Actions on an undertaking or surety bond taken by the court;

(6) Actions for damages for fraud in the sale, purchase, or exchange of personal property;

(7) Proceedings to take and enter judgment on confession of a defendant;

(8) Proceedings to issue writs of attachment, garnishment and replevin upon goods, chattels, moneys, and effects;

(9) All other actions and proceedings of which jurisdiction is specially conferred by statute, when the title to, or right of possession of real property is not involved; and

(10) Actions arising under the provisions of chapter 19.190 RCW. [2003 c 27 § 1; 2000 c 49 § 1; 1997 c 246 § 1; 1991 c 33 § 1; 1984 c 258 § 41; 1981 c 331 § 7; 1979 c 102 § 3; 1965 c 95 § 1; 1961 c 299 § 113.]

Effective date—1991 c 33: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 33 § 7.]

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

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Application, savings—1979 c 102: "Sections 2, 3, and 4 of this 1979 amendatory act upon taking effect shall apply to all actions filed on or after December 8, 1977. Any party to an action which is pending on the effective date of this act shall be permitted to amend any pleadings to reflect such increase in court jurisdiction: PROVIDED, That nothing in this act shall affect the validity of judicial acts taken prior to its effective date." [1979 c 102 § 5.]

Severability—1979 c 102: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 102 § 6.]

Effective date—1979 c 102: "Sections 2 through 5 of this 1979 amendatory act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1979." [1979 c 102 § 7.]

3.66.040 Venue—Civil action. (1) An action arising under RCW 3.66.020 (1), (4), (6), (7), and (9) may be brought in any district in which the defendant, or, if there be more than one defendant, where some one of the defendants, resides at the time the complaint is filed or in which the defendant, or if there be more than one defendant, where some one of the defendants may be served with the notice and complaint in which latter case, however, the district where the defendant or defendants is or are served must be within the county in which the defendant or defendants reside. If the residence of the defendant is not ascertained by reasonable efforts, the action may be brought in the district in which the defendant's place of actual physical employment is located.

(2) An action arising under RCW 3.66.020(2) for the recovery of possession of personal property and RCW 3.66.020(8) shall be brought in the district in which the subject matter of the action or some part thereof is situated.

(3) An action arising under RCW 3.66.020 (3) and (5) shall be brought in the district in which the cause of action, or some part thereof arose.

(4) An action arising under RCW 3.66.020(2) for the recovery of damages for injuries to the person or for injury to personal property may be brought, at the plaintiff's option, either in the district in which the cause of action, or some part thereof, arose, or in the district in which the defendant, or, if there be more than one defendant, where some one of the defendants, resides at the time the complaint is filed.

(5) An action against a nonresident of this state, including an action arising under the provisions of chapter 19.190 RCW, may be brought in any district where service of process may be had, or in which the cause of action or some part thereof arose, or in which the plaintiff or one of them resides.

(6) An action upon the unlawful issuance of a check or draft may be brought in any district in which the defendant resides or may be brought in any district in which the check was issued or presented as payment.

(7) For the purposes of chapters 3.30 through 3.74 RCW, the residence of a corporation defendant shall be deemed to be in any district where the corporation transacts business or has an office for the transaction of business or transacted business at the time the cause of action arose or where any person resides upon whom process may be served upon the corporation, unless herein otherwise provided. [2003 c 27 § 2; 2001 c 45 § 1; 1988 c 71 § 1; 1984 c 258 § 42; 1961 c 299 § 115.]

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

3.66.060 Criminal jurisdiction. The district court shall have jurisdiction: (1) Concurrent with the superior court of all misdemeanors and gross misdemeanors committed in their respective counties and of all violations of city ordinances. It shall in no event impose a greater punishment than a fine of five thousand dollars, or imprisonment for one year in the county or city jail as the case may be, or both such fine and imprisonment, unless otherwise expressly provided by

statute. It may suspend and revoke vehicle operators' licenses in the cases provided by law; (2) to sit as a committing magistrate and conduct preliminary hearings in cases provided by law; (3) concurrent with the superior court of a proceeding to keep the peace in their respective counties; (4) concurrent with the superior court of all violations under Title 77 RCW; (5) to hear and determine traffic infractions under chapter 46.63 RCW; and (6) to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by other courts of limited jurisdiction when those courts are participating in the program established under RCW 2.56.160. [2003 c 39 § 1; 2000 c 111 § 3; 1984 c 258 § 44; 1983 1st ex.s. c 46 § 176; 1982 c 150 § 1; 1961 c 299 § 117.]

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

Title 4

CIVIL PROCEDURE

Chapters

- 4.16** Limitation of actions.
- 4.24** Special rights of action and special immunities.
- 4.44** Trial.
- 4.56** Judgments—Generally.
- 4.64** Entry of judgments.

Chapter 4.16 RCW

LIMITATION OF ACTIONS

Sections

- 4.16.326 Actions or claims for construction defects—Comparative fault.
- 4.16.327 Actions or claims for construction defects—Emergency repairs.

4.16.326 Actions or claims for construction defects—Comparative fault. (1) Persons engaged in any activity defined in RCW 4.16.300 may be excused, in whole or in part, from any obligation, damage, loss, or liability for those defined activities under the principles of comparative fault for the following affirmative defenses:

(a) To the extent it is caused by an unforeseen act of nature that caused, prevented, or precluded the activities defined in RCW 4.16.300 from meeting the applicable building codes, regulations, and ordinances in effect at the commencement of construction. For purposes of this section an "unforeseen act of nature" means any weather condition, earthquake, or manmade event such as war, terrorism, or vandalism;

(b) To the extent it is caused by a homeowner's unreasonable failure to minimize or prevent those damages in a timely manner, including the failure of the homeowner to allow reasonable and timely access for inspections and repairs under this section. This includes the failure to give timely notice to the builder after discovery of a violation, but does not include damages due to the untimely or inadequate response of a builder to the homeowner's claim;

(c) To the extent it is caused by the homeowner or his or her agent, employee, subcontractor, independent contractor, or consultant by virtue of their failure to follow the builder's

or manufacturer's maintenance recommendations, or commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a builder's recommended maintenance schedule, the builder shall show that the homeowner had written notice of the schedule, the schedule was reasonable at the time it was issued, and the homeowner failed to substantially comply with the written schedule;

(d) To the extent it is caused by the homeowner or his or her agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the structure's use for something other than its intended purpose;

(e) As to a particular violation for which the builder has obtained a valid release;

(f) To the extent that the builder's repair corrected the alleged violation or defect;

(g) To the extent that a cause of action does not accrue within the statute of repose pursuant to RCW 4.16.310 or that an actionable cause as set forth in RCW 4.16.300 is not filed within the applicable statute of limitations. In contract actions the applicable contract statute of limitations expires, regardless of discovery, six years after substantial completion of construction, or during the period within six years after the termination of the services enumerated in RCW 4.16.300, whichever is later;

(h) As to any causes of action to which this section does not apply, all applicable affirmative defenses are preserved.

(2) This section does not apply to any civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect. [2003 c 80 § 1.]

4.16.327 Actions or claims for construction defects—Emergency repairs. Any person, including but not limited to contractors, builders, tradespeople, and other providers of construction, remodel, or repair services, who, without compensation or the expectation of compensation, renders emergency repairs to any structure at the scene of any accident, disaster, or emergency that has caused or resulted in damage to the structure is not liable for civil damages resulting from any act or omission in the rendering of such emergency repairs, other than acts or omissions constituting gross negligence or willful or wanton misconduct. Any person rendering emergency repairs during the course of regular employment and receiving compensation or expecting to receive compensation for rendering such repairs is excluded from the protection of this section.

For the purposes of this section, "accident, disaster, or emergency" includes an earthquake, windstorm, hurricane, landslide, flood, volcanic eruption, explosion, fire, or any similar occurrence. [2003 c 11 § 1.]

Reviser's note: 2003 c 11 § 1 directed that this section be added to chapter 4.24 RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 4.16 RCW.

Chapter 4.24 RCW

SPECIAL RIGHTS OF ACTION AND SPECIAL IMMUNITIES

Sections

- 4.24.210 Liability of owners or others in possession of land and water areas for injuries to recreation users—Limitation.

- 4.24.300 Persons rendering emergency care or transportation—Immunity from liability—Exclusion.
- 4.24.320 Action by person damaged by malicious mischief to livestock or by owner damaged by theft of livestock—Treble damages, attorney's fees. (*Effective July 1, 2004.*)
- 4.24.550 Sex offenders and kidnapping offenders—Release of information to public—Web site.
- 4.24.710 Outdoor music festival, campground—Detention.

4.24.210 Liability of owners or others in possession of land and water areas for injuries to recreation users—

Limitation. (1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, hanggliding, paragliding, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land.

(4) Nothing in this section shall prevent the liability of a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. A fixed anchor used in rock climbing and put in place by someone other than a landowner is not a known dangerous artificial latent condition and a landowner under subsection (1) of this section shall not be liable for unintentional injuries resulting from the condition or use of such an anchor. Nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance. Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(5) For purposes of this section, a license or permit issued for statewide use under authority of chapter 79A.05 RCW or Title 77 RCW is not a fee. [2003 c 39 § 2; 2003 c 16 § 2; 1997 c 26 § 1; 1992 c 52 § 1. Prior: 1991 c 69 § 1; 1991 c 50 § 1; 1980 c 111 § 1; 1979 c 53 § 1; 1972 ex.s. c 153 § 17; 1969 ex.s. c 24 § 2; 1967 c 216 § 2.]

Reviser's note: This section was amended by 2003 c 16 § 2 and by 2003 c 39 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—2003 c 16: "The legislature finds that some property owners in Washington are concerned about the possibility of liability arising when individuals are permitted to engage in potentially dangerous outdoor recreational activities, such as rock climbing. Although RCW 4.24.210 provides property owners with immunity from legal claims for any unintentional injuries suffered by certain individuals recreating on their land, the legislature finds that it is important to the promotion of rock climbing opportunities to specifically include rock climbing as one of the recreational activities that are included in RCW 4.24.210. By including rock climbing in RCW 4.24.210, the legislature intends merely to provide assurance to the owners of property suitable for this type of recreation, and does not intend to limit the application of RCW 4.24.210 to other types of recreation. By providing that a landowner shall not be liable for any unintentional injuries resulting from the condition or use of a fixed anchor used in rock climbing, the legislature recognizes that such fixed anchors are recreational equipment used by climbers for which a landowner has no duty of care." [2003 c 16 § 1.]

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

Off-road and nonhighway vehicles: Chapter 46.09 RCW.

Snowmobiles: Chapter 46.10 RCW.

4.24.300 Persons rendering emergency care or transportation—Immunity from liability—Exclusion.

(1) Any person, including but not limited to a volunteer provider of emergency or medical services, who without compensation or the expectation of compensation renders emergency care at the scene of an emergency or who participates in transporting, not for compensation, therefrom an injured person or persons for emergency medical treatment shall not be liable for civil damages resulting from any act or omission in the rendering of such emergency care or in transporting such persons, other than acts or omissions constituting gross negligence or willful or wanton misconduct. Any person rendering emergency care during the course of regular employment and receiving compensation or expecting to receive compensation for rendering such care is excluded from the protection of this subsection.

(2) Any physician licensed under chapter 18.57 or 18.71 RCW in the state of Washington who, without compensation or the expectation of compensation, provides health care services at a community clinic that is a public or private tax exempt corporation is not liable for civil damages resulting from any act or omission in the rendering of such care, other than acts or omissions constituting gross negligence or willful or wanton misconduct. [2003 c 256 § 1; 1985 c 443 § 19; 1975 c 58 § 1.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Citizen's immunity if aiding police officer: RCW 9.01.055.

Infectious disease testing availability: RCW 70.05.180.

4.24.320 Action by person damaged by malicious mischief to livestock or by owner damaged by theft of livestock—Treble damages, attorney's fees. (*Effective July 1, 2004.*)

Any person who suffers damages as a result of actions described in *RCW 9A.48.080(c) or any owner of a horse, mule, cow, heifer, bull, steer, swine, or sheep who suffers damages as a result of a willful, unauthorized act described in RCW 9A.56.080 or 9A.56.083 may bring an action against the person or persons committing the act in a court of competent jurisdiction for exemplary damages up to

three times the actual damages sustained, plus attorney's fees. [2003 c 53 § 4; 1979 c 145 § 1; 1977 ex.s. c 174 § 3.]

***Reviser's note:** RCW 9A.48.080 was amended by 1994 c 261 § 17 deleting subsection (c).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

4.24.550 Sex offenders and kidnapping offenders—Release of information to public—Web site. (1) In addition to the disclosure under subsection (5) of this section, public agencies are authorized to release information to the public regarding sex offenders and kidnapping offenders when the agency determines that disclosure of the information is relevant and necessary to protect the public and counteract the danger created by the particular offender. This authorization applies to information regarding: (a) Any person adjudicated or convicted of a sex offense as defined in RCW 9A.44.130 or a kidnapping offense as defined by RCW 9A.44.130; (b) any person under the jurisdiction of the indeterminate sentence review board as the result of a sex offense or kidnapping offense; (c) any person committed as a sexually violent predator under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06 RCW; (d) any person found not guilty of a sex offense or kidnapping offense by reason of insanity under chapter 10.77 RCW; and (e) any person found incompetent to stand trial for a sex offense or kidnapping offense and subsequently committed under chapter 71.05 or 71.34 RCW.

(2) Except for the information specifically required under subsection (5) of this section, the extent of the public disclosure of relevant and necessary information shall be rationally related to: (a) The level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety.

(3) Except for the information specifically required under subsection (5) of this section, local law enforcement agencies shall consider the following guidelines in determining the extent of a public disclosure made under this section: (a) For offenders classified as risk level I, the agency shall share information with other appropriate law enforcement agencies and may disclose, upon request, relevant, necessary, and accurate information to any victim or witness to the offense and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found; (b) for offenders classified as risk level II, the agency may also disclose relevant, necessary, and accurate information to public and private schools, child day care centers, family day care providers, businesses and organizations that serve primarily children, women, or vulnerable adults, and neighbors and community groups near the residence where the offender resides, expects to reside, or is regularly found; (c) for offenders classified as risk level III, the agency may also disclose relevant, necessary, and accurate information to the public at large; and (d) because more localized notification is not feasible and homeless and transient offenders may present unique risks to the community, the agency may also disclose relevant, necessary, and accurate information to the public at large for offenders registered as homeless or transient.

(4) The county sheriff with whom an offender classified as risk level III is registered shall cause to be published by legal notice, advertising, or news release a sex offender community notification that conforms to the guidelines established under RCW 4.24.5501 in at least one legal newspaper with general circulation in the area of the sex offender's registered address or location. The county sheriff shall also cause to be published consistent with this subsection a current list of level III registered sex offenders, twice yearly. Unless the information is posted on the web site described in subsection (5) of this section, this list shall be maintained by the county sheriff on a publicly accessible web site and shall be updated at least once per month.

(5)(a) When funded by federal grants or other sources, the Washington association of sheriffs and police chiefs shall create and maintain a statewide registered sex offender web site, which shall be available to the public. The web site shall post all level III and level II registered sex offenders in the state of Washington.

(i) For level III offenders, the web site shall contain, but is not limited to, the registered sex offender's name, relevant criminal convictions, address by hundred block, physical description, and photograph. The web site shall provide mapping capabilities that display the sex offender's address by hundred block on a map. The web site shall allow citizens to search for registered sex offenders within the state of Washington by county, city, zip code, last name, type of conviction, and address by hundred block.

(ii) For level II offenders, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(b) Until the implementation of (a) of this subsection, the Washington association of sheriffs and police chiefs shall create a web site available to the public that provides electronic links to county-operated web sites that offer sex offender registration information.

(6) Local law enforcement agencies that disseminate information pursuant to this section shall: (a) Review available risk level classifications made by the department of corrections, the department of social and health services, and the indeterminate sentence review board; (b) assign risk level classifications to all offenders about whom information will be disseminated; and (c) make a good faith effort to notify the public and residents at least fourteen days before the offender is released from confinement or, where an offender moves from another jurisdiction, as soon as possible after the agency learns of the offender's move, except that in no case may this notification provision be construed to require an extension of an offender's release date. The juvenile court shall provide local law enforcement officials with all relevant information on offenders allowed to remain in the community in a timely manner.

(7) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470, or units of local government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any discretionary risk level classification decisions or release of relevant and necessary information, unless it is

shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity in this section applies to risk level classification decisions and the release of relevant and necessary information regarding any individual for whom disclosure is authorized. The decision of a local law enforcement agency or official to classify an offender to a risk level other than the one assigned by the department of corrections, the department of social and health services, or the indeterminate sentence review board, or the release of any relevant and necessary information based on that different classification shall not, by itself, be considered gross negligence or bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public.

(8) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section.

(9) Nothing in this section implies that information regarding persons designated in subsection (1) of this section is confidential except as may otherwise be provided by law.

(10) When a local law enforcement agency or official classifies an offender differently than the offender is classified by the end of sentence review committee or the department of social and health services at the time of the offender's release from confinement, the law enforcement agency or official shall notify the end of sentence review committee or the department of social and health services and submit its reasons supporting the change in classification. Upon implementation of subsection (5)(a) of this section, notification of the change shall also be sent to the Washington association of sheriffs and police chiefs. [2003 c 217 § 1; 2002 c 118 § 1. Prior: 2001 c 283 § 2; 2001 c 169 § 2; 1998 c 220 § 6; prior: 1997 c 364 § 1; 1997 c 113 § 2; 1996 c 215 § 1; 1994 c 129 § 2; 1990 c 3 § 117.]

Conflict with federal requirements—2002 c 118: "If any provision of this act or its application to any person or circumstance is held invalid due to a conflict with federal law, the conflicting part of this act is inoperative solely to the extent of the conflict, and such holding does not affect the operation of the remainder of this act or the application of the provision to other persons or circumstances." [2002 c 118 § 3.]

Severability—1998 c 220: See note following RCW 9A.44.130.

Severability—1997 c 364: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 364 § 9.]

Findings—1997 c 113: "The legislature finds that offenders who commit kidnapping offenses against minor children pose a substantial threat to the well-being of our communities. Child victims are especially vulnerable and unable to protect themselves. The legislature further finds that requiring sex offenders to register has assisted law enforcement agencies in protecting their communities. Similar registration requirements for offenders who have kidnapped or unlawfully imprisoned a child would also assist law enforcement agencies in protecting the children in their communities from further victimization." [1997 c 113 § 1.]

Findings—Intent—1994 c 129: "The legislature finds that members of the public may be alarmed when law enforcement officers notify them that a sex offender who is about to be released from custody will live in or near their neighborhood. The legislature also finds that if the public is provided adequate notice and information, the community can develop constructive plans to prepare themselves and their children for the offender's release. A sufficient time period allows communities to meet with law enforcement to discuss and prepare for the release, to establish block watches, to obtain information about the rights and responsibilities of the community and the

offender, and to provide education and counseling to their children. Therefore, the legislature intends that when law enforcement officials decide to notify the public about a sex offender's pending release that notice be given at least fourteen days before the offender's release whenever possible." [1994 c 129 § 1.]

Finding—Policy—1990 c 3 § 117: "The legislature finds that sex offenders pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is a paramount governmental interest. The legislature further finds that the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety. Overly restrictive confidentiality and liability laws governing the release of information about sexual predators have reduced willingness to release information that could be appropriately released under the public disclosure laws, and have increased risks to public safety. Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Release of information about sexual predators to public agencies and under limited circumstances, the general public, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

Therefore, this state's policy as expressed in RCW 4.24.550 is to require the exchange of relevant information about sexual predators among public agencies and officials and to authorize the release of necessary and relevant information about sexual predators to members of the general public." [1990 c 3 § 116.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Release of information regarding

convicted sex offenders: RCW 9.94A.846.

juveniles found to have committed sex offenses: RCW 13.40.217.

persons in custody of department of social and health services: RCW 10.77.207, 71.05.427, 71.06.135, 71.09.120.

4.24.710 Outdoor music festival, campground—

Detention. (1) In a civil action brought against the detainer by reason of a person having been detained on or in the immediate vicinity of the premises of an outdoor music festival or related campground for the purpose of investigation or questioning as to the lawfulness of the consumption or possession of alcohol or illegal drugs, it is a defense that the detained person was detained in a reasonable manner and for not more than a reasonable time to permit the investigation or questioning by a law enforcement officer, and that a peace officer, owner, operator, employee, or agent of the outdoor music festival had reasonable grounds to believe that the person so detained was unlawfully consuming or attempting to unlawfully consume or possess, alcohol or illegal drugs on the premises.

(2) For the purposes of this section:

(a) "Illegal drug" means a controlled substance under chapter 69.50 RCW for which the person detained does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings, or a legend drug under chapter 69.41 RCW for which the person does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings.

(b) "Outdoor music festival" has the same meaning as in RCW 70.108.020, except that no minimum time limit is required.

(c) "Reasonable grounds" include, but are not limited to:

(i) Exhibiting the effects of having consumed liquor, which means that a person has the odor of liquor on his or her breath, or that by speech, manner, appearance, behavior, lack

of coordination, or otherwise exhibits that he or she has consumed liquor, and either:

(A) Is in possession of or in close proximity to a container that has or recently had liquor in it; or

(B) Is shown by other evidence to have recently consumed liquor; or

(ii) Exhibiting the effects of having consumed an illegal drug, which means that a person by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed an illegal drug, and either:

(A) Is in possession of an illegal drug; or

(B) Is shown by other evidence to have recently consumed an illegal drug.

(d) "Reasonable time" means the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to allow a law enforcement officer to determine the lawfulness of the consumption or possession of alcohol or illegal drugs. "Reasonable time" may not exceed one hour. [2003 c 219 § 2.]

Chapter 4.44 RCW

TRIAL

Sections

4.44.020	Notice of trial—Note of issue.
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4.44.480	Deposits in court—Order.

4.44.020 Notice of trial—Note of issue. At any time after the issues of fact are completed in any case by the service of complaint and answer or reply when necessary, as herein provided, either party may cause the issues of fact to be brought on for trial, by serving upon the opposite party a notice of trial at least three days before any day provided by rules of court for setting causes for trial, which notice shall give the title of the cause as in the pleadings, and notify the opposite party that the issues in such action will be brought on for trial at the time set by the court; and the party giving such notice of trial shall, at least five days before the day of setting such causes for trial file with the clerk of the court a note of issue containing the title of the action, the names of the attorneys and the date when the last pleading was served;

and the clerk shall thereupon enter the cause upon the trial docket according to the date of the issue.

In case an issue of law raised upon the pleadings is desired to be brought on for argument, either party shall, at least five days before the day set apart by the court under its rules for hearing issues of law, serve upon the opposite party a like notice of trial and furnish the clerk of the court with a note of issue as above provided, which note of issue shall specify that the issue to be tried is an issue of law; and the clerk of the court shall thereupon enter such action upon the motion docket of the court.

When a cause has once been placed upon either docket of the court, if not tried or argued at the time for which notice was given, it need not be noticed for a subsequent session or day, but shall remain upon the docket from session to session or from law day to law day until final disposition or stricken off by the court. The party upon whom notice of trial is served may file the note of issue and cause the action to be placed upon the calendar without further notice. [2003 c 406 § 1; 1893 c 127 § 35; RRS § 319.]

Rules of court: *Cf. CR 40(a).*

4.44.025 Priority permitted for aged or ill parties in civil cases. When setting civil cases for trial, unless otherwise provided by statute, upon motion of a party, the court may give priority to cases in which a party is frail and over seventy years of age, a party is afflicted with a terminal illness, or other good cause is shown for an expedited trial date. [2003 c 406 § 2; 1991 c 197 § 1.]

4.44.070 Findings and conclusions, how made. In any case tried upon the facts without a jury or with an advisory jury, any party may, when the evidence is closed, submit distinct and concise proposed findings of fact and conclusions of law. They may be written and handed to the court, or at the option of the court, oral, and entered in the record. [2003 c 406 § 3; Code 1881 § 222; 1877 p 47 § 226; 1869 p 56 § 226; RRS § 341.]

Rules of court: *Cf. CR 52(a).*

4.44.120 Impanelling jury—Voir dire, challenge for cause—Number. When the action is called for trial, a panel of potential jurors shall be selected at random from the citizens summoned for jury service who have appeared and have not been excused. A voir dire examination of the panel shall be conducted for the purpose of discovering any basis for challenge for cause and to permit the intelligent exercise of peremptory challenges. Any necessary additions to the panel shall be selected at random from the list of qualified jurors. The jury shall consist of six persons, unless the parties in their written demand for jury demand that the jury be twelve in number or consent to a less number. The parties may consent to a jury less than six in number but not less than three, and such consent shall be entered in the record. [2003 c 406 § 4; 1996 c 40 § 1; 1972 ex.s. c 57 § 3; Code 1881 § 206; 1877 p 43 § 210; 1869 p 51 § 210; 1854 p 164 § 185; RRS § 323.]

Rules of court: *Cf. CR 48.*

Juries, district courts: Chapter 12.12 RCW.

4.44.140 Peremptory challenges defined. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude the juror. [2003 c 406 § 5; Code 1881 § 208; 1877 p 43 § 212; 1869 p 51 § 212; RRS § 325.]

4.44.150 Challenges for cause defined. A challenge for cause is an objection to a juror, and may be either:

- (1) General; that the juror is disqualified from serving in any action; or
- (2) Particular; that the juror is disqualified from serving in the action on trial. [2003 c 406 § 6; Code 1881 § 209; 1877 p 43 § 213; 1869 p 51 § 213; RRS § 326.]

4.44.180 Implied bias defined. A challenge for implied bias may be taken for any or all of the following causes, and not otherwise:

- (1) Consanguinity or affinity within the fourth degree to either party.
- (2) Standing in the relation of guardian and ward, attorney and client, master and servant or landlord and tenant, to a party; or being a member of the family of, or a partner in business with, or in the employment for wages, of a party, or being surety or bail in the action called for trial, or otherwise, for a party.
- (3) Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, or in a criminal action by the state against either party, upon substantially the same facts or transaction.
- (4) Interest on the part of the juror in the event of the action, or the principal question involved therein, excepting always, the interest of the juror as a member or citizen of the county or municipal corporation. [2003 c 406 § 7; Code 1881 § 212; 1877 p 44 § 216; 1869 p 52 § 216; 1854 p 165 § 187; RRS § 330.]

4.44.190 Challenge for actual bias. A challenge for actual bias may be taken for the cause mentioned in RCW 4.44.170(2). But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon what he or she may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially. [2003 c 406 § 8; Code 1881 § 213; 1877 p 44 § 217; 1869 p 53 § 217; RRS § 331.]

4.44.210 Peremptory challenges, how taken. The jurors having been examined as to their qualifications, first by the plaintiff and then by the defendant, and passed for cause, the peremptory challenges shall be conducted as follows, to wit:

The plaintiff may challenge one, and then the defendant may challenge one, and so alternately until the peremptory challenges shall be exhausted. During this alternating process, if one of the parties declines to exercise a peremptory challenge, then that party may no longer peremptorily challenge any of the jurors in the group for which challenges are then being considered and may only peremptorily challenge any jurors later added to that group. A refusal to challenge by

either party in the said order of alternation shall not prevent the adverse party from using the full number of challenges. [2003 c 406 § 9; Code 1881 § 215; 1877 p 45 § 219; 1869 p 53 § 219; RRS § 333.]

4.44.220 Order of taking challenges. The challenges of either party shall be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class:

- (1) Challenges for cause.
- (2) Peremptory challenges. [2003 c 406 § 10; Code 1881 § 216; 1877 p 45 § 220; 1869 p 53 § 220; RRS § 334.]

4.44.230 Exceptions to challenges—Determination. The challenge may be excepted to by the adverse party for insufficiency, and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so, the court shall determine the facts and decide the issue. [2003 c 406 § 11; Code 1881 § 217; 1877 p 45 § 221; 1869 p 53 § 221; RRS § 335.]

4.44.240 Challenge determination. When facts are determined under RCW 4.44.230, the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent may be examined as a witness by either party. If the challenge is sustained, the juror shall be dismissed from the case; otherwise, the juror shall be retained. [2003 c 406 § 12; Code 1881 § 218; 1877 p 45 § 222; 1869 p 54 § 222; RRS § 336.]

4.44.250 Challenge, exception, denial may be oral. The challenge, the exception, and the denial may be made orally. The judge shall enter the same upon the record, along with the substance of the testimony on either side. [2003 c 406 § 13; Code 1881 § 219; 1877 p 45 § 223; 1869 p 54 § 223; RRS § 337.]

4.44.260 Oath of jurors. When the jury has been selected, an oath or affirmation shall be administered to the jurors, in substance that they and each of them, will well, and truly try, the matter in issue between the plaintiff and defendant, and a true verdict give, according to the law and evidence as given them on the trial. [2003 c 406 § 14; Code 1881 § 220; 1877 p 46 § 224; 1869 p 54 § 224; RRS § 338.]

Oaths and mode of administering: State Constitution Art. I § 6.

4.44.280 Admonitions to jurors. The court may admonish the jurors that they must not discuss among themselves any subject connected with the trial until they begin their deliberations. The court may also admonish the jurors that they must not discuss with nonjurors any subject connected with the trial until the jurors have been dismissed from the case. [2003 c 406 § 15; 1957 c 7 § 5; Code 1881 § 226; 1877 p 47 § 230; 1869 p 56 § 230; RRS § 345.]

Care of jury while deliberating: RCW 4.44.300.

4.44.290 Replacement juror procedure. If after the formation of the jury, and before verdict, a juror becomes

unable to perform his or her duty, the court may discharge the juror. In that case, unless the parties agree to proceed with the other jurors: (1) An alternate juror may replace the discharged juror and the jury instructed to start their deliberations anew; (2) a new juror may be sworn and the trial begin anew; or (3) the jury may be discharged and a new jury then or afterwards formed. [2003 c 406 § 16; Code 1881 § 227; 1877 p 48 § 231; 1869 p 56 § 231; RRS § 347.]

4.44.300 Care of jury while deliberating. During deliberations, the jury may be allowed to separate unless good cause is shown, on the record, for sequestration of the jury. Unless the members of a deliberating jury are allowed to separate, they must be kept together in a room provided for them, or some other convenient place under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the best of his or her ability, keep the jury separate from other persons. The officer shall not allow any communication to be made to them, nor make any himself or herself, unless by order of the court, except to ask them if they have agreed upon their verdict, and the officer shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed on. [2003 c 406 § 17; Code 1881 § 229; 1877 p 48 § 233; 1869 p 57 § 233; 1854 p 166 § 194; RRS § 349.]

Rules of court: *Cf. CR 47(i), 51(h).*

Admonitions to jury, separation: RCW 4.44.280.

4.44.310 Expense of keeping jury. If, while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court orders them to be provided with suitable and sufficient food and lodging, they shall be so provided at the expense of the county. [2003 c 406 § 18; Code 1881 § 230; 1877 p 48 § 234; 1869 p 57 § 234; RRS § 350.]

4.44.360 Proceedings when jury have agreed. When the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge. [2003 c 406 § 19; Code 1881 § 236; 1877 p 49 § 240; 1869 p 58 § 240; RRS § 356.]

4.44.370 Manner of giving verdict. The jurors shall be asked by the court or the clerk whether they have agreed upon their verdict, and if the presiding juror answers in the affirmative, the presiding juror shall submit the verdict to the court. [2003 c 406 § 20; Code 1881 § 237; 1877 p 49 § 241; 1869 p 58 § 241; RRS § 357.]

4.44.380 Number of jurors required to render verdict. In all trials by juries of six in the superior court, except criminal trials, when five of the jurors agree upon a verdict, the verdict so agreed upon shall be signed by the presiding juror, and the verdict shall stand as the verdict of the whole jury, and have all the force and effect of a verdict agreed to by six jurors. In cases where the jury is twelve in number, a verdict reached by ten shall have the same force and effect as described above, and the same procedures shall be followed.

[2003 c 406 § 21; 1972 ex.s. c 57 § 4; 1895 c 36 § 1; RRS § 358.]

Trial by jury: State Constitution Art. 1 § 21.

4.44.390 Jury may be polled. After the verdict is announced, but before it is filed, the jury may be polled at the request of either party. Each juror may be asked whether the verdict is his or her individual verdict and whether the verdict is the jury's collective verdict. If it appears that the verdict is insufficient because the required number of jurors have not reached agreement, the jurors may be returned to the jury room for further deliberation. [2003 c 406 § 22; 1972 ex.s. c 57 § 6; 1895 c 36 § 2; RRS § 359.]

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

4.44.420 Verdict in action for specific personal property. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his or her answer claims a return thereof, the jury shall assess the value of the property if their verdict be in favor of the plaintiff, or if they find in favor of the defendant and that the defendant is entitled to a return thereof, they may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property. [2003 c 406 § 23; Code 1881 § 241; 1877 p 50 § 245; 1869 p 59 § 245; 1854 p 167 § 199; RRS § 363.]

4.44.440 Inconsistency between special findings of fact and general verdict. When special findings of fact are inconsistent with the general verdict, the judge may enter judgment consistent with the findings of fact, may return the jurors to the jury room for further deliberations, or may order a new trial. [2003 c 406 § 24; Code 1881 § 243; 1877 p 50 § 247; 1869 p 60 § 247; 1854 p 167 § 201; RRS § 365.]

Rules of court: *Cf. CR 49(b).*

4.44.450 Jury to assess amount of recovery. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a setoff for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of the recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for a party on the pleadings. [2003 c 406 § 25; 1891 c 60 § 3; Code 1881 § 244; 1877 p 50 § 248; 1869 p 60 § 248; 1854 p 167 § 202; RRS § 366.]

4.44.460 Receiving verdict and discharging jury. If the court determines that the verdict meets the requirements contained in this chapter and in court rules, the clerk shall file the verdict. The verdict is then complete and the jury shall be discharged from the case. The verdict shall be in writing, and under the direction of the court shall be substantially entered in the record as of the day's proceedings on which it was given. [2003 c 406 § 26; Code 1881 § 239; 1877 p 49 § 243; 1869 p 59 § 243; RRS § 361.]

4.44.480 Deposits in court—Order. When it is admitted by the pleading or examination of a party, that the party possesses or has control of any money, or other thing capable of delivery, which being the subject of the litigation, is held by him or her as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the court. [2003 c 406 § 27; Code 1881 § 195; 1877 p 41 § 199; 1869 p 49 § 203; 1854 p 163 § 174; RRS § 745.]

Rules of court: *Cf. CR 67.*

Chapter 4.56 RCW

JUDGMENTS—GENERALLY

Sections

4.56.100 Satisfaction of judgments for payment of money.

4.56.100 Satisfaction of judgments for payment of money. (1) When any judgment for the payment of money only shall have been paid or satisfied, the clerk of the court in which such judgment was rendered shall note upon the record in the execution docket satisfaction thereof giving the date of such satisfaction upon either the payment to such clerk of the amount of such judgment, costs and interest and any accrued costs by reason of the issuance of any execution, or the filing with such clerk of a satisfaction entitled in such action and identifying the same executed by the judgment creditor or his or her attorney of record in such action or his or her assignee acknowledged as deeds are acknowledged. The clerk has the authority to note the satisfaction of judgments for criminal and juvenile legal financial obligations when the clerk's record indicates payment in full or as directed by the court. Every satisfaction of judgment and every partial satisfaction of judgment which provides for the payment of money shall clearly designate the judgment creditor and his or her attorney if any, the judgment debtor, the amount or type of satisfaction, whether the satisfaction is full or partial, the cause number, and the date of entry of the judgment. A certificate by such clerk of the entry of such satisfaction by him or her may be filed in the office of the clerk of any county in which an abstract of such judgment has been filed. When so satisfied by the clerk or the filing of such certificate the lien of such judgment shall be discharged.

(2) The department of social and health services shall file a satisfaction of judgment for welfare fraud conviction if a person does not pay money through the clerk as required under subsection (1) of this section. [2003 c 379 § 23; 1997 c 358 § 4; 1994 c 185 § 1; 1983 c 28 § 1; 1929 c 60 § 6; RRS § 454. Prior: 1893 c 42 § 7.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Chapter 4.64 RCW

ENTRY OF JUDGMENTS

Sections

4.64.030 Entry of judgment—Form of judgment summary.

[2003 RCW Supp—page 16]

4.64.030 Entry of judgment—Form of judgment summary. (1) The clerk shall enter all judgments in the execution docket, subject to the direction of the court and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action.

(2)(a) On the first page of each judgment which provides for the payment of money, including foreign judgments, judgments in rem, mandates of judgments, and judgments on garnishments, the following shall be succinctly summarized: The judgment creditor and the name of his or her attorney, the judgment debtor, the amount of the judgment, the interest owed to the date of the judgment, and the total of the taxable costs and attorney fees, if known at the time of the entry of the judgment, and in the entry of a foreign judgment, the filing and expiration dates of the judgment under the laws of the original jurisdiction.

(b) If the judgment provides for the award of any right, title, or interest in real property, the first page must also include an abbreviated legal description of the property in which the right, title, or interest was awarded by the judgment, including lot, block, plat, or section, township, and range, and reference to the judgment page number where the full legal description is included, if applicable; or the assessor's property tax parcel or account number, consistent with RCW 65.04.045(1) (f) and (g).

(c) If the judgment provides for damages arising from the ownership, maintenance, or use of a motor vehicle as specified in RCW 46.29.270, the first page of the judgment summary must clearly state that the judgment is awarded pursuant to RCW 46.29.270 and that the clerk must give notice to the department of licensing as outlined in RCW 46.29.310.

(3) If the attorney fees and costs are not included in the judgment, they shall be summarized in the cost bill when filed. The clerk may not enter a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section. The clerk is not liable for an incorrect summary. [2003 c 43 § 1; 2000 c 41 § 1; 1999 c 296 § 1; 1997 c 358 § 5; 1995 c 149 § 1; 1994 c 185 § 2; 1987 c 442 § 1107; 1984 c 128 § 6; 1983 c 28 § 2; Code 1881 § 305; 1877 p 62 § 309; 1869 p 75 § 307; RRS § 435.]

Rules of court: *Cf. CR 58(a), CR 58(b), CR 78(e).*

Title 6

ENFORCEMENT OF JUDGMENTS

Chapters

6.27 Garnishment.

6.36 Uniform enforcement of foreign judgments act.

Chapter 6.27 RCW

GARNISHMENT

Sections

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- 6.27.340 Continuing lien on earnings—Captions—Additions to writ and answer forms.
- 6.27.350 Continuing lien on earnings—When lien becomes effective—Termination—Second answer.

6.27.010 Definitions. (1) As used in this chapter, the term "earnings" means compensation paid or payable to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a nongovernmental pension or retirement program.

(2) As used in this chapter, the term "disposable earnings" means that part of earnings remaining after the deduction from those earnings of any amounts required by law to be withheld. [2003 c 222 § 16; 1987 c 442 § 1001.]

6.27.020 Grounds for issuance of writ—Time of issuance of prejudgment writs. (1) The clerks of the superior courts and district courts of this state may issue writs of garnishment returnable to their respective courts for the benefit of a judgment creditor who has a judgment wholly or partially unsatisfied in the court from which the garnishment is sought.

(2) Writs of garnishment may be issued in district court with like effect by the attorney of record for the judgment creditor, and the form of writ shall be substantially the same as when issued by the court except that it shall be subscribed only by the signature of such attorney.

(3) Except as otherwise provided in RCW 6.27.040 and 6.27.330, the superior courts and district courts of this state may issue prejudgment writs of garnishment to a plaintiff at the time of commencement of an action or at any time afterward, subject to the requirements of chapter 6.26 RCW. [2003 c 222 § 1; 1987 c 442 § 1002; 1969 ex.s. c 264 § 1. Formerly RCW 7.33.010.]

Rules of court: Cf. CR 64.

6.27.040 State and municipal corporations subject to garnishment—Service of writ. (1) The state of Washington, all counties, cities, towns, school districts and other municipal corporations shall be subject to garnishment after judgment has been entered in the principal action, but not before, in the superior and district courts, in the same manner and with the same effect, as provided in the case of other garnishees.

(2) The venue of any such garnishment proceeding shall be the same as for the original action, and the writ shall be issued by the clerk of the court having jurisdiction of such original action or by the attorney of record for the judgment creditor in district court.

(3) The writ of garnishment shall be served upon the same officer as is required for service of summons upon the

commencement of a civil action against the state, county, city, town, school district, or other municipal corporation, as the case may be. [2003 c 222 § 2. Prior: 1987 c 442 § 1004; 1987 c 202 § 134; 1969 ex.s. c 264 § 6. Formerly RCW 7.33.060.]

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

6.27.060 Application for writ—Affidavit—Fee. The judgment creditor as the plaintiff or someone in the judgment creditor's behalf shall apply for a writ of garnishment by affidavit, stating the following facts: (1) The plaintiff has a judgment wholly or partially unsatisfied in the court from which the writ is sought; (2) the amount alleged to be due under that judgment; (3) the plaintiff has reason to believe, and does believe that the garnishee, stating the garnishee's name and residence or place of business, is indebted to the defendant in amounts exceeding those exempted from garnishment by any state or federal law, or that the garnishee has possession or control of personal property or effects belonging to the defendant which are not exempted from garnishment by any state or federal law; and (4) whether or not the garnishee is the employer of the judgment debtor.

The judgment creditor shall pay to the clerk of the superior court the fee provided by RCW 36.18.020, or to the clerk of the district court the fee provided by RCW 3.62.060. [2003 c 222 § 17; 1988 c 231 § 22. Prior: 1987 c 442 § 1006; 1987 c 202 § 133; 1981 c 193 § 3; 1977 ex.s. c 55 § 1; 1969 ex.s. c 264 § 4. Formerly RCW 7.33.040.]

Severability—1988 c 231: See note following RCW 6.01.050.

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

6.27.070 Issuance of writ—Form—Dating—Attestation. (1) When application for a writ of garnishment is made by a judgment creditor and the requirements of RCW 6.27.060 have been complied with, the clerk shall docket the case in the names of the judgment creditor as plaintiff, the judgment debtor as defendant, and the garnishee as garnishee defendant, and shall immediately issue and deliver a writ of garnishment to the judgment creditor in the form prescribed in RCW 6.27.100, directed to the garnishee, commanding the garnishee to answer said writ on forms served with the writ and complying with RCW 6.27.190 within twenty days after the service of the writ upon the garnishee. The clerk shall likewise docket the case when a writ of garnishment issued by the attorney of record of a judgment creditor is filed. Whether a writ is issued by the clerk or an attorney, the clerk shall bear no responsibility for errors contained in the writ.

(2) The writ of garnishment shall be dated and attested as in the form prescribed in RCW 6.27.100. The name and office address of the plaintiff's attorney shall be indorsed thereon or, in case the plaintiff has no attorney, the name and address of the plaintiff shall be indorsed thereon. The address of the clerk's office shall appear at the bottom of the writ. [2003 c 222 § 3; 1987 c 442 § 1007; 1970 ex.s. c 61 § 1. Prior: 1969 ex.s. c 264 § 5. Formerly RCW 7.33.050.]

6.27.100 Form of writ. (1) The writ shall be substantially in the following form, but if the writ is issued under a court order or judgment for child support, the following statement shall appear conspicuously in the caption: "This gar-

nishment is based on a judgment or court order for child support"; and if the garnishment is for a continuing lien, the form shall be modified as provided in RCW 6.27.340; and if the writ is not directed to an employer for the purpose of garnishing a defendant's earnings, the paragraph relating to the earnings exemption may be omitted and the paragraph relating to the deduction of processing fees may be omitted; and if the writ is issued by an attorney, the writ shall be revised as indicated in subsection (2) of this section:

"IN THE COURT
OF THE STATE OF WASHINGTON IN AND FOR
THE COUNTY OF

Plaintiff, No.
vs.
Defendant WRIT OF GARNISHMENT
Garnishee
THE STATE OF WASHINGTON TO:
Garnishee
AND TO:
Defendant

The above-named plaintiff has applied for a writ of garnishment against you, claiming that the above-named defendant is indebted to plaintiff and that the amount to be held to satisfy that indebtedness is \$, consisting of:

- Balance on Judgment or Amount of Claim \$
Interest under Judgment from to \$
Taxable Costs and Attorneys' Fees \$
Estimated Garnishment Costs:
Filing Fee \$
Service and Affidavit Fees \$
Postage and Costs of Certified Mail \$
Answer Fee or Fees (If applicable) \$
Garnishment Attorney Fee \$
Other \$

YOU ARE HEREBY COMMANDED, unless otherwise directed by the court, by the attorney of record for the plaintiff, or by this writ, not to pay any debt, whether earnings subject to this garnishment or any other debt, owed to the defendant at the time this writ was served and not to deliver, sell, or transfer, or recognize any sale or transfer of, any personal property or effects of the defendant in your possession or control at the time when this writ was served. Any such payment, delivery, sale, or transfer is void to the extent necessary to satisfy the plaintiff's claim and costs for this writ with interest.

YOU ARE FURTHER COMMANDED to answer this writ by filling in the attached form according to the instructions in this writ and in the answer forms and, within twenty days after the service of the writ upon you, to mail or deliver the original of such answer to the court, one copy to the plaintiff or the plaintiff's attorney, and one copy to the defendant, in the envelopes provided.

If, at the time this writ was served, you owed the defendant any earnings (that is, wages, salary, commission, bonus,

or other compensation for personal services or any periodic payments pursuant to a nongovernmental pension or retirement program), the defendant is entitled to receive amounts that are exempt from garnishment under federal and state law. You must pay the exempt amounts to the defendant on the day you would customarily pay the compensation or other periodic payment. As more fully explained in the answer, the basic exempt amount is the greater of seventy-five percent of disposable earnings or a minimum amount determined by reference to the employee's pay period, to be calculated as provided in the answer. However, if this writ carries a statement in the heading that "This garnishment is based on a judgment or court order for child support," the basic exempt amount is forty percent of disposable earnings.

IF THIS IS A WRIT FOR A CONTINUING LIEN ON EARNINGS, YOU MAY DEDUCT A PROCESSING FEE FROM THE REMAINDER OF THE EMPLOYEE'S EARNINGS AFTER WITHHOLDING UNDER THIS WRIT. THE PROCESSING FEE MAY NOT EXCEED TWENTY DOLLARS FOR THE FIRST ANSWER AND TEN DOLLARS AT THE TIME YOU SUBMIT THE SECOND ANSWER.

If you owe the defendant a debt payable in money in excess of the amount set forth in the first paragraph of this writ, hold only the amount set forth in the first paragraph and any processing fee if one is charged and release all additional funds or property to defendant.

IF YOU FAIL TO ANSWER THIS WRIT AS COMMANDED, A JUDGMENT MAY BE ENTERED AGAINST YOU FOR THE FULL AMOUNT OF THE PLAINTIFF'S CLAIM AGAINST THE DEFENDANT WITH ACCRUING INTEREST, ATTORNEY FEES, AND COSTS WHETHER OR NOT YOU OWE ANYTHING TO THE DEFENDANT. IF YOU PROPERLY ANSWER THIS WRIT, ANY JUDGMENT AGAINST YOU WILL NOT EXCEED THE AMOUNT OF ANY NONEXEMPT DEBT OR THE VALUE OF ANY NONEXEMPT PROPERTY OR EFFECTS IN YOUR POSSESSION OR CONTROL.

JUDGMENT MAY ALSO BE ENTERED AGAINST THE DEFENDANT FOR COSTS AND FEES INCURRED BY THE PLAINTIFF.

Witness, the Honorable, Judge of the above-entitled Court, and the seal thereof, this day of , 20. . .

[Seal]

Attorney for Clerk of the
Plaintiff (or Court
Plaintiff, if no
attorney)
Address By
Address"

(2) If an attorney issues the writ of garnishment, the final paragraph of the writ, containing the date, and the subscripted attorney and clerk provisions, shall be replaced with text in substantially the following form:

in cash or in a bank account) and certain property such as household furnishings, tools of trade, and a motor vehicle (all limited by differing dollar values).

HOW TO CLAIM EXEMPTIONS. Fill out the enclosed claim form and mail or deliver it as described in instructions on the claim form. If the plaintiff does not object to your claim, the funds or other property that you have claimed as exempt must be released not later than 10 days after the plaintiff receives your claim form. If the plaintiff objects, the law requires a hearing not later than 14 days after the plaintiff receives your claim form, and notice of the objection and hearing date will be mailed to you at the address that you put on the claim form.

THE LAW ALSO PROVIDES OTHER EXEMPTION RIGHTS. IF NECESSARY, AN ATTORNEY CAN ASSIST YOU TO ASSERT THESE AND OTHER RIGHTS, BUT YOU MUST ACT IMMEDIATELY TO AVOID LOSS OF RIGHTS BY DELAY.

(2) The claim form required by RCW 6.27.130(1) to be mailed to or served on an individual judgment debtor shall be in the following form, printed or typed in type no smaller than elite type:

[Caption to be filled in by judgment creditor or plaintiff before mailing.]

Name of Court
Plaintiff,
vs.
Defendant,
Garnishee Defendant
EXEMPTION CLAIM

INSTRUCTIONS:

- 1. Read this whole form after reading the enclosed notice. Then put an X in the box or boxes that describe your exemption claim or claims and write in the necessary information on the blank lines. If additional space is needed, use the bottom of the last page or attach another sheet.
2. Make two copies of the completed form. Deliver the original form by first class mail or in person to the clerk of the court, whose address is shown at the bottom of the writ of garnishment. Deliver one of the copies by first class mail or in person to the plaintiff or plaintiff's attorney, whose name and address are shown at the bottom of the writ. Keep the other copy. YOU SHOULD DO THIS AS QUICKLY AS POSSIBLE, BUT NO LATER THAN 28 DAYS (4 WEEKS) AFTER THE DATE ON THE WRIT.

I/We claim the following money or property as exempt:

IF BANK ACCOUNT IS GARNISHED:

- [] The account contains payments from:
[] Temporary assistance for needy families, SSI, or other public assistance. I receive \$ monthly.
[] Social Security. I receive \$ monthly.
[] Veterans' Benefits. I receive \$ monthly.
[] U.S. Government Pension. I receive \$ monthly.
[] Unemployment Compensation. I receive \$ monthly.
[] Child support. I receive \$ monthly.
[] Other. Explain

IF EXEMPTION IN BANK ACCOUNT IS CLAIMED, ANSWER ONE OR BOTH OF THE FOLLOWING:

- [] No money other than from above payments are in the account.
[] Moneys in addition to the above payments have been deposited in the account. Explain

IF EARNINGS ARE GARNISHED FOR CHILD SUPPORT:

- [] I claim maximum exemption.
[] I am supporting another child or other children.
[] I am supporting a husband or a wife.

IF PENSION OR RETIREMENT BENEFITS ARE GARNISHED:

- [] Name and address of employer who is paying the benefits:

OTHER PROPERTY:

- [] Describe property
(If you claim other personal property as exempt, you must attach a list of all other personal property that you own.)

Print: Your name If married, name of husband/wife
Your signature Signature of husband or wife
Address Address (if different from yours)
Telephone number Telephone number (if different from yours)

CAUTION: If the plaintiff objects to your claim, you will have to go to court and give proof of your claim. For example, if you claim that a bank account is exempt, you may have to show the judge your bank statements and papers that show the source of the money you deposited in the bank.

6.27.190 Answer of garnishee—Contents—Forms.

The answer of the garnishee shall be signed by the garnishee or attorney or if the garnishee is a corporation, by an officer, attorney or duly authorized agent of the garnishee, under penalty of perjury, and the original delivered, either personally or by mail, to the clerk of the court, one copy to the plaintiff or the plaintiff's attorney, and one copy to the defendant. The answer shall be made on a form substantially as appears in this section, served on the garnishee with the writ. Prior to serving the answer forms for a writ for continuing lien on earnings, the plaintiff shall fill in the minimum exemption amounts for the different pay periods, and the maximum percentages of disposable earnings subject to lien and exempt from lien. If the garnishment is for a continuing lien, the answer forms shall be as prescribed in RCW 6.27.340 and 6.27.350. If the writ is not directed to an employer for the purpose of garnishing the defendant's wages, the paragraphs in section II of the answer relating to earnings and calculations of withheld amounts may be omitted.

IN THE COURT
OF THE STATE OF WASHINGTON IN AND FOR
THE COUNTY OF
NO. . . .
Plaintiff
vs.
Defendant
Garnishee Defendant
ANSWER
TO WRIT OF
GARNISHMENT

SECTION I. On the date the writ of garnishment was issued as indicated by the date appearing on the last page of the writ:

If paid: Weekly \$
Bi-weekly \$

*These are minimum exempt amounts that the defendant must be paid. If your answer covers more than one pay period, multiply the preceding amount by the number of pay periods and/or fraction thereof your answer covers. If you use a pay period not shown, prorate the monthly exempt amount.

Subtract the larger of lines 4 and 5 from line 3: \$(6)

Enter amount (if any) withheld for ongoing government liens such as child support: \$(7)

Subtract line 7 from line 6. This amount must be held out for the plaintiff: \$(8)

This is the formula that you will use for withholding each pay period over the required sixty-day garnishment period. Deduct any allowable processing fee you may charge from the amount that is to be paid to the defendant.

If there is any uncertainty about your answer, give an explanation on the last page or on an attached page.

(A) The defendant: (check one) was, was not employed by garnishee. If not employed and you have no possession or control of any funds of defendant, indicate the last day of employment: ; and complete section III of this answer and mail or deliver the forms as directed in the writ;

(B) The defendant: (check one) did, did not maintain a financial account with garnishee; and

(C) The garnishee: (check one) did, did not have possession of or control over any funds, personal property, or effects of the defendant. (List all of defendant's personal property or effects in your possession or control on the last page of this answer form or attach a schedule if necessary.)

SECTION II. At the time of service of the writ of garnishment on the garnishee there was due and owing from the garnishee to the above-named defendant \$

This writ attaches a maximum of percent of the defendant's disposable earnings (that is, compensation payable for personal services, whether called wages, salary, commission, bonus, or otherwise, and including periodic payments pursuant to a nongovernmental pension or retirement program). Calculate the attachable amount as follows:

Gross Earnings \$(1)

Less deductions required by law (social security, federal withholding tax, etc. Do not include deductions for child support orders or government liens here. Deduct child support orders and liens on line 7): \$(2)

Disposable Earnings (subtract line 2 from line 1): \$(3)

Enter percent of line 3: \$(4)

Enter one of the following exempt amounts*: \$(5)

Semi-monthly \$
Monthly \$

SECTION III. An attorney may answer for the garnishee.

Under penalty of perjury, I affirm that I have examined this answer, including accompanying schedules, and to the best of my knowledge and belief it is true, correct, and complete.

Signature of Garnishee Defendant Date
Signature of person answering for garnishee Connection with garnishee
Print name of person signing Address of garnishee

[2003 c 222 § 8; 2000 c 72 § 4; 1997 c 296 § 5; 1988 c 231 § 30; 1987 c 442 § 1019; 1969 ex.s. c 264 § 15. Formerly RCW 7.33.150.]

Rules of court: Cf. SPR 91.04W(c).

Severability—1988 c 231: See note following RCW 6.01.050.

6.27.200 Default judgment—Reduction upon motion of garnishee—Attorney's fees. If the garnishee fails to answer the writ within the time prescribed in the writ, after the time to answer the writ has expired and after required returns or affidavits have been filed, showing service on the garnishee and service on or mailing to the defendant, it shall be lawful for the court to render judgment by default against such garnishee, after providing a notice to the garnishee by personal service or first class mail deposited in the mail at least ten calendar days prior to entry of the judgment, for the full amount claimed by the plaintiff against the defendant, or in case the plaintiff has a judgment against the defendant, for the full amount of the plaintiff's unpaid judgment against the defendant with all accruing interest and costs as prescribed in RCW 6.27.090: PROVIDED, That upon motion by the garnishee at any time within seven days following service on, or mailing to, the garnishee of a copy of the first writ of execution or writ of garnishment under such judgment, the judgment against the garnishee shall be reduced to the amount of any nonexempt funds or property which was actually in the possession of the garnishee at the time the writ was served, plus the cumulative amount of the nonexempt earnings subject to the lien provided for in RCW 6.27.350, or the sum of one hundred dollars, whichever is more, but in no event to exceed the full amount claimed by the plaintiff or the amount of the unpaid judgment against the principal defendant plus all accruing interest and costs and attorney's fees as prescribed in RCW 6.27.090, and in addition the plaintiff shall be entitled to a reasonable attorney's fee for the plaintiff's response to the garnishee's motion to reduce said judgment against the garnishee under this proviso and the court may allow additional attorney's fees for other actions taken because of the garnishee's failure to answer. [2003 c 222 § 9; 1997 c 296 § 6; 1988 c 231 § 31; 1987 c 442 § 1020; 1970 ex.s. c 61 § 10; 1969 ex.s. c 264 § 19. Formerly RCW 7.33.190.]

Rules of court: *CR 55, JCR 55.*

Severability—1988 c 231: See note following RCW 6.01.050.

6.27.250 Judgment against garnishee—Procedure if debt not mature. (1)(a) If it appears from the answer of the garnishee or if it is otherwise made to appear that the garnishee was indebted to the defendant in any amount, not exempt, when the writ of garnishment was served, and if the required return or affidavit showing service on or mailing to the defendant is on file, the court shall render judgment for the plaintiff against such garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount exceeds the amount of the plaintiff's claim or judgment against the defendant with accruing interest and costs and attorney's fees as prescribed in RCW 6.27.090, in which case it shall be for the amount of such claim or judgment, with said interest, costs, and fees. In the case of a superior court garnishment, the court shall order the garnishee to pay to the plaintiff or to the plaintiff's attorney through the registry of the court the amount of the judgment against the garnishee, the clerk of the court shall note receipt of any such payment, and the clerk of the court shall disburse the payment to the plaintiff. In the case of a district court garnishment, the court shall order the garnishee to pay the judgment amount directly to the plaintiff or to the plaintiff's attor-

ney. In either case, the court shall inform the garnishee that failure to pay the amount may result in execution of the judgment, including garnishment.

(b) If, prior to judgment, the garnishee tenders to the plaintiff or to the plaintiff's attorney or to the court any amounts due, such tender will support judgment against the garnishee in the amount so tendered, subject to any exemption claimed within the time required in RCW 6.27.160 after the amounts are tendered, and subject to any controversion filed within the time required in RCW 6.27.210 after the amounts are tendered. Any amounts tendered to the court by or on behalf of the garnishee or the defendant prior to judgment shall be disbursed to the party entitled to same upon entry of judgment or order, and any amounts so tendered after entry of judgment or order shall be disbursed upon receipt to the party entitled to same.

(2) If it shall appear from the answer of the garnishee and the same is not controverted, or if it shall appear from the hearing or trial on controversion or by stipulation of the parties that the garnishee is indebted to the principal defendant in any sum, but that such indebtedness is not matured and is not due and payable, and if the required return or affidavit showing service on or mailing to the defendant is on file, the court shall make an order requiring the garnishee to pay such sum into court when the same becomes due, the date when such payment is to be made to be specified in the order, and in default thereof that judgment shall be entered against the garnishee for the amount of such indebtedness so admitted or found due. In case the garnishee pays the sum at the time specified in the order, the payment shall operate as a discharge, otherwise judgment shall be entered against the garnishee for the amount of such indebtedness, which judgment shall have the same force and effect, and be enforced in the same manner as other judgments entered against garnishees as provided in this chapter: PROVIDED, That if judgment is rendered in favor of the principal defendant, or if any judgment rendered against the principal defendant is satisfied prior to the date of payment specified in an order of payment entered under this subsection, the garnishee shall not be required to make the payment, nor shall any judgment in such case be entered against the garnishee.

(3) The court shall, upon request of the plaintiff at the time judgment is rendered against the garnishee or within one year thereafter, or within one year after service of the writ on the garnishee if no judgment is taken against the garnishee, render judgment against the defendant for recoverable garnishment costs and attorney fees. However, if it appears from the answer of garnishee or otherwise that, at the time the writ was issued, the garnishee held no funds, personal property, or effects of the defendant and, in the case of a garnishment on earnings, the defendant was not employed by the garnishee, or, in the case of a writ directed to a financial institution, the defendant maintained no account therein, then the plaintiff may not be awarded judgment against the defendant for such costs or attorney fees. [2003 c 222 § 10; 2000 c 72 § 5; 1988 c 231 § 32; 1987 c 442 § 1025; 1969 ex.s. c 264 § 20. Formerly RCW 7.33.200.]

Rules of court: *Cf. SPR 91.04W(d).*

Severability—1988 c 231: See note following RCW 6.01.050.

6.27.265 Form for judgment against garnishee. The judgment on garnishee's answer or tendered funds, and for costs against defendant, and the order to pay funds shall be substantially in the following form:

IN THE COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF

Plaintiff vs. Defendant Garnishee

No. JUDGMENT AND ORDER TO PAY (Clerk's Action Required)

Table with 2 columns: Item, Amount. Includes Judgment Creditor, Garnishment Judgment Debtor, Judgment Amount, Costs Judgment Debtor, Costs Judgment Amount, and Attorney for Judgment Creditor.

IT APPEARING THAT garnishee was indebted to defendant in the nonexempt amount of \$; that at the time the writ of garnishment was issued defendant was employed by or maintained a financial institution account with garnishee, or garnishee had in its possession or control funds, personal property, or effects of defendant; and that plaintiff has incurred recoverable costs and attorney fees of \$; now, therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED that plaintiff is awarded judgment against garnishee in the amount of \$; that plaintiff is awarded judgment against defendant in the amount of \$ for recoverable costs; that, if this is a superior court order, garnishee shall pay its judgment amount to plaintiff [or to plaintiff's attorney] through the registry of the court, and the clerk of the court shall note receipt thereof and forthwith disburse such payment to plaintiff [or to plaintiff's attorney]; that, if this is a district court order, garnishee shall pay its judgment amount to plaintiff directly [or to plaintiff's attorney], and if any payment is received by the clerk of the court, the clerk shall forthwith disburse such payment to plaintiff [or to plaintiff's attorney]. Garnishee is advised that the failure to pay its judgment amount may result in execution of the judgment, including garnishment.

DONE IN OPEN COURT this day of , 20. Judge/Court Commissioner

Presented by: Attorney for Plaintiff

[2003 c 222 § 11; 2000 c 72 § 6.]

6.27.320 Dismissal of garnishment—Duty of plaintiff—Procedure—Penalty—Costs. In any case where garnishee has answered that it is holding funds or property belonging to defendant and plaintiff shall obtain satisfaction of the judgment and payment of recoverable garnishment costs and attorney fees from a source other than the garnishment, upon written demand of the defendant or the garnishee, it shall be the duty of plaintiff to obtain an order dismissing the garnishment and to serve it upon the garnishee within twenty days after the demand or the satisfaction of judgment and payment of costs and fees, whichever shall be later. The attorney of record for the plaintiff may, as an alternative to obtaining a court order dismissing the garnishment, deliver to the garnishee and file with the court an authorization to dismiss the garnishment in whole or part, signed by the attorney, in substantially the form indicated in RCW 6.27.160(3). In the event of the failure of plaintiff to obtain and serve such an order or release, if garnishee continues to hold such funds or property, defendant shall be entitled to move for dismissal of the garnishment and shall further be entitled to a judgment against plaintiff of one hundred dollars plus defendant's costs and damages. Dismissal may be on ex parte motion of the plaintiff. [2003 c 222 § 12; 2000 c 72 § 7; 1969 ex.s. c 264 § 31. Formerly RCW 7.33.310.]

6.27.340 Continuing lien on earnings—Captions—Additions to writ and answer forms. (1) Service of a writ for a continuing lien shall comply fully with RCW 6.27.110.

(2) The caption of the writ shall be marked "CONTINUING LIEN ON EARNINGS" and the following additional paragraph shall be included in the writ form prescribed in RCW 6.27.100:

"THIS IS A WRIT FOR A CONTINUING LIEN. THE GARNISHEE SHALL HOLD the nonexempt portion of the defendant's earnings due at the time of service of this writ and shall also hold the defendant's nonexempt earnings that accrue through the last payroll period ending on or before SIXTY days after the date of service of this writ. HOWEVER, IF THE GARNISHEE IS PRESENTLY HOLDING THE NONEXEMPT PORTION OF THE DEFENDANT'S EARNINGS UNDER A PREVIOUSLY SERVED WRIT FOR A CONTINUING LIEN, THE GARNISHEE SHALL HOLD UNDER THIS WRIT only the defendant's nonexempt earnings that accrue from the date the previously served writ or writs terminate and through the last payroll period ending on or before sixty days after the date of termination of the previous writ or writs. IN EITHER CASE, THE GARNISHEE SHALL STOP WITHHOLDING WHEN THE SUM WITHHELD EQUALS THE AMOUNT STATED IN THIS WRIT OF GARNISHMENT."

(3) The answer forms served on an employer with the writ shall include in the caption, "ANSWER TO WRIT OF GARNISHMENT FOR CONTINUING LIEN ON EARNINGS"

INGS," and the following paragraph shall be added to section I of the answer form prescribed in RCW 6.27.190:

"If you are withholding the defendant's nonexempt earnings under a previously served writ for a continuing lien, answer only sections I and II of this form and mail or deliver the forms as directed in the writ. Withhold from the defendant's future nonexempt earnings as directed in the writ, and a second set of answer forms will be forwarded to you later.

ANSWER: I am presently holding the defendant's nonexempt earnings under a previous writ served on that will terminate not later than, 20 . . .

.....

If you are NOT withholding the defendant's earnings under a previously served writ for a continuing lien, answer this entire form and mail or deliver the forms as directed in the writ. A second set of answer forms will be forwarded to you later for subsequently withheld earnings."

(4) In the event plaintiff fails to comply with this section, employer may elect to treat the garnishment as one not creating a continuing lien. [2003 c 222 § 13; 1988 c 231 § 34; 1987 c 442 § 1033; 1970 ex.s. c 61 § 6. Formerly RCW 7.33.360.]

Severability—1988 c 231: See note following RCW 6.01.050.

6.27.350 Continuing lien on earnings—When lien becomes effective—Termination—Second answer. (1) Where the garnishee's answer to a garnishment for a continuing lien reflects that the defendant is employed by the garnishee, the judgment or balance due thereon as reflected on the writ of garnishment shall become a lien on earnings due at the time of the effective date of the writ, as defined in this subsection, to the extent that they are not exempt from garnishment, and such lien shall continue as to subsequent non-exempt earnings until the total subject to the lien equals the amount stated on the writ of garnishment or until the expiration of the employer's payroll period ending on or before sixty days after the effective date of the writ, whichever occurs first, except that such lien on subsequent earnings shall terminate sooner if the employment relationship is terminated or if the underlying judgment is vacated, modified, or satisfied in full or if the writ is dismissed. The "effective date" of a writ is the date of service of the writ if there is no previously served writ; otherwise, it is the date of termination of a previously served writ or writs.

(2) At the time of the expected termination of the lien, the plaintiff shall mail to the garnishee three additional stamped envelopes addressed as provided in RCW 6.27.110, and four additional copies of the answer form prescribed in RCW 6.27.190. The plaintiff shall replace the text of section I of the answer form with a statement in substantially the following form: "ANSWER SECTION II OF THIS FORM WITH RESPECT TO THE TOTAL AMOUNT OF EARNINGS WITHHELD UNDER THIS GARNISHMENT, INCLUDING THE AMOUNT, IF ANY, STATED IN

YOUR FIRST ANSWER, AND WITHIN TWENTY DAYS AFTER YOU RECEIVE THESE FORMS, MAIL OR DELIVER THEM AS DIRECTED IN THE WRIT."

Amount due and owing stated in first answer \$. . .
Amount accrued since first answer \$. . .
TOTAL AMOUNT WITHHELD \$. . .

(3) Within twenty days of receipt of the second answer form the garnishee shall file a second answer, in the form as provided in subsection (2) of this section, stating the total amount held subject to the garnishment. [2003 c 222 § 14; 1997 c 296 § 7; 1988 c 231 § 35; 1987 c 442 § 1034; 1970 ex.s. c 61 § 7. Formerly RCW 7.33.370.]

Severability—1988 c 231: See note following RCW 6.01.050.

Chapter 6.36 RCW

UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

Sections

6.36.035 Affidavit of last address of judgment debtor, creditor—Filing—Notice of filing of judgment—Contents—Effect.

6.36.035 Affidavit of last address of judgment debtor, creditor—Filing—Notice of filing of judgment—Contents—Effect.

(1) At the time of the filing of the foreign judgment, the judgment creditor or the judgment creditor's lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post office address of the judgment debtor, the judgment creditor, and the filing and expiration date of the judgment in the originating jurisdiction.

(2) Promptly upon the filing of the foreign judgment and the affidavit, the judgment creditor shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer if any in this state. In addition, the judgment creditor shall file proof of mailing with the clerk.

(3)(a) No execution or other process for enforcement of a foreign judgment filed in the office of the clerk of a superior court shall be allowed until ten days after the proof of mailing has been filed with the clerk by the judgment creditor.

(b) No execution or other process for enforcement of a foreign judgment filed in the office of the clerk of a district court shall be allowed until fourteen days after the proof of mailing has been filed with the clerk by the judgment creditor.

(c) Nothing in this section may be interpreted to extend the expiration date of a foreign judgment beyond the expiration date under the laws of the jurisdiction where the judgment originated. [2003 c 43 § 2; 1997 c 358 § 1; 1994 c 185 § 7; 1979 c 97 § 1; 1977 ex.s. c 45 § 2.]

Title 7

SPECIAL PROCEEDINGS AND ACTIONS

Chapters

- 7.40 Injunctions.
7.68 Victims of crimes—Compensation, assistance.
7.70 Actions for injuries resulting from health care.

7.80 Civil infractions.**7.84 Natural resource infractions.****Chapter 7.40 RCW****INJUNCTIONS**

Sections

7.40.230 Injunctions—Fraud in obtaining telecommunications service.
(Effective July 1, 2004.)

7.40.230 Injunctions—Fraud in obtaining telecommunications service. (Effective July 1, 2004.) (1) Whenever it appears that any person is engaged in or about to engage in any act that constitutes or will constitute a violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090, the prosecuting attorney, a telecommunications company, or any person harmed by an alleged violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090 may initiate a civil proceeding in superior court to enjoin such violation, and may petition the court to issue an order for the discontinuance of the specific telephone service being used in violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090.

(2) An action under this section shall be brought in the county in which the unlawful act or acts are alleged to have taken place, and shall be commenced by the filing of a verified complaint, or shall be accompanied by an affidavit.

(3) If it is shown to the satisfaction of the court, either by verified complaint or affidavit, that a person is engaged in or about to engage in any act that constitutes a violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090, the court may issue a temporary restraining order to abate and prevent the continuance or recurrence of the act. The court may direct the sheriff to seize and retain until further order of the court any device that is being used in violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090. All property seized pursuant to the order of the court shall remain in the custody of the court.

(4) The court may issue a permanent injunction to restrain, abate or prevent the continuance or recurrence of the violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090. The court may grant declaratory relief, mandatory orders, or any other relief deemed necessary to accomplish the purposes of the injunction. The court may retain jurisdiction of the case for the purpose of enforcing its orders.

(5) If it is shown to the satisfaction of the court, either by verified complaint or affidavit, that a person is engaged in or is about to engage in any act that constitutes a violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090, the court may issue an order which shall be promptly served upon the person in whose name the telecommunications device is listed, requiring the party, within a reasonable time, to be fixed by the court, from the time of service of the petition on the party, to show cause before the judge why telephone service should not promptly be discontinued. At the hearing the burden of proof shall be on the complainant.

(6) Upon a finding by the court that the telecommunications device is being used or has been used in violation of RCW 9.26A.110 or 9.26A.115, the court may issue an order requiring the telephone company which is rendering service over the device to disconnect such service. Upon receipt of such order, which shall be served upon an officer of the telephone company by the sheriff or deputy of the county in

which the telecommunications device is installed, the telephone company shall proceed promptly to disconnect and remove such device and discontinue all telephone service until further order of the court, provided that the telephone company may do so without breach of the peace or trespass.

(7) The telecommunications company that petitions the court for the removal of any telecommunications device under this section shall be a necessary party to any proceeding or action arising out of or under RCW 9.26A.110 or 9.26A.115.

(8) No telephone company shall be liable for any damages, penalty, or forfeiture, whether civil or criminal, for any legal act performed in compliance with any order issued by the court.

(9) Property seized pursuant to the direction of the court that the court has determined to have been used in violation of RCW 9.26A.110 or 9.26A.115 shall be forfeited after notice and hearing. The court may remit or mitigate the forfeiture upon terms and conditions as the court deems reasonable if it finds that such forfeiture was incurred without gross negligence or without any intent of the petitioner to violate the law, or it finds the existence of such mitigating circumstances as to justify the remission or the mitigation of the forfeiture. In determining whether to remit or mitigate forfeiture, the court shall consider losses that may have been suffered by victims as the result of the use of the forfeited property. [2003 c 53 § 5; 1990 c 11 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1990 c 11: See RCW 9.26A.900.

Chapter 7.68 RCW**VICTIMS OF CRIMES—
COMPENSATION, ASSISTANCE**

Sections

7.68.350 Washington state task force against the trafficking of persons.

7.68.350 Washington state task force against the trafficking of persons. (1) There is created the Washington state task force against the trafficking of persons.

(2) The task force shall consist of the following members:

(a) The director of the office of community development, or the director's designee;

(b) The secretary of the department of health, or the secretary's designee;

(c) The secretary of the department of social and health services, or the secretary's designee;

(d) The director of the department of labor and industries, or the director's designee;

(e) The commissioner of the employment security department, or the commissioner's designee;

(f) Nine members, selected by the director of the office of community development, that represent public and private sector organizations that provide assistance to persons who are victims of trafficking.

(3) The task force shall be chaired by the director of the office of community development, or the director's designee.

(4) The task force shall carry out the following activities:

(a) Measure and evaluate the progress of the state in trafficking prevention activities;

(b) Identify available federal, state, and local programs that provide services to victims of trafficking that include, but are not limited to health care, human services, housing, education, legal assistance, job training or preparation, interpreting services, English as a second language classes, and victim's compensation; and

(c) Make recommendations on methods to provide a coordinated system of support and assistance to persons who are victims of trafficking.

(5) The task force shall report its supplemental findings and recommendations to the governor and legislature by June 30, 2004.

(6) The office of community development shall provide necessary administrative and clerical support to the task force, within available resources.

(7) The members of the task force shall serve without compensation, but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060, within available resources.

(8) The task force expires June 30, 2004. [2003 c 266 § 1.]

Effective date—2003 c 266: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2003]." [2003 c 266 § 3.]

Chapter 7.70 RCW

ACTIONS FOR INJURIES RESULTING FROM HEALTH CARE

Sections

- 7.70.065 Informed consent—Persons authorized to provide for patients who are not competent—Priority.
- 7.70.068 Informed consent—May be contained in mental health advance directive.

7.70.065 Informed consent—Persons authorized to provide for patients who are not competent—Priority. (1) Informed consent for health care for a patient who is not competent, as defined in RCW 11.88.010(1)(e), to consent may be obtained from a person authorized to consent on behalf of such patient. Persons authorized to provide informed consent to health care on behalf of a patient who is not competent to consent shall be a member of one of the following classes of persons in the following order of priority:

- (a) The appointed guardian of the patient, if any;
- (b) The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions;
- (c) The patient's spouse;
- (d) Children of the patient who are at least eighteen years of age;
- (e) Parents of the patient; and
- (f) Adult brothers and sisters of the patient.

(2) If the physician seeking informed consent for proposed health care of the patient who is not competent to consent makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class in the order of descend-

ing priority. However, no person under this section may provide informed consent to health care:

(a) If a person of higher priority under this section has refused to give such authorization; or

(b) If there are two or more individuals in the same class and the decision is not unanimous among all available members of that class.

(3) Before any person authorized to provide informed consent on behalf of a patient not competent to consent exercises that authority, the person must first determine in good faith that that patient, if competent, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests. [2003 c 283 § 29; 1987 c 162 § 1.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

7.70.068 Informed consent—May be contained in mental health advance directive. Consent to treatment or admission contained in a validly executed mental health advance directive constitutes informed consent for purposes of this chapter. [2003 c 283 § 30.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

**Chapter 7.80 RCW
CIVIL INFRACTIONS**

Sections

- 7.80.120 Monetary penalties—Restitution.

7.80.120 Monetary penalties—Restitution. (1) A person found to have committed a civil infraction shall be assessed a monetary penalty.

(a) The maximum penalty and the default amount for a class 1 civil infraction shall be two hundred fifty dollars, not including statutory assessments, except for an infraction of state law involving potentially dangerous litter as specified in RCW 70.93.060(4) and an infraction of state law involving violent video or computer games under RCW 9.91.180, in which case the maximum penalty and default amount is five hundred dollars;

(b) The maximum penalty and the default amount for a class 2 civil infraction shall be one hundred twenty-five dollars, not including statutory assessments;

(c) The maximum penalty and the default amount for a class 3 civil infraction shall be fifty dollars, not including statutory assessments; and

(d) The maximum penalty and the default amount for a class 4 civil infraction shall be twenty-five dollars, not including statutory assessments.

(2) The supreme court shall prescribe by rule the conditions under which local courts may exercise discretion in assessing fines for civil infractions.

(3) Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time the court may grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the

court may proceed to collect the penalty in the same manner as other civil judgments and may notify the prosecuting authority of the failure to pay.

(4) The court may also order a person found to have committed a civil infraction to make restitution. [2003 c 365 § 3; 2003 c 337 § 4; 1997 c 159 § 2; 1987 c 456 § 20.]

Reviser's note: This section was amended by 2003 c 337 § 4 and by 2003 c 365 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—2003 c 365: See note following RCW 9.91.180.

Findings—2003 c 337: See note following RCW 70.93.060.

Chapter 7.84 RCW

NATURAL RESOURCE INFRACTIONS

Sections

7.84.020	"Infraction" defined.
7.84.040	Jurisdiction of court—Venue.

7.84.020 "Infraction" defined. Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Infraction" means an offense which, by the terms of Title 76, 77, 79, or 79A RCW or *chapter 43.30 RCW and rules adopted under these titles and chapters, is declared not to be a criminal offense and is subject to the provisions of this chapter. [2003 c 39 § 3; 1999 c 249 § 503; 1993 c 244 § 3; 1987 c 380 § 2.]

***Reviser's note:** Chapter 43.30 RCW was recodified or repealed in its entirety by chapter 334, Laws of 2003. See Comparative Table for chapter 43.30 RCW in the Table of Disposition of Former RCW Sections, this volume.

Severability—1999 c 249: See note following RCW 79A.05.010.

Intent—1993 c 244: See note following RCW 79A.60.010.

7.84.040 Jurisdiction of court—Venue. (1) Infraction proceedings may be heard and determined by a district court.

(2) Infraction proceedings shall be brought in the district court district in which the infraction occurred. If an infraction takes place in the offshore waters, as defined in RCW 77.08.010, the infraction proceeding may be brought in any county bordering on the Pacific Ocean. [2003 c 39 § 4; 1987 c 380 § 4.]

Title 8

EMINENT DOMAIN

Chapters

8.26 Relocation assistance—Real property acquisition policy.

Chapter 8.26 RCW

RELOCATION ASSISTANCE—REAL PROPERTY ACQUISITION POLICY

Sections

8.26.020	Definitions.
8.26.035	Payment for moving and related expenses.

8.26.020 Definitions. As used in this chapter:

(1) The term "state" means any department, commission, agency, or instrumentality of the state of Washington.

(2) The term "local public agency" applies to any county, city or town, or other municipal corporation or political subdivision of the state and any person who has the authority to acquire property by eminent domain under state law, or any instrumentality of any of the foregoing.

(3) The term "person" means any individual, partnership, corporation, or association.

(4)(a) The term "displaced person" means, except as provided in (c) of this subsection, any person who moves from real property, or moves his personal property from real property:

(i) As a direct result of a written notice of intent to acquire, or the acquisition of, such real property in whole or in part for a program or project undertaken by a displacing agency; or

(ii) On which the person is a residential tenant or conducts a small business, a farm operation, or a business defined in this section, as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a displacing agency in any case in which the displacing agency determines that the displacement is permanent.

(b) Solely for the purposes of RCW 8.26.035 (1) and (2) and 8.26.065, the term "displaced person" includes any person who moves from real property, or moves his personal property from real property:

(i) As a direct result of a written notice of intent to acquire, or the acquisition of, other real property in whole or in part on which the person conducts a business or farm operation, for a program or project undertaken by a displacing agency; or

(ii) As a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which the person conducts a business or a farm operation, under a program or project undertaken by a displacing agency where the displacing agency determines that the displacement is permanent.

(c) The term "displaced person" does not include:

(i) A person who has been determined, according to criteria established by the lead agency, to be either unlawfully occupying the displacement dwelling or to have occupied the dwelling for the purpose of obtaining assistance under this chapter; or

(ii) In any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of the property at the time it was acquired) who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(5) The term "business" means any lawful activity, excepting a farm operation, conducted primarily:

(a) For the purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or other personal property;

(b) For the sale of services to the public;

(c) By a nonprofit organization; or

(d) Solely for the purposes of RCW 8.26.035, for assisting in the purchase, sale, resale, manufacture, processing, or

marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(6) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or for home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(7) The term "comparable replacement dwelling" means any dwelling that is (a) decent, safe, and sanitary; (b) adequate in size to accommodate the occupants; (c) within the financial means of the displaced person; (d) functionally equivalent; (e) in an area not subject to unreasonably adverse environmental conditions; and (f) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(8) For purposes of RCW 8.26.180 through 8.26.200, the term "acquiring agency" means:

(a) A state agency or local public agency that has the authority to acquire property by eminent domain under state law; or

(b) Any state agency, local public agency, or person that (i) does not have the authority to acquire property by eminent domain under state law and (ii) has been designated an "acquiring agency" under rules adopted by the lead agency. However, the lead agency may only designate a state agency, local public agency, or a person as an "acquiring agency" to the extent that it is necessary in order to qualify for federal financial assistance.

(9) The term "displacing agency" means the state agency, local public agency, or any person carrying out a program or project, with federal or state financial assistance, that causes a person to be a displaced person.

(10) The term "federal financial assistance" means a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(11) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of this state, together with the credit instruments, if any, secured thereby.

(12) The term "lead agency" means the Washington state department of transportation.

(13) The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. [2003 c 254 § 1; 1988 c 90 § 2; 1972 ex.s. c 34 § 1; 1971 ex.s. c 240 § 2.]

Section captions—1988 c 90: See note following RCW 8.26.010.

Application—1972 ex.s. c 34: "Sec. 2. The amendatory language contained in section 1 of this 1972 amendatory act shall apply only to persons displaced after the effective date of this 1972 amendatory act [February 20, 1972]." [1972 ex.s. c 34 § 2.]

8.26.035 Payment for moving and related expenses.

(1) Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the displacing agency shall provide for the payment to the displaced person of:

(a) Actual reasonable expenses in moving himself or herself, or his or her family, business, farm operation, or other personal property;

(b) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate the property, in accordance with criteria established by the lead agency;

(c) Actual reasonable expenses in searching for a replacement business or farm; and

(d) Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, in accordance with criteria established by the lead agency, but not to exceed fifty thousand dollars.

(2) A displaced person eligible for payments under subsection (1) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (1) of this section may receive an expense and dislocation allowance determined according to a schedule established by the lead agency.

(3) A displaced person eligible for payments under subsection (1) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (1) of this section. The payment shall consist of a fixed payment in an amount to be determined according to criteria established by the lead agency, except that the payment shall be not less than one thousand dollars nor more than twenty thousand dollars. A person whose sole business at the displacement dwelling is the rental of that property to others does not qualify for a payment under this subsection. [2003 c 357 § 1; 1988 c 90 § 3.]

Section captions—1988 c 90: See note following RCW 8.26.010.

Title 9

CRIMES AND PUNISHMENTS

Chapters

- 9.05 Sabotage.**
- 9.08 Animals, crimes relating to.**
- 9.16 Brands and marks, crimes relating to.**
- 9.18 Bidding offenses.**
- 9.24 Corporations, crimes relating to.**
- 9.26A Telecommunications crime.**
- 9.35 Identity crimes.**
- 9.40 Fire, crimes relating to.**
- 9.41 Firearms and dangerous weapons.**
- 9.45 Frauds and swindles.**
- 9.46 Gambling—1973 act.**
- 9.47 Gambling.**
- 9.61 Malicious mischief—Injury to property.**
- 9.62 Malicious prosecution—Abuse of process.**
- 9.68 Obscenity and pornography.**

- 9.68A Sexual exploitation of children.
- 9.81 Subversive activities.
- 9.82 Treason.
- 9.86 Flags, crimes relating to.
- 9.91 Miscellaneous crimes.
- 9.92 Punishment.
- 9.94 Prisoners—Correctional institutions.
- 9.94A Sentencing reform act of 1981.
- 9.95 Indeterminate sentences.

Chapter 9.05 RCW

SABOTAGE

(Formerly: Anarchy and sabotage)

Sections

- 9.05.030 Assemblages of saboteurs. (*Effective July 1, 2004.*)
- 9.05.060 Criminal sabotage defined—Penalty. (*Effective July 1, 2004.*)

9.05.030 Assemblages of saboteurs. (*Effective July 1, 2004.*) Whenever two or more persons assemble for the purpose of committing criminal sabotage, as defined in RCW 9.05.060, such an assembly is unlawful, and every person voluntarily and knowingly participating therein by his or her presence, aid, or instigation, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both. [2003 c 53 § 6; 1999 c 191 § 1; 1992 c 7 § 2; 1909 c 249 § 314; 1903 c 45 § 4; RRS § 2566.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.05.060 Criminal sabotage defined—Penalty. (*Effective July 1, 2004.*) (1) Whoever, with intent that his or her act shall, or with reason to believe that it may, injure, interfere with, interrupt, supplant, nullify, impair, or obstruct the owner's or operator's management, operation, or control of any agricultural, stockraising, lumbering, mining, quarrying, fishing, manufacturing, transportation, mercantile, or building enterprise, or any other public or private business or commercial enterprise, wherein any person is employed for wage, shall willfully damage or destroy, or attempt or threaten to damage or destroy, any property whatsoever, or shall unlawfully take or retain, or attempt or threaten unlawfully to take or retain, possession or control of any property, instrumentality, machine, mechanism, or appliance used in such business or enterprise, shall be guilty of criminal sabotage.

(2) Criminal sabotage is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 7; 1999 c 191 § 2; 1919 c 173 § 1; RRS § 2563-3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Endangering life by breach of labor contract: RCW 49.44.080.

Excessive steam in boilers: RCW 70.54.080.

Malicious injury to railroad property: RCW 81.60.070.

Malicious mischief—Injury to property: Chapter 9A.48 RCW.

Sabotaging rolling stock: RCW 81.60.080.

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Chapter 9.08 RCW

ANIMALS, CRIMES RELATING TO

Sections

- 9.08.065 Definitions. (*Effective July 1, 2004.*)
- 9.08.070 Pet animals—Taking, concealing, injuring, killing, etc.—Penalty. (*Effective July 1, 2004.*)
- 9.08.072 Transferring stolen pet animal to a research institution—Penalty. (*Effective July 1, 2004.*)
- 9.08.074 Transferring stolen pet animal to a person who has previously sold a stolen pet animal to a research institution—Penalty. (*Effective July 1, 2004.*)
- 9.08.076 Transferring stolen pet animal to a research institution by a U.S.D.A. licensed dealer—Penalty. (*Effective July 1, 2004.*)
- 9.08.078 Illegal sale, receipt, or transfer of pet animals—Separate offenses. (*Effective July 1, 2004.*)

9.08.065 Definitions. (*Effective July 1, 2004.*) As used in RCW 9.08.070 through 9.08.078:

(1) "Pet animal" means a tamed or domesticated animal legally retained by a person and kept as a companion. "Pet animal" does not include livestock raised for commercial purposes.

(2) "Research institution" means a facility licensed by the United States department of agriculture to use animals in biomedical or product research.

(3) "U.S.D.A. licensed dealer" means a person who is licensed or required to be licensed by the United States department of agriculture to commercially buy, receive, sell, negotiate for sale, or transport animals. [2003 c 53 § 8; 1989 c 359 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.08.070 Pet animals—Taking, concealing, injuring, killing, etc.—Penalty. (*Effective July 1, 2004.*) (1) Any person who, with intent to deprive or defraud the owner thereof, does any of the following shall be guilty of a gross misdemeanor punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than five hundred dollars per pet animal, except as provided by subsection (2) of this section:

(a) Takes, leads away, confines, secretes or converts any pet animal, except in cases in which the value of the pet animal exceeds two hundred fifty dollars;

(b) Conceals the identity of any pet animal or its owner by obscuring, altering, or removing from the pet animal any collar, tag, license, tattoo, or other identifying device or mark;

(c) Willfully or recklessly kills or injures any pet animal, unless excused by law.

(2) Nothing in this section shall prohibit a person from also being convicted of separate offenses under RCW 9A.56.030, 9A.56.040, or 9A.56.050 for theft or under RCW 9A.56.150, 9A.56.160, or 9A.56.170 for possession of stolen property. [2003 c 53 § 9; 1989 c 359 § 2; 1982 c 114 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application of Consumer Protection Act: RCW 19.86.145.

9.08.072 Transferring stolen pet animal to a research institution—Penalty. (*Effective July 1, 2004.*) (1) It is unlawful for any person to receive with intent to sell to a research institution in the state of Washington, or sell or oth-

erwise directly transfer to a research institution in the state of Washington, a pet animal that the person knows or has reason to know has been stolen or fraudulently obtained. This section does not apply to U.S.D.A. licensed dealers.

(2) The first conviction under this section is a gross misdemeanor punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than five hundred dollars per pet animal.

(3) A second or subsequent conviction under this section is a class C felony punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than one thousand dollars per pet animal.

(4) Nothing in this section shall prohibit a person from also being convicted of separate offenses under RCW 9A.56.030, 9A.56.040, or 9A.56.050 for theft or under RCW 9A.56.150, 9A.56.160, or 9A.56.170 for possession of stolen property. [2003 c 53 § 10.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.08.074 Transferring stolen pet animal to a person who has previously sold a stolen pet animal to a research institution—Penalty. (Effective July 1, 2004.) (1) It is unlawful for any person, who knows or has reason to know that a pet animal has been stolen or fraudulently obtained, to sell or otherwise transfer the pet animal to another who the person knows or has reason to know has previously sold a stolen or fraudulently obtained pet animal to a research institution in the state of Washington.

(2) A conviction under this section is a class C felony punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than one thousand dollars per pet animal. [2003 c 53 § 11.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.08.076 Transferring stolen pet animal to a research institution by a U.S.D.A. licensed dealer—Penalty. (Effective July 1, 2004.) (1) It is unlawful for a U.S.D.A. licensed dealer to receive with intent to sell, or sell or transfer directly or through a third party, to a research institution in the state of Washington, a pet animal that the dealer knows or has reason to know has been stolen or fraudulently obtained.

(2) A conviction under this section is a class C felony punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than one thousand dollars per pet animal. [2003 c 53 § 12.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.08.078 Illegal sale, receipt, or transfer of pet animals—Separate offenses. (Effective July 1, 2004.) (1) The sale, receipt, or transfer of each individual pet animal in violation of RCW 9.08.070 through 9.08.078 constitutes a separate offense.

(2) The provisions of RCW 9.08.070 through 9.08.078 shall not apply to the lawful acts of any employee, agent, or director of any humane society, animal control agency, or animal shelter operated by or on behalf of any government agency, operating under law. [2003 c 53 § 13.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 9.16 RCW

BRANDS AND MARKS, CRIMES RELATING TO

Sections

- 9.16.080 Petroleum products improperly labeled or graded—Penalty. (Effective July 1, 2004.)
 9.16.090 Repealed. (Effective July 1, 2004.)

9.16.080 Petroleum products improperly labeled or graded—Penalty. (Effective July 1, 2004.) (1) It shall be unlawful for any person, firm, or corporation:

(a) To use, adopt, place upon, or permit to be used, adopted or placed upon, any barrel, tank, drum or other container of gasoline or lubricating oil for internal combustion engines, sold or offered for sale, or upon any pump or other device used in delivering the same, any trade name, trademark, designation or other descriptive matter, which is not the true and correct trade name, trademark, designation or other descriptive matter of the gasoline or lubricating oil so sold or offered for sale;

(b) To sell, or offer for sale, or have in his or her or its possession with intent to sell, any gasoline or lubricating oil, contained in, or taken from, or through any barrel, tank, drum, or other container or pump or other device, so unlawfully labeled or marked, as hereinabove provided;

(c) To sell, or offer for sale, or have in his or her or its possession with intent to sell any gasoline or lubricating oil for internal combustion engines and to represent to the purchaser, or prospective purchaser, that such gasoline or lubricating oil so sold or offered for sale, is of a quality, grade or standard, or the product of a particular gasoline or lubricating oil manufacturing, refining or distributing company or association, other than the true quality, grade, standard, or the product of a particular gasoline or oil manufacturing, refining or distributing company or association, of the gasoline or oil so offered for sale or sold.

(2)(a) Except as provided in (b) of this subsection, any person, firm, or corporation violating this section is guilty of a misdemeanor.

(b) A second and each subsequent violation of this section is a gross misdemeanor. [2003 c 53 § 14; 1927 c 222 § 1; RRS § 2637-1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.16.090 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 9.18 RCW

BIDDING OFFENSES

(Formerly: Bribery and grafting)

Sections

- 9.18.120 Suppression of competitive bidding. (Effective July 1, 2004.)
 9.18.130 Collusion to prevent competitive bidding—Penalty. (Effective July 1, 2004.)
 9.18.140 Repealed. (Effective July 1, 2004.)

9.18.120 Suppression of competitive bidding. (*Effective July 1, 2004.*) (1) When any competitive bid or bids are to be or have been solicited, requested, or advertised for by the state of Washington, or any county, city, town or other municipal corporation therein, or any department of either thereof, for any work or improvement to be done or constructed for or by such state, county, city, town, or other municipal corporation, or any department of either thereof, it shall be unlawful for any person acting for himself or herself or as agent of another, or as agent for or as a member of any partnership, unincorporated firm or association, or as an officer or agent of any corporation, to offer, give, or promise to give, any money, check, draft, property, or other thing of value, to another or to any firm, association, or corporation for the purpose of inducing such other person, firm, association, or corporation, either to refrain from submitting any bids upon such public work or improvement, or to enter into any agreement, understanding or arrangement whereby full and unrestricted competition for the securing of such public work will be suppressed, prevented, or eliminated; and it shall be unlawful for any person to solicit, accept, or receive any money, check, draft, property, or other thing of value upon a promise or understanding, express or implied, that he or she individually or as an agent or officer of another person, persons, or corporation, will refrain from bidding upon such public work or improvement, or that he or she will on behalf of himself or herself or such others submit or permit another to submit for him or her any bid upon such public work or improvement in such sum as to eliminate full and unrestricted competition thereon.

(2) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 15; 1921 c 12 § 1; RRS § 2333-1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.18.130 Collusion to prevent competitive bidding—Penalty. (*Effective July 1, 2004.*) (1) It shall be unlawful for any person for himself or herself or as an agent or officer of any other person, persons, or corporation to in any manner enter into collusion or an understanding with any other person, persons, or corporation to prevent or eliminate full and unrestricted competition upon any public work or improvement mentioned in RCW 9.18.120.

(2) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 16; 1921 c 12 § 2; RRS § 2333-2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.18.140 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 9.24 RCW

CORPORATIONS, CRIMES RELATING TO

Sections

9.24.020	Fraudulent issue of stock, scrip, etc. (<i>Effective July 1, 2004.</i>)
9.24.030	Insolvent bank receiving deposit. (<i>Effective July 1, 2004.</i>)
9.24.050	False report of corporation. (<i>Effective July 1, 2004.</i>)

[2003 RCW Supp—page 32]

9.24.020 Fraudulent issue of stock, scrip, etc. (*Effective July 1, 2004.*) Every officer, agent or other person in the service of a joint stock company or corporation, domestic or foreign, who, willfully and knowingly with intent to defraud:

(1) Sells, pledges, or issues, or causes to be sold, pledged, or issued, or signs or executes, or causes to be signed or executed, with intent to sell, pledge, or issue, or cause to be sold, pledged, or issued, any certificate or instrument purporting to be a certificate or evidence of ownership of any share or shares of such company or corporation, or any conveyance or encumbrance of real or personal property, contract, bond, or evidence of debt, or writing purporting to be a conveyance or encumbrance of real or personal property, contract, bond or evidence of debt of such company or corporation, without being first duly authorized by such company or corporation, or contrary to the charter or laws under which such company or corporation exists, or in excess of the power of such company or corporation, or of the limit imposed by law or otherwise upon its power to create or issue stock or evidence of debt; or,

(2) Reissues, sells, pledges, disposes of, or causes to be reissued, sold, pledged, or disposed of, any surrendered or canceled certificate or other evidence of the transfer of ownership of any such share or shares

is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [2003 c 53 § 17; 1992 c 7 § 5; 1909 c 249 § 387; RRS § 2639. Formerly RCW 9.37.070.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.24.030 Insolvent bank receiving deposit. (*Effective July 1, 2004.*) Every owner, officer, stockholder, agent or employee of any person, firm, corporation or association engaged, wholly or in part, in the business of banking or receiving money or negotiable paper or securities on deposit or in trust, who shall accept or receive, with or without interest, any deposit, or who shall consent thereto or connive thereat, when he or she knows or has good reason to believe that such person, firm, corporation or association is unsafe or insolvent, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than ten thousand dollars. [2003 c 53 § 18; 1992 c 7 § 6; 1909 c 249 § 388; 1893 c 111 § 1; RRS § 2640. Formerly RCW 9.45.140.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application to mutual savings banks: RCW 32.04.120.

Receiving deposits by bank after insolvency: State Constitution Art. 12 § 12, RCW 30.44.120.

9.24.050 False report of corporation. (*Effective July 1, 2004.*) Every director, officer or agent of any corporation or joint stock association, and every person engaged in organizing or promoting any enterprise, who shall knowingly make or publish or concur in making or publishing any written prospectus, report, exhibit or statement of its affairs or pecuniary condition, containing any material statement that is false or exaggerated, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for

not more than ten years, or by a fine of not more than five thousand dollars. [2003 c 53 § 19; 1992 c 7 § 7; 1909 c 249 § 390; RRS § 2642. Formerly RCW 9.38.040.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application to mutual savings banks: RCW 32.04.120.

Chapter 9.26A RCW

TELECOMMUNICATIONS CRIME

(Formerly: Credit cards, crimes relating to)

Sections

- 9.26A.110 Fraud in obtaining telecommunications service—Penalty. (*Effective July 1, 2004.*)
 9.26A.115 Fraud in obtaining telecommunications service—Use of telecommunications device—Penalty. (*Effective July 1, 2004.*)

9.26A.110 Fraud in obtaining telecommunications service—Penalty. (*Effective July 1, 2004.*) (1) Every person who, with intent to evade the provisions of any order or rule of the Washington utilities and transportation commission or of any tariff, price list, contract, or any other filing lawfully submitted to the commission by any telephone, telegraph, or telecommunications company, or with intent to defraud, obtains telephone, telegraph, or telecommunications service from any telephone, telegraph, or telecommunications company through: (a) The use of a false or fictitious name or telephone number; (b) the unauthorized use of the name or telephone number of another; (c) the physical or electronic installation of, rearrangement of, or tampering with any equipment, or use of a telecommunications device; (d) the commission of computer trespass; or (e) any other trick, deceit, or fraudulent device, is guilty of a misdemeanor.

(2) If the value of the telephone, telegraph, or telecommunications service that any person obtains in violation of this section during a period of ninety days exceeds fifty dollars in the aggregate, then such person is guilty of a gross misdemeanor.

(3) If the value of the telephone, telegraph, or telecommunications service that any person obtains in violation of this section during a period of ninety days exceeds two hundred fifty dollars in the aggregate, then such person is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(4) For any act that constitutes a violation of both this section and RCW 9.26A.115 the provisions of RCW 9.26A.115 shall be exclusive. [2003 c 53 § 20; 1990 c 11 § 2; 1981 c 252 § 1; 1977 ex.s. c 42 § 1; 1974 ex.s. c 160 § 2; 1972 ex.s. c 75 § 1; 1955 c 114 § 1. Formerly RCW 9.45.240.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Injunctive relief for violations: RCW 7.40.230.

9.26A.115 Fraud in obtaining telecommunications service—Use of telecommunications device—Penalty. (*Effective July 1, 2004.*) Every person is guilty of a class B felony punishable according to chapter 9A.20 RCW who:

(1) Makes, possesses, sells, gives, or otherwise transfers to another a telecommunications device with intent to use it or with knowledge or reason to believe it is intended to be used to avoid any lawful telephone or telegraph toll charge or

to conceal the existence or place of origin or destination of any telephone or telegraph message; or

(2) Sells, gives, or otherwise transfers to another plans or instructions for making or assembling a telecommunications device described in subsection (1) of this section with knowledge or reason to believe that the plans may be used to make or assemble such device. [2003 c 53 § 21.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 9.35 RCW

IDENTITY CRIMES

Sections

- 9.35.020 Identity theft. (*Effective July 1, 2004.*)

9.35.020 Identity theft. (*Effective July 1, 2004.*) (1) No person may knowingly obtain, possess, use, or transfer a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime.

(2) Violation of this section when the accused or an accomplice uses the victim's means of identification or financial information and obtains an aggregate total of credit, money, goods, services, or anything else of value in excess of one thousand five hundred dollars in value shall constitute identity theft in the first degree. Identity theft in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(3) Violation of this section when the accused or an accomplice uses the victim's means of identification or financial information and obtains an aggregate total of credit, money, goods, services, or anything else of value that is less than one thousand five hundred dollars in value, or when no credit, money, goods, services, or anything of value is obtained shall constitute identity theft in the second degree. Identity theft in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(4) A person who violates this section is liable for civil damages of five hundred dollars or actual damages, whichever is greater, including costs to repair the victim's credit record, and reasonable attorneys' fees as determined by the court.

(5) In a proceeding under this section, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(6) The provisions of this section do not apply to any person who obtains another person's driver's license or other form of identification for the sole purpose of misrepresenting his or her age.

(7) In a proceeding under this section in which a person's means of identification or financial information was used without that person's authorization, and when there has been a conviction, the sentencing court may issue such orders as are necessary to correct a public record that contains false information resulting from a violation of this section. [2003 c 53 § 22; 2001 c 217 § 9; 1999 c 368 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Captions not law—2001 c 217: See note following RCW 9.35.005.

Chapter 9.40 RCW

FIRE, CRIMES RELATING TO

Sections

- 9.40.100 Tampering with fire alarm or fire fighting equipment—False alarm—Penalties. (*Effective July 1, 2004.*)
 9.40.105 Tampering with fire alarm or fire fighting equipment—Intent to commit arson—Penalty. (*Effective July 1, 2004.*)
 9.40.120 Incendiary devices—Penalty. (*Effective July 1, 2004.*)

9.40.100 Tampering with fire alarm or fire fighting equipment—False alarm—Penalties. (*Effective July 1, 2004.*) Any person who willfully and without cause tampers with, molests, injures or breaks any public or private fire alarm apparatus, emergency phone, radio, or other wire or signal, or any fire fighting equipment, or who willfully and without having reasonable grounds for believing a fire exists, sends, gives, transmits, or sounds any false alarm of fire, by shouting in a public place or by means of any public or private fire alarm system or signal, or by telephone, is guilty of a misdemeanor. This provision shall not prohibit the testing of fire alarm systems by persons authorized to do so, by a fire department or the chief of the Washington state patrol, through the director of fire protection. [2003 c 53 § 23; 1995 c 369 § 3; 1990 c 177 § 1; 1986 c 266 § 80; 1967 c 204 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

Severability—1990 c 177: See RCW 18.160.902.

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

9.40.105 Tampering with fire alarm or fire fighting equipment—Intent to commit arson—Penalty. (*Effective July 1, 2004.*) Any person who willfully and without cause tampers with, molests, injures, or breaks any public or private fire alarm apparatus, emergency phone, radio, or other wire or signal, or any fire fighting equipment with the intent to commit arson, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 24.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.40.120 Incendiary devices—Penalty. (*Effective July 1, 2004.*) Every person who possesses, manufactures, or disposes of an incendiary device knowing it to be such is guilty of a class B felony punishable according to chapter 9A.20 RCW, and upon conviction, shall be punished by imprisonment in a state prison for a term of not more than ten years. [2003 c 53 § 25; 1999 c 352 § 5; 1971 ex.s. c 302 § 4; 1969 ex.s. c 79 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application—1999 c 352 §§ 3-5: See note following RCW 9.94A.515.

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

Chapter 9.41 RCW

FIREARMS AND DANGEROUS WEAPONS

Sections

[2003 RCW Supp—page 34]

- 9.41.040 Unlawful possession of firearms—Ownership, possession by certain persons—Penalties. (*Effective July 1, 2004.*)
 9.41.042 Children—Permissible firearm possession. (*Effective July 1, 2004.*)
 9.41.050 Carrying firearms. (*Effective July 1, 2004.*)
 9.41.098 Forfeiture of firearms—Disposition—Confiscation.

9.41.040 Unlawful possession of firearms—Ownership, possession by certain persons—Penalties. (*Effective July 1, 2004.*) (1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

(ii) After having previously been involuntarily committed for mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(iii) If the person is under eighteen years of age, except as provided in RCW 9.41.042; and/or

(iv) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

(b) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-factfinding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of

the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4) Notwithstanding subsection (1) or (2) of this section, a person convicted of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(a) Under RCW 9.41.047; and/or

(b)(i) If the conviction was for a felony offense, after five or more consecutive years in the community without being convicted or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(ii) If the conviction was for a nonfelony offense, after three or more consecutive years in the community without being convicted or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under RCW 46.20.265.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive

sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense. [2003 c 53 § 26; 1997 c 338 § 47; 1996 c 295 § 2. Prior: 1995 c 129 § 16 (Initiative Measure No. 159); 1994 sp.s. c 7 § 402; prior: 1992 c 205 § 118; 1992 c 168 § 2; 1983 c 232 § 2; 1961 c 124 § 3; 1935 c 172 § 4; RRS § 2516-4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Severability—1992 c 168: See note following RCW 9.41.070.

Severability—1983 c 232: See note following RCW 9.41.010.

9.41.042 Children—Permissible firearm possession. (*Effective July 1, 2004.*) RCW 9.41.040(2)(a)(iii) shall not apply to any person under the age of eighteen years who is:

(1) In attendance at a hunter's safety course or a firearms safety course;

(2) Engaging in practice in the use of a firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located or any other area where the discharge of a firearm is not prohibited;

(3) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by an organized group that uses firearms as a part of the performance;

(4) Hunting or trapping under a valid license issued to the person under Title 77 RCW;

(5) In an area where the discharge of a firearm is permitted, is not trespassing, and the person either: (a) Is at least fourteen years of age, has been issued a hunter safety certificate, and is using a lawful firearm other than a pistol; or (b) is under the supervision of a parent, guardian, or other adult approved for the purpose by the parent or guardian;

(6) Traveling with any unloaded firearm in the person's possession to or from any activity described in subsection (1), (2), (3), (4), or (5) of this section;

(7) On real property under the control of his or her parent, other relative, or legal guardian and who has the permission of the parent or legal guardian to possess a firearm;

(8) At his or her residence and who, with the permission of his or her parent or legal guardian, possesses a firearm for the purpose of exercising the rights specified in RCW 9A.16.020(3); or

(9) Is a member of the armed forces of the United States, national guard, or organized reserves, when on duty. [2003 c 53 § 27; 1999 c 143 § 2; 1994 sp.s. c 7 § 403.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

9.41.050 Carrying firearms. (Effective July 1, 2004.)

(1)(a) Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed pistol.

(b) Every licensee shall have his or her concealed pistol license in his or her immediate possession at all times that he or she is required by this section to have a concealed pistol license and shall display the same upon demand to any police officer or to any other person when and if required by law to do so. Any violation of this subsection (1)(b) shall be a class 1 civil infraction under chapter 7.80 RCW and shall be punished accordingly pursuant to chapter 7.80 RCW and the infraction rules for courts of limited jurisdiction.

(2)(a) A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed pistol and: (i) The pistol is on the licensee's person, (ii) the licensee is within the vehicle at all times that the pistol is there, or (iii) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle.

(b) A violation of this subsection is a misdemeanor.

(3)(a) A person at least eighteen years of age who is in possession of an unloaded pistol shall not leave the unloaded pistol in a vehicle unless the unloaded pistol is locked within the vehicle and concealed from view from outside the vehicle.

(b) A violation of this subsection is a misdemeanor.

(4) Nothing in this section permits the possession of firearms illegal to possess under state or federal law. [2003 c 53 § 28; 1997 c 200 § 1; 1996 c 295 § 4; 1994 sp.s. c 7 § 405; 1982 1st ex.s. c 47 § 3; 1961 c 124 § 4; 1935 c 172 § 5; RRS § 2516-5.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.41.098 Forfeiture of firearms—Disposition—Confiscation. (1) The superior courts and the courts of limited jurisdiction of the state may order forfeiture of a firearm which is proven to be:

(a) Found concealed on a person not authorized by RCW 9.41.060 or 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute defense to forfeiture if the person possessed a valid Washington concealed pistol license within the preceding two years and has not become ineligible for a concealed pistol license in the interim. Before the firearm may be returned, the person must pay the past due renewal fee and the current renewal fee;

(b) Commercially sold to any person without an application as required by RCW 9.41.090;

(c) In the possession of a person prohibited from possessing the firearm under RCW 9.41.040 or 9.41.045;

(d) In the possession or under the control of a person at the time the person committed or was arrested for committing a felony or committing a nonfelony crime in which a firearm was used or displayed;

(e) In the possession of a person who is in any place in which a concealed pistol license is required, and who is under the influence of any drug or under the influence of intoxicating liquor, as defined in chapter 46.61 RCW;

(f) In the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a felony or for a nonfelony crime in which a firearm was used or displayed, except that violations of Title 77 RCW shall not result in forfeiture under this section;

(g) In the possession of a person found to have been mentally incompetent while in possession of a firearm when apprehended or who is thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

(h) Used or displayed by a person in the violation of a proper written order of a court of general jurisdiction; or

(i) Used in the commission of a felony or of a nonfelony crime in which a firearm was used or displayed.

(2) Upon order of forfeiture, the court in its discretion may order destruction of any forfeited firearm. A court may temporarily retain forfeited firearms needed for evidence.

(a) Except as provided in (b), (c), and (d) of this subsection, firearms that are: (i) Judicially forfeited and no longer needed for evidence; or (ii) forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010; may be disposed of in any manner determined by the local legislative authority. Any proceeds of an auction or trade may be retained by the legislative authority. This subsection (2)(a) applies only to firearms that come into the possession of the law enforcement agency after June 30, 1993.

By midnight, June 30, 1993, every law enforcement agency shall prepare an inventory, under oath, of every firearm that has been judicially forfeited, has been seized and may be subject to judicial forfeiture, or that has been, or may be, forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010.

(b) Except as provided in (c) of this subsection, of the inventoried firearms a law enforcement agency shall destroy illegal firearms, may retain a maximum of ten percent of legal forfeited firearms for agency use, and shall either:

(i) Comply with the provisions for the auction of firearms in RCW 9.41.098 that were in effect immediately preceding May 7, 1993; or

(ii) Trade, auction, or arrange for the auction of, rifles and shotguns. In addition, the law enforcement agency shall either trade, auction, or arrange for the auction of, short firearms, or shall pay a fee of twenty-five dollars to the state treasurer for every short firearm neither auctioned nor traded, to a maximum of fifty thousand dollars. The fees shall be accompanied by an inventory, under oath, of every short firearm listed in the inventory required by (a) of this subsection, that has been neither traded nor auctioned. The state treasurer shall credit the fees to the firearms range account established in RCW 79A.25.210. All trades or auctions of firearms under this subsection shall be to licensed dealers. Proceeds of any auction less costs, including actual costs of storage and sale, shall be forwarded to the firearms range account established in RCW 79A.25.210.

(c) Antique firearms and firearms recognized as curios, relics, and firearms of particular historical significance by the United States treasury department bureau of alcohol, tobacco, and firearms are exempt from destruction and shall be disposed of by auction or trade to licensed dealers.

(d) Firearms in the possession of the Washington state patrol on or after May 7, 1993, that are judicially forfeited and no longer needed for evidence, or forfeited due to a failure to make a claim under RCW 63.35.020, must be disposed of as follows: (i) Firearms illegal for any person to possess must be destroyed; (ii) the Washington state patrol may retain a maximum of ten percent of legal firearms for agency use; and (iii) all other legal firearms must be auctioned or traded to licensed dealers. The Washington state patrol may retain any proceeds of an auction or trade.

(3) The court shall order the firearm returned to the owner upon a showing that there is no probable cause to believe a violation of subsection (1) of this section existed or the firearm was stolen from the owner or the owner neither had knowledge of nor consented to the act or omission involving the firearm which resulted in its forfeiture.

(4) A law enforcement officer of the state or of any county or municipality may confiscate a firearm found to be in the possession of a person under circumstances specified in subsection (1) of this section. After confiscation, the firearm shall not be surrendered except: (a) To the prosecuting attorney for use in subsequent legal proceedings; (b) for disposition according to an order of a court having jurisdiction as provided in subsection (1) of this section; or (c) to the owner if the proceedings are dismissed or as directed in subsection (3) of this section. [2003 c 39 § 5; 1996 c 295 § 10; 1994 sp.s. c 7 § 414; 1993 c 243 § 1; 1989 c 222 § 8; 1988 c 223 § 2. Prior: 1987 c 506 § 91; 1987 c 373 § 7; 1986 c 153 § 1; 1983 c 232 § 6.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Effective date—1993 c 243: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 243 § 2.]

Severability—1989 c 222: See RCW 63.35.900.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

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

Severability—1983 c 232: See note following RCW 9.41.010.

Chapter 9.45 RCW

FRAUDS AND SWINDLES

Sections

9.45.020	Substitution of child. (<i>Effective July 1, 2004.</i>)
9.45.124	Measurement of commodities—Measuring inaccurately—Altering measuring devices—Penalty. (<i>Effective July 1, 2004.</i>)
9.45.126	Measurement of commodities—Inducing violations—Penalty. (<i>Effective July 1, 2004.</i>)
9.45.210	Altering sample or certificate of assay. (<i>Effective July 1, 2004.</i>)
9.45.220	Making false sample or assay of ore. (<i>Effective July 1, 2004.</i>)
9.45.230	Repealed. (<i>Effective July 1, 2004.</i>)

9.45.020 Substitution of child. (*Effective July 1, 2004.*) Every person to whom a child has been confided for nursing, education or any other purpose, who, with intent to deceive a person, guardian or relative of such child, shall substitute or produce to such parent, guardian or relative, another child or person in the place of the child so confided, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years. [2003 c 53 § 29; 1992 c 7 § 9; 1909 c 249 § 123; RRS § 2375.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.45.124 Measurement of commodities—Measuring inaccurately—Altering measuring devices—Penalty. (*Effective July 1, 2004.*) Every person, corporation, or association whether profit or nonprofit, who shall ask or receive, or conspire to ask or receive, directly or indirectly, any compensation, gratuity, or reward or any promise thereof, on any agreement or understanding that he or she shall (1) intentionally make an inaccurate visual or mechanical measurement or an intentionally inaccurate recording of any visual or mechanical measurement of goods, raw materials, and agricultural products (whether severed or unsevered from the land) which he or she has or will have the duty to measure, or shall (2) intentionally change, alter or affect, for the purpose of making an inaccurate measurement, any equipment or other device which is designed to measure, either qualitatively or quantitatively, such goods, raw materials, and agricultural products, or shall intentionally alter the recordation of such measurements, is guilty of a class B felony, punishable by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both. [2003 c 53 § 30; 1992 c 7 § 11; 1967 c 200 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.45.126 Measurement of commodities—Inducing violations—Penalty. (*Effective July 1, 2004.*) Every person who shall give, offer or promise, or conspire to give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any person, corporation, independent contractor, or agent, employee or servant thereof with intent to violate RCW 9.45.124, is guilty of a class B felony, punishable by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or both. [2003 c 53 § 31; 1992 c 7 § 12; 1967 c 200 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.45.210 Altering sample or certificate of assay. (*Effective July 1, 2004.*) Any person who shall interfere with or in any manner change samples of ores or bullion produced for sampling, or change or alter samples or packages of ores or bullion which have been purchased for assaying, or who shall change or alter any certificate of sampling or assaying, with intent to cheat, wrong or defraud, is guilty of a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or by a fine of not less than fifty nor more than one thousand

dollars, or by both such fine and imprisonment. [2003 c 53 § 32; 1890 p 99 § 2; RRS § 2712.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.45.220 Making false sample or assay of ore. (*Effective July 1, 2004.*) Any person who shall, with intent to cheat, wrong or defraud, make or publish a false sample of ore or bullion, or who shall make or publish or cause to be published a false assay of ore or bullion, is guilty of a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or by a fine of not less than fifty nor more than one thousand dollars, or by both such fine and imprisonment. [2003 c 53 § 33; 1890 p 99 § 3; RRS § 2713.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.45.230 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 9.46 RCW GAMBLING—1973 ACT

Sections

9.46.071	Information for compulsive gamblers.
9.46.155	Applicants and licensees—Bribes to public officials, employees, agents—Penalty. (<i>Effective July 1, 2004.</i>)
9.46.215	Ownership or interest in gambling device—Penalty—Exceptions. (<i>Effective July 1, 2004.</i>)

9.46.071 Information for compulsive gamblers. The legislature recognizes that some individuals in this state are problem or compulsive gamblers. Because the state promotes and regulates gambling through the activities of the state lottery commission, the Washington horse racing commission, and the Washington state gambling commission, the state has the responsibility to continue to provide resources for the support of services for problem and compulsive gamblers. Therefore, at a minimum, the Washington state gambling commission, the Washington horse racing commission, and the state lottery commission shall jointly develop informational signs concerning problem and compulsive gambling which include a toll-free hot line number for problem and compulsive gamblers. The signs shall be placed in the establishments of gambling licensees, horse racing licensees, and lottery retailers. In addition, the Washington state gambling commission, the Washington horse racing commission, and the state lottery commission may also contract with other qualified entities to provide public awareness, training, and other services to ensure the intent of this section is fulfilled. [2003 c 75 § 1; 1994 c 218 § 6.]

Effective date—1994 c 218: See note following RCW 9.46.010.

9.46.155 Applicants and licensees—Bribes to public officials, employees, agents—Penalty. (*Effective July 1, 2004.*) (1) No applicant or licensee shall give or provide, or offer to give or provide, directly or indirectly, to any public official or employee or agent of this state, or any of its agencies or political subdivisions, any compensation or reward, or share of the money or property paid or received through gam-

[2003 RCW Supp—page 38]

bling activities, in consideration for obtaining any license, authorization, permission or privilege to participate in any gaming operations except as authorized by this chapter or rules adopted pursuant thereto.

(2) Violation of this section is a class C felony for which a person, upon conviction, shall be punished by imprisonment for not more than five years or a fine of not more than one hundred thousand dollars, or both. [2003 c 53 § 34; 1981 c 139 § 15.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1981 c 139: See note following RCW 9.46.070.

9.46.215 Ownership or interest in gambling device—Penalty—Exceptions. (*Effective July 1, 2004.*) (1) Whoever knowingly owns, manufactures, possesses, buys, sells, rents, leases, finances, holds a security interest in, stores, repairs, or transports any gambling device or offers or solicits any interest therein, whether through an agent or employee or otherwise, is guilty of a class C felony and shall be fined not more than one hundred thousand dollars or imprisoned not more than five years or both.

(2) This section does not apply to persons licensed by the commission, or who are otherwise authorized by this chapter, or by commission rule, to conduct gambling activities without a license, respecting devices that are to be used, or are being used, solely in that activity for which the license was issued, or for which the person has been otherwise authorized if:

(a) The person is acting in conformance with this chapter and the rules adopted under this chapter; and

(b) The devices are a type and kind traditionally and usually employed in connection with the particular activity.

(3) This section also does not apply to any act or acts by the persons in furtherance of the activity for which the license was issued, or for which the person is authorized, when the activity is conducted in compliance with this chapter and in accordance with the rules adopted under this chapter.

(4) In the enforcement of this section direct possession of any such a gambling device is presumed to be knowing possession thereof. [2003 c 53 § 35; 1994 c 218 § 9.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—1994 c 218: See note following RCW 9.46.010.

Chapter 9.47 RCW GAMBLING

Sections

9.47.090	Maintaining bucket shop—Penalty. (<i>Effective July 1, 2004.</i>)
9.47.120	Bunco steering. (<i>Effective July 1, 2004.</i>)

9.47.090 Maintaining bucket shop—Penalty. (*Effective July 1, 2004.*) Every person, whether in his or her own behalf, or as agent, servant or employee of another person, within or outside of this state, who shall open, conduct or carry on any bucket shop, or make or offer to make any contract described in RCW 9.47.080, or with intent to make such a contract, or assist therein, shall receive, exhibit, or display any statement of market prices of any commodities, securities, or property, is guilty of a class C felony and shall be pun-

ished by imprisonment in a state correctional facility for not more than five years. [2003 c 53 § 36; 1992 c 7 § 13; 1909 c 249 § 224; RRS § 2476.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.47.120 Bunco steering. (Effective July 1, 2004.)

Every person who shall entice, or induce another, upon any pretense, to go to any place where any gambling game, scheme or device, or any trick, sleight of hand performance, fraud or fraudulent scheme, cards, dice or device, is being conducted or operated; or while in such place shall entice or induce another to bet, wager or hazard any money or property, or representative of either, upon any such game, scheme, device, trick, sleight of hand performance, fraud or fraudulent scheme, cards, dice, or device, or to execute any obligation for the payment of money, or delivery of property, or to lose, advance, or loan any money or property, or representative of either, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years. [2003 c 53 § 37; 1992 c 7 § 14; 1909 c 249 § 227; RRS § 2479.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Swindling: Chapter 9A.60 RCW.

Chapter 9.61 RCW

MALICIOUS MISCHIEF—INJURY TO PROPERTY

Sections

9.61.160	Threats to bomb or injure property—Penalty. (<i>Effective July 1, 2004.</i>)
9.61.170	Repealed. (<i>Effective July 1, 2004.</i>)
9.61.180	Repealed. (<i>Effective July 1, 2004.</i>)
9.61.230	Telephone harassment. (<i>Effective July 1, 2004.</i>)

9.61.160 Threats to bomb or injure property—Penalty. (Effective July 1, 2004.) (1) It shall be unlawful for any person to threaten to bomb or otherwise injure any public or private school building, any place of worship or public assembly, any governmental property, or any other building, common carrier, or structure, or any place used for human occupancy; or to communicate or repeat any information concerning such a threatened bombing or injury, knowing such information to be false and with intent to alarm the person or persons to whom the information is communicated or repeated.

(2) It shall not be a defense to any prosecution under this section that the threatened bombing or injury was a hoax.

(3) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 38; 1977 ex.s. c 231 § 1; 1959 c 141 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.61.170 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

9.61.180 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

9.61.230 Telephone harassment. (Effective July 1, 2004.) (1) Every person who, with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call to such other person:

(a) Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act; or

(b) Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or

(c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household;

is guilty of a gross misdemeanor, except as provided in subsection (2) of this section.

(2) The person is guilty of a class C felony punishable according to chapter 9A.20 RCW if either of the following applies:

(a) That person has previously been convicted of any crime of harassment, as defined in RCW 9A.46.060, with the same victim or member of the victim's family or household or any person specifically named in a no-contact or no-harassment order in this or any other state; or

(b) That person harasses another person under subsection (1)(c) of this section by threatening to kill the person threatened or any other person. [2003 c 53 § 39; 1992 c 186 § 6; 1985 c 288 § 11; 1967 c 16 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1992 c 186: See note following RCW 9A.46.110.

Effective date—Severability—1985 c 288: See RCW 9A.46.905 and 9A.46.910.

Severability—1967 c 16: "If any portion of this act is held to be unconstitutional or void, such decision shall not affect the validity of the remaining parts of this act." [1967 c 16 § 4.]

Communicating with child for immoral purposes: RCW 9.68A.090.

Interference with telephone message: RCW 9A.48.070, 9A.48.080.

Chapter 9.62 RCW

MALICIOUS PROSECUTION—ABUSE OF PROCESS

Sections

9.62.010	Malicious prosecution. (<i>Effective July 1, 2004.</i>)
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9.62.010 Malicious prosecution. (Effective July 1, 2004.) Every person who shall, maliciously and without probable cause therefor, cause or attempt to cause another to be arrested or proceeded against for any crime of which he or she is innocent:

(1) If such crime be a felony, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years; and

(2) If such crime be a gross misdemeanor or misdemeanor, shall be guilty of a misdemeanor. [2003 c 53 § 40; 1992 c 7 § 15; 1909 c 249 § 117; Code 1881 § 899; 1873 p 203 § 98; 1854 p 92 § 89; RRS § 2369.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 9.68 RCW

OBSCENITY AND PORNOGRAPHY

Sections

9.68.060 "Erotic material"—Determination by court—Labeling—Penalties. (*Effective July 1, 2004.*)

9.68.060 "Erotic material"—Determination by court—Labeling—Penalties. (*Effective July 1, 2004.*) (1) When it appears that material which may be deemed erotic is being sold, distributed, or exhibited in this state, the prosecuting attorney of the county in which the sale, distribution, or exhibition is taking place may apply to the superior court for a hearing to determine the character of the material with respect to whether it is erotic material.

(2) Notice of the hearing shall immediately be served upon the dealer, distributor, or exhibitor selling or otherwise distributing or exhibiting the alleged erotic material. The superior court shall hold a hearing not later than five days from the service of notice to determine whether the subject matter is erotic material within the meaning of RCW 9.68.050.

(3) If the superior court rules that the subject material is erotic material, then, following such adjudication:

(a) If the subject material is written or printed, or is a sound recording, the court shall issue an order requiring that an "adults only" label be placed on the publication or sound recording, if such publication or sound recording is going to continue to be distributed. Whenever the superior court orders a publication or sound recording to have an "adults only" label placed thereon, such label shall be impressed on the front cover of all copies of such erotic publication or sound recording sold or otherwise distributed in the state of Washington. Such labels shall be in forty-eight point bold face type located in a conspicuous place on the front cover of the publication or sound recording. All dealers and distributors are hereby prohibited from displaying erotic publications or sound recordings in their store windows, on outside newsstands on public thoroughfares, or in any other manner so as to make an erotic publication or the contents of an erotic sound recording readily accessible to minors.

(b) If the subject material is a motion picture, the court shall issue an order requiring that such motion picture shall be labeled "adults only". The exhibitor shall prominently display a sign saying "adults only" at the place of exhibition, and any advertising of the motion picture shall contain a statement that it is for adults only. Such exhibitor shall also display a sign at the place where admission tickets are sold stating that it is unlawful for minors to misrepresent their age.

(4) Failure to comply with a court order issued under the provisions of this section shall subject the dealer, distributor, or exhibitor to contempt proceedings.

(5) Any person who, after the court determines material to be erotic, sells, distributes, or exhibits the erotic material to a minor shall be guilty of violating RCW 9.68.050 through 9.68.120, such violation to carry the following penalties:

(a) For the first offense a misdemeanor and upon conviction shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months;

(b) For the second offense a gross misdemeanor and upon conviction shall be fined not more than one thousand dollars, or imprisoned not more than one year;

(c) For all subsequent offenses a class B felony and upon conviction shall be fined not more than five thousand dollars,

or imprisoned not less than one year. [2003 c 53 § 41; 1992 c 5 § 2; 1969 ex.s. c 256 § 14.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

Chapter 9.68A RCW

SEXUAL EXPLOITATION OF CHILDREN

(Formerly: Child pornography)

Sections

- 9.68A.090 Communication with minor for immoral purposes. (*Effective until July 1, 2004.*)
- 9.68A.090 Communication with minor for immoral purposes—Penalties. (*Effective July 1, 2004.*)
- 9.68A.140 Repealed. (*Effective July 1, 2004.*)
- 9.68A.150 Allowing minor on premises of live erotic performance—Definitions—Penalty. (*Effective July 1, 2004.*)
- 9.68A.160 Repealed. (*Effective July 1, 2004.*)

9.68A.090 Communication with minor for immoral purposes. (*Effective until July 1, 2004.*) A person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor, unless that person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state, in which case the person is guilty of a class C felony punishable under chapter 9A.20 RCW. [2003 c 26 § 1; 1989 c 32 § 7; 1986 c 319 § 2; 1984 c 262 § 8.]

9.68A.090 Communication with minor for immoral purposes—Penalties. (*Effective July 1, 2004.*) (1) Except as provided in subsection (2) of this section, a person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor.

(2) A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state. [2003 c 53 § 42; 2003 c 26 § 1; 1989 c 32 § 7; 1986 c 319 § 2; 1984 c 262 § 8.]

Reviser's note: This section was amended by 2003 c 26 § 1 and by 2003 c 53 § 42, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.68A.140 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

9.68A.150 Allowing minor on premises of live erotic performance—Definitions—Penalty. (*Effective July 1, 2004.*) (1) No person may knowingly allow a minor to be on the premises of a commercial establishment open to the pub-

lic if there is a live performance containing matter which is erotic material.

(2) Any person who is convicted of violating this section is guilty of a gross misdemeanor.

(3) For the purposes of this section:

(a) "Minor" means any person under the age of eighteen years.

(b) "Erotic materials" means live performance:

(i) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest of minors; and

(ii) Which explicitly depicts or describes patently offensive representations or descriptions of sexually explicit conduct as defined in RCW 9.68A.011; and

(iii) Which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political, or scientific value for minors.

(c) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to, or before an audience of one or more, with or without consideration.

(d) "Person" means any individual, partnership, firm, association, corporation, or other legal entity. [2003 c 53 § 43; 1987 c 396 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1987 c 396: See note following RCW 9.68A.140.

9.68A.160 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 9.81 RCW SUBVERSIVE ACTIVITIES

Sections

9.81.020	Subversive activities made felony—Penalty. (<i>Effective July 1, 2004.</i>)
9.81.030	Membership in subversive organization is felony—Penalty. (<i>Effective July 1, 2004.</i>)
9.81.100	Repealed. (<i>Effective July 1, 2004.</i>)

9.81.020 Subversive activities made felony—Penalty. (Effective July 1, 2004.) (1) It is a class B felony for any person knowingly and willfully to:

(a) Commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of Washington or any political subdivision of either of them, by revolution, force or violence; or

(b) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of Washington or of any political subdivision of either of them; or

(c) Conspire with one or more persons to commit any such act; or

(d) Assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing the orga-

nization to be a subversive organization or a foreign subversive organization; or

(e) Destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing the organization to be such.

(2) Any person upon a plea of guilty or upon conviction of violating any of the provisions of this section shall be fined not more than ten thousand dollars, or imprisoned for not more than ten years, or both, at the discretion of the court. [2003 c 53 § 44; 1951 c 254 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.81.030 Membership in subversive organization is felony—Penalty. (Effective July 1, 2004.) It is a class C felony for any person after June 1, 1951, to become, or after September 1, 1951, to remain a member of a subversive organization or a foreign subversive organization knowing the organization to be a subversive organization or foreign subversive organization. Any person upon a plea of guilty or upon conviction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court. [2003 c 53 § 45; 1951 c 254 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.81.100 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 9.82 RCW TREASON

Sections

9.82.010	Defined—Penalty. (<i>Effective July 1, 2004.</i>)
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9.82.010 Defined—Penalty. (Effective July 1, 2004.)

(1) Treason against the people of the state consists in—

- Levying war against the people of the state, or
- Adhering to its enemies, or
- Giving them aid and comfort.

(2) Treason is a class A felony and punishable by death.

(3) No person shall be convicted for treason unless upon the testimony of two witnesses to the same overt act or by confession in open court. [2003 c 53 § 46; 1909 c 249 § 65; RRS § 2317.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Treason defined and evidence required: State Constitution Art. 1 § 27.

Chapter 9.86 RCW FLAGS, CRIMES RELATING TO

Sections

9.86.020	Improper use of flag prohibited. (<i>Effective July 1, 2004.</i>)
9.86.030	Desecration of flag. (<i>Effective July 1, 2004.</i>)
9.86.050	Repealed. (<i>Effective July 1, 2004.</i>)

9.86.020 Improper use of flag prohibited. (*Effective July 1, 2004.*) (1) No person shall, in any manner, for exhibition or display:

(a) Place or cause to be placed any word, figure, mark, picture, design, drawing or advertisement of any nature upon any flag, standard, color, ensign or shield of the United States or of this state, or authorized by any law of the United States or of this state; or

(b) Expose to public view any such flag, standard, color, ensign or shield upon which shall have been printed, painted or otherwise produced, or to which shall have been attached, appended, affixed or annexed any such word, figure, mark, picture, design, drawing or advertisement; or

(c) Expose to public view for sale, manufacture, or otherwise, or to sell, give, or have in possession for sale, for gift or for use for any purpose, any substance, being an article of merchandise, or receptacle, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any such flag, standard, color, ensign or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance.

(2) A violation of this section is a gross misdemeanor. [2003 c 53 § 47; 1919 c 107 § 2; 1909 c 249 § 423; 1901 c 154 § 1; RRS § 2675-2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.86.030 Desecration of flag. (*Effective July 1, 2004.*)

(1) No person shall knowingly cast contempt upon any flag, standard, color, ensign or shield, as defined in RCW 9.86.010, by publicly mutilating, defacing, defiling, burning, or trampling upon the flag, standard, color, ensign or shield.

(2) A violation of this section is a gross misdemeanor. [2003 c 53 § 48; 1969 ex.s. c 110 § 1; 1919 c 107 § 3; 1909 c 249 § 423; RRS § 2675-3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.86.050 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 9.91 RCW

MISCELLANEOUS CRIMES

Sections

9.91.140	Food stamps—Unlawful sale. (<i>Effective July 1, 2004.</i>)
9.91.142	Food stamps—Trafficking. (<i>Effective July 1, 2004.</i>)
9.91.144	Food stamps—Unlawful redemption. (<i>Effective July 1, 2004.</i>)
9.91.170	Interfering with dog guide or service animal. (<i>Effective July 1, 2004.</i>)
9.91.180	Violent video or computer games.

9.91.140 Food stamps—Unlawful sale. (*Effective July 1, 2004.*) A person who sells food stamps obtained through the program established under RCW 74.04.500 or food stamp benefits transferred electronically, or food purchased therewith, is guilty of the following:

(1) A gross misdemeanor if the value of the stamps, benefits, or food transferred exceeds one hundred dollars; or

(2) A misdemeanor if the value of the stamps, benefits, or food transferred is one hundred dollars or less. [2003 c 53 § 49; 1998 c 79 § 1; 1996 c 78 § 1; 1988 c 62 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.91.142 Food stamps—Trafficking. (*Effective July 1, 2004.*) A person who purchases, or who otherwise acquires and sells, or who traffics in, food stamps as defined by the federal food stamp act, as amended, 7 U.S.C. Sec. 2011 et seq., or food stamp benefits transferred electronically, is guilty of the following:

(1) A class C felony punishable according to chapter 9A.20 RCW if the face value of the stamps or benefits exceeds one hundred dollars; or

(2) A gross misdemeanor if the face value of the stamps or benefits is one hundred dollars or less. [2003 c 53 § 50.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.91.144 Food stamps—Unlawful redemption. (*Effective July 1, 2004.*) A person who, in violation of 7 U.S.C. Sec. 2024(c), obtains and presents food stamps as defined by the federal food stamp act, as amended, 7 U.S.C. Sec. 2011 et seq., or food stamp benefits transferred electronically, for redemption or causes such stamps or benefits to be presented for redemption through the program established under RCW 74.04.500 is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 51.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.91.170 Interfering with dog guide or service animal. (*Effective July 1, 2004.*) (1)(a) Any person who has received notice that his or her behavior is interfering with the use of a dog guide or service animal who continues with reckless disregard to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal is guilty of a misdemeanor, except as provided in (b) of this subsection.

(b) A second or subsequent violation of this subsection is a gross misdemeanor.

(2)(a) Any person who, with reckless disregard, allows his or her dog to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal is guilty of a misdemeanor, except as provided in (b) of this subsection.

(b) A second or subsequent violation of this subsection is a gross misdemeanor.

(3) Any person who, with reckless disregard, injures, disables, or causes the death of a dog guide or service animal is guilty of a gross misdemeanor.

(4) Any person who, with reckless disregard, allows his or her dog to injure, disable, or cause the death of a dog guide or service animal is guilty of a gross misdemeanor.

(5) Any person who intentionally injures, disables, or causes the death of a dog guide or service animal is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(6) Any person who wrongfully obtains or exerts unauthorized control over a dog guide or service animal with the intent to deprive the dog guide or service animal user of his or her dog guide or service animal is guilty of theft in the first degree, RCW 9A.56.030.

(7)(a) In any case in which the defendant is convicted of a violation of this section, he or she shall also be ordered to make full restitution for all damages, including incidental and consequential expenses incurred by the dog guide or service animal user and the dog guide or service animal which arise out of or are related to the criminal offense.

(b) Restitution for a conviction under this section shall include, but is not limited to:

(i) The value of the replacement of an incapacitated or deceased dog guide or service animal, the training of a replacement dog guide or service animal, or retraining of the affected dog guide or service animal and all related veterinary and care expenses; and

(ii) Medical expenses of the dog guide or service animal user, training of the dog guide or service animal user, and compensation for wages or earned income lost by the dog guide or service animal user.

(8) Nothing in this section shall affect any civil remedies available for violation of this section.

(9) For purposes of this section, the following definitions apply:

(a) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog trained for the purpose of assisting hearing impaired persons.

(b) "Service animal" means an animal that is trained for the purposes of assisting or accommodating a disabled person's sensory, mental, or physical disability.

(c) "Notice" means a verbal or otherwise communicated warning prescribing the behavior of another person and a request that the person stop their behavior.

(d) "Value" means the value to the dog guide or service animal user and does not refer to cost or fair market value. [2003 c 53 § 52; 2001 c 112 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Short title—2001 c 112: "This act may be known and cited as Layla's Law." [2001 c 112 § 1.]

9.91.180 Violent video or computer games. (1) A person who sells, rents, or permits to be sold or rented, any video or computer game they know to be a violent video or computer game to any minor has committed a class 1 civil infraction as provided in RCW 7.80.120.

(2) "Minor" means a person under seventeen years of age.

(3) "Person" means a retailer engaged in the business of selling or renting video or computer games including any individual, partnership, corporation, or association who is subject to the tax on retailers under RCW 82.04.250.

(4) "Violent video or computer game" means a video or computer game that contains realistic or photographic-like depictions of aggressive conflict in which the player kills, injures, or otherwise causes physical harm to a human form in the game who is depicted, by dress or other recognizable symbols, as a public law enforcement officer. [2003 c 365 § 2.]

Findings—2003 c 365: "The legislature finds that there has been an increase in studies showing a correlation between exposure to violent video and computer games and various forms of hostile and antisocial behavior. The entertainment software industry's ratings and content descriptors of video and computer games reflect that some video and computer games are suitable only for adults due to graphic depictions of sex and/or violence. Furthermore, some video and computer games focus on violence specifically against public law enforcement officers such as police and fire fighters. The legislature encourages retailers and parents to utilize the rating system.

In addition, the legislature finds there is a compelling interest to curb hostile and antisocial behavior in Washington's youth and to foster respect for public law enforcement officers." [2003 c 365 § 1.]

Chapter 9.92 RCW PUNISHMENT

Sections

9.92.066 Termination of suspended sentence—Restoration of civil rights—Vacation of conviction.

9.92.066 Termination of suspended sentence—Restoration of civil rights—Vacation of conviction. (1) Upon termination of any suspended sentence under RCW 9.92.060 or 9.95.210, such person may apply to the court for restoration of his or her civil rights. Thereupon the court may in its discretion enter an order directing that such defendant shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he or she has been convicted.

(2)(a) Upon termination of a suspended sentence under RCW 9.92.060 or 9.95.210, the person may apply to the sentencing court for a vacation of the person's record of conviction under RCW 9.94A.640. The court may, in its discretion, clear the record of conviction if it finds the person has met the equivalent of the tests in RCW 9.94A.640(2) as those tests would be applied to a person convicted of a crime committed before July 1, 1984.

(b) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. [2003 c 66 § 2; 1971 ex.s. c 188 § 3.]

Applicability—1984 c 209: See RCW 9.92.900.

Chapter 9.94 RCW PRISONERS—CORRECTIONAL INSTITUTIONS

Sections

9.94.010 Prison riot—Penalty. (*Effective July 1, 2004.*)
9.94.020 Repealed. (*Effective July 1, 2004.*)
9.94.030 Holding person hostage—Interference with officer's duties. (*Effective July 1, 2004.*)

9.94.010 Prison riot—Penalty. (*Effective July 1, 2004.*) (1) Whenever two or more inmates of a correctional

institution assemble for any purpose, and act in such a manner as to disturb the good order of the institution and contrary to the commands of the officers of the institution, by the use of force or violence, or the threat thereof, and whether acting in concert or not, they shall be guilty of prison riot.

(2) Every inmate of a correctional institution who is guilty of prison riot or of voluntarily participating therein by being present at, or by instigating, aiding, or abetting the same, is guilty of a class B felony and shall be punished by imprisonment in a state correctional institution for not less than one year nor more than ten years, which shall be in addition to the sentence being served. [2003 c 53 § 53; 1995 c 314 § 1; 1955 c 241 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.94.020 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

9.94.030 Holding person hostage—Interference with officer's duties. (Effective July 1, 2004.) Whenever any inmate of a correctional institution shall hold, or participate in holding, any person as a hostage, by force or violence, or the threat thereof, or shall prevent, or participate in preventing an officer of such institution from carrying out his or her duties, by force or violence, or the threat thereof, he or she shall be guilty of a class B felony and upon conviction shall be punished by imprisonment in a state correctional institution for not less than one year nor more than ten years. [2003 c 53 § 54; 1995 c 314 § 3; 1992 c 7 § 20; 1957 c 112 § 1; 1955 c 241 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Interfering with public officer: Chapter 9A.76 RCW.

Kidnapping: Chapter 9A.40 RCW.

Chapter 9.94A RCW

SENTENCING REFORM ACT OF 1981

Sections

9.94A.030	Definitions. <i>(Effective July 1, 2004.)</i>
9.94A.501	Risk assessment—Risk categories—Department must supervise specified offenders. <i>(Expires July 1, 2010.)</i>
9.94A.515	Table 2—Crimes included within each seriousness level. <i>(Expires July 1, 2004.)</i>
9.94A.515	Table 2—Crimes included within each seriousness level. <i>(Effective July 1, 2004.)</i>
9.94A.518	Table 4—Drug offenses seriousness level. <i>(Effective July 1, 2004.)</i>
9.94A.533	Adjustments to standard sentences. <i>(Effective July 1, 2004.)</i>
9.94A.535	Departures from the guidelines.
9.94A.545	Community custody.
9.94A.550	Fines. <i>(Effective July 1, 2004.)</i>
9.94A.605	Methamphetamine—Manufacturing with child on premises—Special allegation. <i>(Effective July 1, 2004.)</i>
9.94A.610	Drug offenders—Notice of release or escape. <i>(Effective July 1, 2004.)</i>
9.94A.637	Discharge upon completion of sentence—Certificate of discharge—Obligations, counseling after discharge.
9.94A.700	Community placement.
9.94A.705	Community placement for specified offenders.
9.94A.715	Community custody for specified offenders.
9.94A.720	Supervision of offenders.
9.94A.728	Earned release time.
9.94A.7281	Legislative declaration—Earned release time not an entitlement.
9.94A.7282	Earned release study.

9.94A.731	Term of partial confinement, work release, home detention.
9.94A.734	Home detention—Conditions. <i>(Effective July 1, 2004.)</i>
9.94A.750	Restitution.
9.94A.753	Restitution—Application dates.
9.94A.760	Legal financial obligations.
9.94A.772	Legal financial obligations—Monthly payment, starting dates—Construction.
9.94A.775	Legal financial obligations—Termination of supervision—Monitoring of payments.
9.94A.780	Offender supervision assessments.
9.94A.925	Application—2003 c 379 §§ 13-27.

9.94A.030 Definitions. (Effective July 1, 2004.)

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

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850, for crimes committed on or after July 1, 2000.

(7) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(8) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(9) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a

court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(10) "Confinement" means total or partial confinement.

(11) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(12) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(13) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(14) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(15) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(16) "Department" means the department of corrections.

(17) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(18) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensa-

tion paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(19) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

(20) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(21) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(22) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (*RCW 72.66.060), willful failure to return from work release (*RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(23) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(24) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(25) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(26) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(27) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys'

fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(28) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under **RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim

and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

(29) "Nonviolent offense" means an offense which is not a violent offense.

(30) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(31) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

(32) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (32)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

(33) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(34) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(35) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

(36) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(37) "Serious violent offense" is a subcategory of violent offense and means:

- (a)(i) Murder in the first degree;
- (ii) Homicide by abuse;
- (iii) Murder in the second degree;
- (iv) Manslaughter in the first degree;
- (v) Assault in the first degree;
- (vi) Kidnapping in the first degree;
- (vii) Rape in the first degree;
- (viii) Assault of a child in the first degree; or
- (ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(38) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(11);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.070 or 9.68A.080; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(39) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(40) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(41) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(42) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(43) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(44) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(45) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(46) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(47) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requir-

ing offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(48) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. [2003 c 53 § 55. Prior: 2002 c 175 § 5; 2002 c 107 § 2; prior: 2001 2nd sp.s. c 12 § 301; 2001 c 300 § 3; 2001 c 7 § 2; prior: 2001 c 287 § 4; 2001 c 95 § 1; 2000 c 28 § 2; 1999 c 352 § 8; 1999 c 197 § 1; 1999 c 196 § 2; 1998 c 290 § 3; prior: 1997 c 365 § 1; 1997 c 340 § 4; 1997 c 339 § 1; 1997 c 338 § 2; 1997 c 144 § 1; 1997 c 70 § 1; prior: 1996 c 289 § 1; 1996 c 275 § 5; prior: 1995 c 268 § 2; 1995 c 108 § 1; 1995 c 101 § 2; 1994 c 261 § 16; prior: 1994 c 1 § 3 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 338 § 2; 1993 c 251 § 4; 1993 c 164 § 1; prior: 1992 c 145 § 6; 1992 c 75 § 1; prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

Reviser's note: *(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

** (2) RCW 9A.88.100 was recodified as RCW 9A.44.100 pursuant to 1979 ex.s. c 244 § 17.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—2002 c 107: "The legislature considers the majority opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*, Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since neither properly interpreted legislative intent. When the legislature enacted the sentencing reform act, chapter 9.94A RCW, and each time the legislature has amended the act, the legislature intended that an offender's criminal history and offender score be determined using the statutory provisions that were in effect on the day the current offense was committed.

Although certain prior convictions previously were not counted in the offender score or included in the criminal history pursuant to former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior convictions need not be "revived" because they were never vacated. As noted in the minority opinions in *Cruz* and *Smith*, such application of the law does not involve retroactive application or violate ex postfacto prohibitions. Additionally, the Washington state supreme court has repeatedly held in the past that the provisions of the sentencing reform act act upon and punish only current conduct; the sentencing reform act does not act upon or alter the punishment for prior convictions. See *In re Personal Restraint Petition of Williams*, 111 Wn.2d 353, (1988). The legislature has never intended to create in an offender a vested right with respect to whether a prior conviction is excluded when calculating an offender score or with respect to how a prior conviction is counted in the offender score for a current offense." [2002 c 107 § 1.]

Application—2002 c 107: "RCW 9.94A.030(13) (b) and (c) and 9.94A.525(18) apply only to current offenses committed on or after June 13, 2002. No offender who committed his or her current offense prior to June 13, 2002, may be subject to resentencing as a result of this act." [2002 c 107 § 4.]

Application—2001 2nd sp.s. c 12 §§ 301-363: "(1) Sections 301 through 363 of this act shall not affect the validity of any sentence imposed under any other law for any offense committed before, on, or after September 1, 2001.

(2) Sections 301 through 363 of this act shall apply to offenses committed on or after September 1, 2001." [2001 2nd sp.s. c 12 § 503.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Effective dates—2001 c 287: See note following RCW 9A.76.115.

Effective date—2001 c 95: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 95 § 3.]

Finding—Intent—2001 c 7: "The legislature finds that an ambiguity may exist regarding whether out-of-state convictions or convictions under prior Washington law, for sex offenses that are comparable to current Washington offenses, count when determining whether an offender is a persistent offender. This act is intended to clarify the legislature's intent that out-of-state convictions for comparable sex offenses and prior Washington convictions for comparable sex offenses shall be used to determine whether an offender meets the definition of a persistent offender." [2001 c 7 § 1.]

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Severability—1999 c 197: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 197 § 14.]

Construction—Short title—1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability—1999 c 196: See note following RCW 9.94A.010.

Application—Effective date—Severability—1998 c 290: See notes following RCW 69.50.401.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—1996 c 275: See note following RCW 9.94A.505.

Application—1996 c 275 §§ 1-5: See note following RCW 9.94A.505.

Purpose—1995 c 268: "In order to eliminate a potential ambiguity over the scope of the term "sex offense," this act clarifies that for general purposes the definition of "sex offense" does not include any misdemeanors or gross misdemeanors. For purposes of the registration of sex offenders pursuant to RCW 9A.44.130, however, the definition of "sex offense" is expanded to include those gross misdemeanors that constitute attempts, conspiracies, and solicitations to commit class C felonies." [1995 c 268 § 1.]

Effective date—1995 c 108: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 19, 1995]." [1995 c 108 § 6.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Severability—Short title—Captions—1994 c 1: See notes following RCW 9.94A.555.

Severability—Effective date—1993 c 338: See notes following RCW 72.09.400.

Finding—Intent—1993 c 251: See note following RCW 38.52.430.

Effective date—1991 c 348: See note following RCW 46.61.520.

Effective date—Application—1990 c 3 §§ 601-605: See note following RCW 9.94A.835.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Purpose—1989 c 252: "The purpose of this act is to create a system that: (1) Assists the courts in sentencing felony offenders regarding the offenders' legal financial obligations; (2) holds offenders accountable to victims, counties, cities, the state, municipalities, and society for the assessed costs associated with their crimes; and (3) provides remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior." [1989 c 252 § 1.]

Prospective application—1989 c 252: "Except for sections 18, 22, 23, and 24 of this act, this act applies prospectively only and not retrospectively. It applies only to offenses committed on or after the effective date of this act." [1989 c 252 § 27.]

Effective dates—1989 c 252: "(1) Sections 1 through 17, 19 through 21, 25, 26, and 28 of this act shall take effect July 1, 1990 unless otherwise directed by law.

(2) Sections 18, 22, 23, and 24 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 252 § 30.]

Severability—1989 c 252: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 252 § 31.]

Application—1988 c 157: "This act applies to crimes committed after July 1, 1988." [1988 c 157 § 7.]

Effective date—1988 c 153: "This act shall take effect July 1, 1988." [1988 c 153 § 16.]

Application of increased sanctions—1988 c 153: "Increased sanctions authorized by this act are applicable only to those persons committing offenses after July 1, 1988." [1988 c 153 § 15.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: "Sections 17 through 35 of this act shall take effect July 1, 1986." [1986 c 257 § 38.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1983 c 163: See note following RCW 9.94A.505.

9.94A.501 Risk assessment—Risk categories—Department must supervise specified offenders. (Expires July 1, 2010.) (1) When the department performs a risk assessment pursuant to RCW 9.94A.500, or to determine a person's conditions of supervision, the risk assessment shall classify the offender into one of at least four risk categories.

(2) The department shall supervise every offender sentenced to a term of community custody, community placement, or community supervision:

(a) Whose risk assessment places that offender in one of the two highest risk categories; or

(b) Regardless of the offender's risk category if:

(i) The offender's current conviction is for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(ii) The offender has a prior conviction for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(iii) The conditions of the offender's community custody, community placement, or community supervision include chemical dependency treatment;

(iv) The offender was sentenced under RCW 9.94A.650 or 9.94A.670; or

(v) The offender is subject to supervision pursuant to RCW 9.94A.745.

(3) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody, community placement, or community supervision unless the offender is one for whom supervision is required under subsection (2) of this section.

(4) This section expires July 1, 2010. [2003 c 379 § 3.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

9.94A.515 Table 2—Crimes included within each seriousness level. (Expires July 1, 2004.)

TABLE 2

CRIMES INCLUDED WITHIN EACH
SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))
	Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011)
	Assault of a Child 1 (RCW 9A.36.120)
	Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
	Rape 1 (RCW 9A.44.040)
	Rape of a Child 1 (RCW 9A.44.073)
	Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060)
	Rape 2 (RCW 9A.44.050)
	Rape of a Child 2 (RCW 9A.44.076)
X	Child Molestation 1 (RCW 9A.44.083)
	Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
	Kidnapping 1 (RCW 9A.40.020)
	Leading Organized Crime (RCW 9A.82.060(1)(a))
	Malicious explosion 3 (RCW 70.74.280(3))
	Manufacture of methamphetamine (RCW 69.50.401(a)(1)(ii))

- Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)
- Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
- Controlled Substance Homicide (RCW 69.50.415)
- Explosive devices prohibited (RCW 70.74.180)
- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
- Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(a)(1)(ii))
- Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
- Possession of Ephedrine or any of its Salts or Isomers or Salts of Isomers, Pseudoephedrine or any of its Salts or Isomers or Salts of Isomers, Pressurized Ammonia Gas, or Pressurized Ammonia Gas Solution with intent to manufacture methamphetamine (RCW 69.50.440)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
- Theft of Ammonia (RCW 69.55.010)
- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Civil Disorder Training (RCW 9A.48.120)
- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Involving a minor in drug dealing (RCW 69.50.401(f))
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)(a))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) or flunitrazepam from Schedule IV (RCW 69.50.401(a)(1)(i))
- Rape of a Child 3 (RCW 9A.44.079)

- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of dependent person 1 (RCW 9A.42.060)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070(1))
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2)(a))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- Malicious Harassment (RCW 9A.36.080)
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam) (RCW 69.50.401(a)(1) (iii) through (v))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(3))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Willful Failure to Return from Furlough (*RCW 72.66.060)
- III Abandonment of dependent person 2 (RCW 9A.42.070)

- Assault 3 (RCW 9A.36.031)
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Assault (RCW 9A.36.100)
- Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(a)(6))
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(iii))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230)
- Theft of Livestock 2 (RCW 9A.56.080)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(1)(b))
- Unlawful Use of Building for Drug Purposes (RCW 69.53.010)
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (*RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(2)(b))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II or flunitrazepam from Schedule IV (RCW 69.50.401(d))
- Possession of phencyclidine (PCP) (RCW 69.50.401(d))
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(4))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)

Forged Prescription (RCW 69.41.020)
 Forged Prescription for a Controlled Substance (RCW 69.50.403)
 Forgery (RCW 9A.60.020)
 Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
 Malicious Mischief 2 (RCW 9A.48.080)
 Mineral Trespass (RCW 78.44.330)
 Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine or flunitrazepam) (RCW 69.50.401(d))
 Possession of Stolen Property 2 (RCW 9A.56.160)
 Reckless Burning 1 (RCW 9A.48.040)
 Taking Motor Vehicle Without Permission 2 (RCW 9A.56.070(2))
 Theft 2 (RCW 9A.56.040)
 Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(4))
 Transaction of insurance business beyond the scope of licensure (RCW 48.17.063(4))
 Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
 Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
 Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
 Unlawful Possession of Payment Instruments (RCW 9A.56.320)
 Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
 Unlawful Production of Payment Instruments (RCW 9A.56.320)
 Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
 Vehicle Prowl 1 (RCW 9A.52.095)

[2003 c 335 § 4; 2003 c 283 § 32; 2003 c 267 § 2; 2003 c 250 § 13; 2003 c 119 § 7; 2003 c 52 § 3. Prior: 2002 c 340 § 2; 2002 c 324 § 2; (2002 c 290 § 2 expired July 1, 2003); 2002 c 253 § 4; 2002 c 229 § 2; 2002 c 134 § 2; 2002 c 133 § 4; prior: 2001 2nd sp.s. c 12 § 361; 2001 c 300 § 4; 2001 c 217 § 12; 2001 c 17 § 1; prior: 2001 c 310 § 4; 2001 c 287 § 3; 2001 c 224 § 3; 2001 c 222 § 24; 2001 c 207 § 3; 2000 c 225 § 5; 2000 c 119 § 17; 2000 c 66 § 2; prior: 1999 c 352 § 3; 1999 c 322 § 5; 1999 c 45 § 4; prior: 1998 c 290 § 4; 1998 c 219 § 4; 1998 c 82 § 1; 1998 c 78 § 1; prior: 1997 c 365 § 4; 1997 c 346 § 3; 1997 c 340 § 1; 1997 c 338 § 51; 1997 c 266 § 15; 1997 c 120 § 5; prior: 1996 c 302 § 6; 1996 c 205 § 3;

1996 c 36 § 2; prior: 1995 c 385 § 2; 1995 c 285 § 28; 1995 c 129 § 3 (Initiative Measure No. 159); prior: (1994 sp.s. c 7 § 510 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1994 c 275 § 20; 1994 c 53 § 2; prior: 1992 c 145 § 4; 1992 c 75 § 3; 1991 c 32 § 3; 1990 c 3 § 702; prior: 1989 2nd ex.s. c 1 § 3; 1989 c 412 § 3; 1989 c 405 § 1; 1989 c 271 § 102; 1989 c 99 § 1; prior: 1988 c 218 § 2; 1988 c 145 § 12; 1988 c 62 § 2; prior: 1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 § 23; 1984 c 209 § 17; 1983 c 115 § 3. Formerly RCW 9.94A.320.]

Reviser's note: *(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

(2) This section was amended by 2003 c 52 § 3, 2003 c 119 § 7, 2003 c 250 § 13, 2003 c 267 § 2, 2003 c 283 § 32, and by 2003 c 335 § 4, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2003 c 335 § 4: "Section 4 of this act expires July 1, 2004." [2003 c 335 § 7.]

Expiration date—2003 c 283 § 32: "Section 32 of this act expires July 1, 2004." [2003 c 283 § 36.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

Expiration date—2003 c 267 § 2: "Section 2 of this act expires July 1, 2004." [2003 c 267 § 8.]

Expiration date—2003 c 250 § 13: "Section 13 of this act expires July 1, 2004." [2003 c 250 § 16.]

Severability—2003 c 250: See note following RCW 48.01.080.

Expiration date—2003 c 119 § 7: "Section 7 of this act expires July 1, 2004." [2003 c 119 § 9.]

Expiration date—2003 c 52 § 3: "Section 3 of this act expires July 1, 2004." [2003 c 52 § 5.]

Study and report—2002 c 324: See note following RCW 9A.56.070.

Effective date—2002 c 290 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2002, and apply to crimes committed on or after July 1, 2002." [2002 c 290 § 29.]

Expiration date—2002 c 290 § 2: "Section 2 of this act expires July 1, 2003." [2003 c 379 § 9; 2002 c 290 § 30.]

Intent—2002 c 290: See note following RCW 9.94A.517.

Effective date—2002 c 229: See note following RCW 9A.42.100.

Effective date—2002 c 134: See note following RCW 69.50.440.

Effective date—2002 c 133: See note following RCW 69.55.010.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Purpose—Effective date—2001 c 310: See notes following RCW 2.48.180.

Effective dates—2001 c 287: See note following RCW 9A.76.115.

Purpose—Effective date—2001 c 224: See notes following RCW 9A.68.060.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

Captions not law—2001 c 217: See note following RCW 9.35.005.

Purpose—Effective date—2001 c 207: See notes following RCW 18.130.190.

Severability—2000 c 225: See note following RCW 69.55.010.

Effective date—2000 c 119 § 17: "Section 17 of this act takes effect July 1, 2000." [2000 c 119 § 30.]

Application—2000 c 119: See note following RCW 26.50.021.

Alphabetization—1999 c 352: "The code reviser shall alphabetize the offenses within each seriousness level in RCW 9.94A.320, including any offenses added in the 1999 legislative session." [1999 c 352 § 6.]

Application—1999 c 352 §§ 3-5: "The amendments made by sections 3 through 5, chapter 352, Laws of 1999 shall apply to offenses committed on or after July 25, 1999, except that the amendments made by chapter 352, Laws of 1999 to seriousness level V in RCW 9.94A.320 shall apply to offenses committed on or after July 1, 2000." [1999 c 352 § 7.]

Application—Effective date—Severability—1998 c 290: See notes following RCW 69.50.401.

Application—1998 c 78: "This act applies to crimes committed on or after July 1, 1998." [1998 c 78 § 2.]

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

Severability—1996 c 302: See note following RCW 9A.42.010.

Effective date—1995 c 285: See RCW 48.30A.900.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Contingent expiration date—1994 sp.s. c 7: See note following RCW 43.70.540.

Finding—Intent—Severability—Effective dates—1994 sp.s. c 7: See notes following RCW 43.70.540.

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

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date—1989 2nd ex.s. c 1: See note following RCW 9A.52.025.

Finding—Intent—1989 c 271 §§ 102, 109, and 110: See note following RCW 9A.36.050.

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability—1989 c 271: See note following RCW 9.94A.510.

Application—1989 c 99: "This act applies to crimes committed after July 1, 1989." [1989 c 99 § 2.]

Effective date—1989 c 99: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 99 § 3.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Effective date—Application—1987 c 224: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987. It shall apply to crimes committed on or after July 1, 1987." [1987 c 224 § 2.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.515 Table 2—Crimes included within each seriousness level. (Effective July 1, 2004.)

TABLE 2

CRIMES INCLUDED WITHIN EACH
SERIOUSNESS LEVEL

XVI Aggravated Murder 1 (RCW 10.95.020)

XV Homicide by abuse (RCW 9A.32.055)

Malicious explosion 1 (RCW
70.74.280(1))

Murder 1 (RCW 9A.32.030)

XIV Murder 2 (RCW 9A.32.050)
Trafficking 1 (RCW 9A.40.100(1))

XIII Malicious explosion 2 (RCW
70.74.280(2))
Malicious placement of an explosive 1
(RCW 70.74.270(1))

XII Assault 1 (RCW 9A.36.011)
Assault of a Child 1 (RCW 9A.36.120)
Malicious placement of an imitation
device 1 (RCW 70.74.272(1)(a))

Rape 1 (RCW 9A.44.040)
Rape of a Child 1 (RCW 9A.44.073)
Trafficking 2 (RCW 9A.40.100(2))

XI Manslaughter 1 (RCW 9A.32.060)
Rape 2 (RCW 9A.44.050)
Rape of a Child 2 (RCW 9A.44.076)

X Child Molestation 1 (RCW 9A.44.083)
Indecent Liberties (with forcible com-
pulsion) (RCW 9A.44.100(1)(a))
Kidnapping 1 (RCW 9A.40.020)

Leading Organized Crime (RCW
9A.82.060(1)(a))

Malicious explosion 3 (RCW
70.74.280(3))

Sexually Violent Predator Escape (RCW
9A.76.115)

IX Assault of a Child 2 (RCW 9A.36.130)
Explosive devices prohibited (RCW
70.74.180)

Hit and Run—Death (RCW
46.52.020(4)(a))

Homicide by Watercraft, by being under
the influence of intoxicating liquor
or any drug (RCW 79A.60.050)

Inciting Criminal Profiteering (RCW
9A.82.060(1)(b))

Malicious placement of an explosive 2
(RCW 70.74.270(2))

Robbery 1 (RCW 9A.56.200)

Sexual Exploitation (RCW 9.68A.040)

Vehicular Homicide, by being under the
influence of intoxicating liquor or
any drug (RCW 46.61.520)

VIII Arson 1 (RCW 9A.48.020)

Homicide by Watercraft, by the opera-
tion of any vessel in a reckless man-
ner (RCW 79A.60.050)

Manslaughter 2 (RCW 9A.32.070)

Promoting Prostitution 1 (RCW
9A.88.070)

Theft of Ammonia (RCW 69.55.010)

- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Civil Disorder Training (RCW 9A.48.120)
- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of dependent person 1 (RCW 9A.42.060)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Malicious Harassment (RCW 9A.36.080)

- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(3))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Willful Failure to Return from Furlough (*RCW 72.66.060)
- III Abandonment of dependent person 2 (RCW 9A.42.070)
- Assault 3 (RCW 9A.36.031)
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Assault (RCW 9A.36.100)
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (*RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Practice of Law (RCW 2.48.180)

Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))

I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)

False Verification for Welfare (RCW 74.08.055)

Forgery (RCW 9A.60.020)

Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)

Malicious Mischief 2 (RCW 9A.48.080)

Mineral Trespass (RCW 78.44.330)

Possession of Stolen Property 2 (RCW 9A.56.160)

Reckless Burning 1 (RCW 9A.48.040)

Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)

Theft 2 (RCW 9A.56.040)

Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))

Transaction of insurance business beyond the scope of licensure (RCW 48.17.063(4))

Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)

Unlawful Possession of Fictitious Identification (RCW 9A.56.320)

Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)

Unlawful Possession of Payment Instruments (RCW 9A.56.320)

Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)

Unlawful Production of Payment Instruments (RCW 9A.56.320)

Unlawful Trafficking in Food Stamps (RCW 9.91.142)

Unlawful Use of Food Stamps (RCW 9.91.144)

Vehicle Prowl 1 (RCW 9A.52.095)

[2003 c 335 § 5; 2003 c 283 § 33; 2003 c 267 § 3; 2003 c 250 § 14; 2003 c 119 § 8; 2003 c 53 § 56; 2003 c 52 § 4. Prior: 2002 c 340 § 2; 2002 c 324 § 2; 2002 c 290 § 7; 2002 c 253 § 4; 2002 c 229 § 2; 2002 c 134 § 2; 2002 c 133 § 4; prior: 2001 2nd sp.s. c 12 § 361; 2001 c 300 § 4; 2001 c 217 § 12; 2001 c 17 § 1; prior: 2001 c 310 § 4; 2001 c 287 § 3; 2001 c 224 § 3; 2001 c 222 § 24; 2001 c 207 § 3; 2000 c 225 § 5; 2000 c 119 § 17; 2000 c 66 § 2; prior: 1999 c 352 § 3; 1999 c 322 § 5; 1999 c 45 § 4; prior: 1998 c 290 § 4; 1998 c 219 § 4; 1998 c 82 § 1; 1998 c 78 § 1; prior: 1997 c 365 § 4; 1997 c 346 § 3; 1997 c 340 § 1; 1997 c 338 § 51; 1997 c 266 § 15; 1997 c

120 § 5; prior: 1996 c 302 § 6; 1996 c 205 § 3; 1996 c 36 § 2; prior: 1995 c 385 § 2; 1995 c 285 § 28; 1995 c 129 § 3 (Initiative Measure No. 159); prior: (1994 sp.s. c 7 § 510 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1994 c 275 § 20; 1994 c 53 § 2; prior: 1992 c 145 § 4; 1992 c 75 § 3; 1991 c 32 § 3; 1990 c 3 § 702; prior: 1989 2nd ex.s. c 1 § 3; 1989 c 412 § 3; 1989 c 405 § 1; 1989 c 271 § 102; 1989 c 99 § 1; prior: 1988 c 218 § 2; 1988 c 145 § 12; 1988 c 62 § 2; prior: 1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 § 23; 1984 c 209 § 17; 1983 c 115 § 3. Formerly RCW 9.94A.320.]

Reviser's note: *(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

(2) This section was amended by 2003 c 52 § 4, 2003 c 53 § 56, 2003 c 119 § 8, 2003 c 250 § 14, 2003 c 267 § 3, 2003 c 283 § 33, and by 2003 c 335 § 5, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 335 § 5: "Section 5 of this act takes effect July 1, 2004." [2003 c 335 § 8.]

Effective date—2003 c 283 § 33: "Section 33 of this act takes effect July 1, 2004." [2003 c 283 § 37.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

Effective date—2003 c 267 § 3: "Section 3 of this act takes effect July 1, 2004." [2003 c 267 § 9.]

Effective date—2003 c 250 § 14: "Section 14 of this act takes effect July 1, 2004." [2003 c 250 § 17.]

Severability—2003 c 250: See note following RCW 48.01.080.

Effective date—2003 c 119 § 8: "Section 8 of this act takes effect July 1, 2004." [2003 c 119 § 10.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2003 c 52 § 4: "Section 4 of this act takes effect July 1, 2004." [2003 c 52 § 6.]

Study and report—2002 c 324: See note following RCW 9A.56.070.

Effective date—2002 c 290 §§ 7-11 and 14-23: "Sections 7 through 11 and 14 through 23 of this act take effect July 1, 2003." [2003 c 379 § 10; 2002 c 290 § 31.]

Intent—2002 c 290: See note following RCW 9.94A.517.

Effective date—2002 c 229: See note following RCW 9A.42.100.

Effective date—2002 c 134: See note following RCW 69.50.440.

Effective date—2002 c 133: See note following RCW 69.55.010.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Purpose—Effective date—2001 c 310: See notes following RCW 2.48.180.

Effective dates—2001 c 287: See note following RCW 9A.76.115.

Purpose—Effective date—2001 c 224: See notes following RCW 9A.68.060.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

Captions not law—2001 c 217: See note following RCW 9.35.005.

Purpose—Effective date—2001 c 207: See notes following RCW 18.130.190.

Severability—2000 c 225: See note following RCW 69.55.010.

Effective date—2000 c 119 § 17: "Section 17 of this act takes effect July 1, 2000." [2000 c 119 § 30.]

Application—2000 c 119: See note following RCW 26.50.021.

Alphabetization—1999 c 352: "The code reviser shall alphabetize the offenses within each seriousness level in RCW 9.94A.320, including any offenses added in the 1999 legislative session." [1999 c 352 § 6.]

Application—1999 c 352 §§ 3-5: "The amendments made by sections 3 through 5, chapter 352, Laws of 1999 shall apply to offenses committed on or after July 25, 1999, except that the amendments made by chapter 352, Laws of 1999 to seriousness level V in RCW 9.94A.320 shall apply to offenses committed on or after July 1, 2000." [1999 c 352 § 7.]

Application—Effective date—Severability—1998 c 290: See notes following RCW 69.50.401.

Application—1998 c 78: "This act applies to crimes committed on or after July 1, 1998." [1998 c 78 § 2.]

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

Severability—1996 c 302: See note following RCW 9A.42.010.

Effective date—1995 c 285: See RCW 48.30A.900.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Contingent expiration date—1994 sp.s. c 7: See note following RCW 43.70.540.

Finding—Intent—Severability—Effective dates—1994 sp.s. c 7: See notes following RCW 43.70.540.

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

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date—1989 2nd ex.s. c 1: See note following RCW 9A.52.025.

Finding—Intent—1989 c 271 §§ 102, 109, and 110: See note following RCW 9A.36.050.

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability—1989 c 271: See note following RCW 9.94A.510.

Application—1989 c 99: "This act applies to crimes committed after July 1, 1989." [1989 c 99 § 2.]

Effective date—1989 c 99: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 99 § 3.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Effective date—Application—1987 c 224: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987. It shall apply to crimes committed on or after July 1, 1987." [1987 c 224 § 2.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

**9.94A.518 Table 4—Drug offenses seriousness level.
(Effective July 1, 2004.)**

TABLE 4
DRUG OFFENSES
INCLUDED WITHIN EACH SERI-
OUSNESS LEVEL

- III Any felony offense under chapter 69.50 RCW with a deadly weapon special verdict under RCW 9.94A.602
Controlled Substance Homicide (RCW 69.50.415)

Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))

Involving a minor in drug dealing (RCW 69.50.4015)

Manufacture of methamphetamine (RCW 69.50.401(2)(b))

Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)

Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)

Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine * (RCW 69.50.440)

Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)

II Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.4011)

Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(2)(b))

Delivery of a material in lieu of a controlled substance (RCW 69.50.4012)

Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(1)(f))

Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(2)(b))

Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II or flunitrazepam from Schedule IV (RCW 69.50.401(2)(a))

Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam) (RCW 69.50.401(2) (c) through (e))

Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))

I Forged Prescription (RCW 69.41.020)

Forged Prescription for a Controlled Substance (RCW 69.50.403)

Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(2)(c))

Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Nonnarcotic from Schedule I-V (RCW 69.50.4013)

Possession of Controlled Substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.4013)

Unlawful Use of Building for Drug Purposes (RCW 69.53.010)

[2003 c 53 § 57; 2002 c 290 § 9.]

*Reviser's note: cf. 2002 c 134 § 1.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

9.94A.533 Adjustments to standard sentences. (*Effective July 1, 2004.*) (1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the

felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.605.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055. [2003 c 53 § 58; 2002 c 290 § 11.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

9.94A.535 Departures from the guidelines. The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence unless it is imposed on an offender sentenced under RCW 9.94A.712. An exceptional sentence imposed on an offender sentenced under RCW 9.94A.712 shall be to a minimum term set by the court and a maximum term equal to the statutory maximum sentence for the offense of conviction under chapter 9A.20 RCW.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

The following are illustrative factors which the court may consider in the exercise of its discretion to impose an exceptional sentence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(1) Mitigating Circumstances

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(2) Aggravating Circumstances

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(j) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(k) The offense resulted in the pregnancy of a child victim of rape.

(l) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(m) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(n) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense. [2003 c 267 § 4; 2002 c 169 § 1; 2001 2nd sp.s. c 12 § 314; 2000 c 28 § 8; 1999 c 330 § 1; 1997 c 52 § 4. Prior: 1996 c 248 § 2; 1996 c 121 § 1; 1995 c 316 § 2; 1990 c 3 § 603; 1989 c 408 § 1; 1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10. Formerly RCW 9.94A.390.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Effective date—1996 c 121: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1996]." [1996 c 121 § 2.]

Effective date—Application—1990 c 3 §§ 601 through 605: See note following RCW 9.94A.835.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17 through 35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.545 Community custody. Except as provided in RCW 9.94A.650, on all sentences of confinement for one year or less, in which the offender is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy, or solicitation to commit such a crime, the court may impose up to one year of community custody, subject to conditions and sanctions as authorized in RCW 9.94A.715 and 9.94A.720. An offender shall be on community custody as of the date of sentencing. However, during the time for which the offender is in total or partial confinement pursuant to the sentence or a violation of the sentence, the period of community custody shall toll. [2003 c 379 § 8; 2000 c 28 § 13; 1999 c 196 § 10; 1988 c 143 § 23; 1984 c 209 § 22. Formerly RCW 9.94A.383.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Effective date—1999 c 196 § 10: "Section 10 of this act takes effect July 1, 2000, and applies only to offenses committed on or after July 1, 2000." [1999 c 196 § 19.]

Construction—Short title—1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability—1999 c 196: See note following RCW 9.94A.010.

Applicability—1988 c 143 §§ 21-24: See note following RCW 9.94A.505.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.550 Fines. (*Effective July 1, 2004.*) Unless otherwise provided by a statute of this state, on all sentences under this chapter the court may impose fines according to the following ranges:

Class A felonies	\$0 - 50,000
Class B felonies	\$0 - 20,000
Class C felonies	\$0 - 10,000

[2003 c 53 § 59; 1984 c 209 § 23. Formerly RCW 9.94A.386.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.605 Methamphetamine—Manufacturing with child on premises—Special allegation. (*Effective July 1, 2004.*) In a criminal case where:

(1) The defendant has been convicted of (a) manufacture of a controlled substance under RCW 69.50.401 relating to manufacture of methamphetamine; or (b) possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, as defined in RCW 69.50.440; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant com-

mitted the crime when a person under the age of eighteen was present in or upon the premises of manufacture; the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation. [2003 c 53 § 60; 2002 c 134 § 3; 2000 c 132 § 1. Formerly RCW 9.94A.128.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2002 c 134: See note following RCW 69.50.440.

9.94A.610 Drug offenders—Notice of release or escape. (*Effective July 1, 2004.*) (1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, community placement, work release placement, furlough, or escape about a specific inmate convicted of a serious drug offense to the following if such notice has been requested in writing about a specific inmate convicted of a serious drug offense:

(a) Any witnesses who testified against the inmate in any court proceedings involving the serious drug offense; and

(b) Any person specified in writing by the prosecuting attorney.

Information regarding witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate.

(2) If an inmate convicted of a serious drug offense escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses who are entitled to notice under this section. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The department of corrections shall send the notices required by this section to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section, "serious drug offense" means an offense under RCW 69.50.401(2) (a) or (b) or 69.50.4011(2) (a) or (b). [2003 c 53 § 61; 1996 c 205 § 4; 1991 c 147 § 1. Formerly RCW 9.94A.154.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9.94A.637 Discharge upon completion of sentence—Certificate of discharge—Obligations, counseling after discharge. (1)(a) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's des-

ignee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(b)(i) When an offender has reached the end of his or her supervision with the department and has completed all the requirements of the sentence except his or her legal financial obligations, the secretary's designee shall provide the county clerk with a notice that the offender has completed all nonfinancial requirements of the sentence.

(ii) When the department has provided the county clerk with notice that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court, including the notice from the department, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(2) The court shall send a copy of every signed certificate of discharge to the auditor for the county in which the court resides and to the department. The department shall create and maintain a data base containing the names of all felons who have been issued certificates of discharge, the date of discharge, and the date of conviction and offense.

(3) An offender who is not convicted of a violent offense or a sex offense and is sentenced to a term involving community supervision may be considered for a discharge of sentence by the sentencing court prior to the completion of community supervision, provided that the offender has completed at least one-half of the term of community supervision and has met all other sentence requirements.

(4) Except as provided in subsection (5) of this section, the discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

(5) Unless otherwise ordered by the sentencing court, a certificate of discharge shall not terminate the offender's obligation to comply with an order issued under chapter 10.99 RCW that excludes or prohibits the offender from having contact with a specified person or coming within a set distance of any specified location that was contained in the judgment and sentence. An offender who violates such an order after a certificate of discharge has been issued shall be subject to prosecution according to the chapter under which the order was originally issued.

(6) Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody. [2003 c 379 § 19; 2002 c 16 § 2; 2000 c 119 § 3; 1994 c 271 § 901; 1984 c 209 § 14; 1981 c 137 § 22. Formerly RCW 9.94A.220.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Intent—2002 c 16: "The legislature recognizes that an individual's right to vote is a hallmark of a free and inclusive society and that it is in the best interests of society to provide reasonable opportunities and processes for an offender to regain the right to vote after completion of all of the requirements of his or her sentence. The legislature intends to clarify the method by which the court may fulfill its already existing direction to provide discharged offenders with their certificates of discharge." [2002 c 16 § 1.]

Application—2000 c 119: See note following RCW 26.50.021.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.700 Community placement. When a court sentences an offender to a term of total confinement in the custody of the department for any of the offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement imposed under this section.

(1) The court shall order a one-year term of community placement for the following:

(a) A sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990; or

(b) An offense committed on or after July 1, 1988, but before July 25, 1999, that is:

(i) Assault in the second degree;

(ii) Assault of a child in the second degree;

(iii) A crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission; or

(iv) A felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660.

(2) The court shall sentence the offender to a term of community placement of two years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer, for:

(a) An offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, including those sex offenses also included in other offense categories;

(b) A serious violent offense other than a sex offense committed on or after July 1, 1990, but before July 1, 2000; or

(c) A vehicular homicide or vehicular assault committed on or after July 1, 1990, but before July 1, 2000.

(3) The community placement ordered under this section shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release. When the court sentences an offender to the statutory maximum sentence then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible. Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions:

(a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The offender shall work at department-approved education, employment, or community restitution, or any combination thereof;

(c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The offender shall pay supervision fees as determined by the department; and

(e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

(5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:

(a) The offender shall remain within, or outside of, a specified geographical boundary;

(b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) The offender shall participate in crime-related treatment or counseling services;

(d) The offender shall not consume alcohol; or

(e) The offender shall comply with any crime-related prohibitions.

(6) An offender convicted of a felony sex offense against a minor victim after June 6, 1996, shall comply with any terms and conditions of community placement imposed by the department relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

(7) Prior to or during community placement, upon recommendation of the department, the sentencing court may remove or modify any conditions of community placement so as not to be more restrictive. [2003 c 379 § 4; 2002 c 175 § 13; 2000 c 28 § 22.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Effective date—2002 c 175: See note following RCW 7.80.130.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

9.94A.705 Community placement for specified offenders. Except for persons sentenced under RCW 9.94A.700(2) or 9.94A.710, when a court sentences a person to a term of total confinement to the custody of the department for a violent offense, any crime against persons under RCW 9.94A.411(2), or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660, committed on or after July 25, 1999, but before July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.728 (1) and (2). When the court sentences the offender under this section to the statutory maximum period

of confinement, then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.728 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement or community custody imposed under this section. [2003 c 379 § 5; 2000 c 28 § 23.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

9.94A.715 Community custody for specified offenders. (1) When a court sentences a person to the custody of the department for a sex offense not sentenced under RCW 9.94A.712, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer. The community custody shall begin: (a) Upon completion of the term of confinement; (b) at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to offenders sentenced under RCW 9.94A.660, upon failure to complete or administrative termination from the special drug offender sentencing alternative program. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community custody imposed under this section.

(2)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to subsection (6) of this section.

(b) As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.720. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. In addition, the department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(c) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(3) If an offender violates conditions imposed by the court or the department pursuant to this section during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.737 and 9.94A.740.

(4) Except for terms of community custody under RCW 9.94A.670, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

(5) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(6) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection.

(7) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (a) The crime of conviction; (b) the offender's risk of reoffending; or (c) the safety of the community. [2003 c 379 § 6; 2001 2nd sp.s. c 12 § 302; 2001 c 10 § 5; 2000 c 28 § 25.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

9.94A.720 Supervision of offenders. (1)(a) Except as provided in RCW 9.94A.501, all offenders sentenced to terms involving community supervision, community restitution, community placement, or community custody shall be under the supervision of the department and shall follow explicitly the instructions and conditions of the department.

The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed. The department may only supervise the offender's compliance with payment of legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.501.

(b) The instructions shall include, at a minimum, reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

(c) For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (b) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals.

(d) For offenders sentenced to terms of community custody for crimes committed on or after July 1, 2000, the department may impose conditions as specified in RCW 9.94A.715.

The conditions authorized under (c) of this subsection may be imposed by the department prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to RCW 9.94A.710 occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.740 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.737. At any time prior to the completion of an offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to RCW 9.94A.710 or 9.94A.715 be continued beyond the expiration of the offender's term of community custody as authorized in RCW 9.94A.715 (3) or (5).

The department may require offenders to pay for special services rendered on or after July 25, 1993, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(2) No offender sentenced to terms involving community supervision, community restitution, community custody, or community placement under the supervision of the department may own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the violation process and sanctions under RCW 9.94A.634, 9.94A.737, and 9.94A.740. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection has the same definition as in RCW 9.41.010. [2003 c 379 § 7; 2002 c 175 § 14; 2000 c 28 § 26.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Effective date—2002 c 175: See note following RCW 7.80.130.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

9.94A.728 Earned release time. No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(b)(i) In the case of an offender who qualifies under (b)(ii) of this subsection, the aggregate earned release time may not exceed fifty percent of the sentence.

(ii) An offender is qualified to earn up to fifty percent of aggregate earned release time under this subsection (1)(b) if he or she:

(A) Is classified in one of the two lowest risk categories under (b)(iii) of this subsection;

(B) Is not confined pursuant to a sentence for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor); and

(C) Has no prior conviction for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor).

(iii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that is domestic violence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine, or a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.

(iv) The department shall recalculate the earned release time and reschedule the expected release dates for each qualified offender under this subsection (1)(b).

(v) This subsection (1)(b) applies retroactively to eligible offenders serving terms of total confinement in a state correctional facility as of July 1, 2003.

(vi) This subsection (1)(b) does not apply to offenders convicted after July 1, 2010.

(c) In no other case shall the aggregate earned release time exceed one-third of the total sentence;

(2)(a) A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;

(b) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu

of earned release time pursuant to subsection (1) of this section;

(c) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community placement or community custody terms eligible for release to community custody status in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(d) The department may deny transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody or community placement;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious enough to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and

(iii) Granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time;

(5) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(6) No more than the final six months of the sentence may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community;

(7) The governor may pardon any offender;

(8) The department may release an offender from confinement any time within ten days before a release date calculated under this section; and

(9) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870.

Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement. [2003 c 379 § 1. Prior: 2002 c 290 § 21; 2002 c 50 § 2; 2000 c 28 § 28; prior: 1999 c 324 § 1; 1999 c 37 § 1; 1996 c 199 § 2; 1995 c 129 § 7 (Initiative Measure No. 159); 1992 c 145 § 8; 1990 c 3 § 202; 1989 c 248 § 2; prior: 1988 c 153 § 3; 1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15. Formerly RCW 9.94A.150.]

Severability—2003 c 379: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 379 § 28.]

Effective dates—2003 c 379: "(1) Sections 1 through 12, 20, and 28 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2003.

(2) Sections 13 through 19 and 21 through 27 of this act take effect October 1, 2003." [2003 c 379 § 29.]

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Intent—2002 c 50: "The legislature has determined in RCW 9.94A.728(2) that the department of corrections may transfer offenders to community custody status in lieu of earned release time in accordance with a program developed by the department of corrections. It is the legislature's intent, in response to: *In re: Capello 106 Wn.App. 576 (2001)*, to clarify the law to reflect that the secretary of the department has, and has had since enactment of the community placement act of 1988, the authority to require all offenders, eligible for release to community custody status in lieu of earned release, to provide a release plan that includes an approved residence and living arrangement prior to any transfer to the community." [2002 c 50 § 1.]

Application—2002 c 50: "This act applies to all offenders with community placement or community custody terms currently incarcerated either before, on, or after March 14, 2002." [2002 c 50 § 3.]

Severability—2002 c 50: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 50 § 4.]

Effective date—2002 c 50: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2002]." [2002 c 50 § 5.]

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Severability—1996 c 199: See note following RCW 9.94A.505.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Application—1989 c 248: See note following RCW 9.92.151.

Effective date—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.7281 Legislative declaration—Earned release time not an entitlement. The legislature declares that the changes to the maximum percentages of earned release time in chapter 379, Laws of 2003 do not create any expectation that the percentage of earned release time cannot be revised and offenders have no reason to conclude that the maximum percentage of earned release time is an entitlement or creates any liberty interest. The legislature retains full control over the right to revise the percentages of earned release time available to offenders at any time. This section applies to persons convicted on or after July 1, 2003. [2003 c 379 § 2.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

9.94A.7282 Earned release study. The Washington state institute for public policy shall study the results of the changes in earned release under section 1, chapter 379, Laws of 2003. The study shall determine whether the changes in earned release affect the rate of recidivism or the type of offenses committed by persons whose release dates were affected by the changes in chapter 379, Laws of 2003. The Washington state institute for public policy shall report its findings to the governor and the appropriate committees of the legislature no later than December 1, 2008. [2003 c 379 § 12.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

9.94A.731 Term of partial confinement, work release, home detention. (1) An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day or, if serving a work crew sentence shall comply with the conditions of that sentence as set forth in RCW 9.94A.030(31) and 9.94A.725. The offender shall be required as a condition of partial confinement to report to the facility at designated times. During the period of partial confinement, an offender may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or the department pursuant to this chapter.

(2) An offender in a county jail ordered to serve all or part of a term of less than one year in work release, work crew, or a program of home detention who violates the rules of the work release facility, work crew, or program of home detention or fails to remain employed or enrolled in school may be transferred to the appropriate county detention facility without further court order but shall, upon request, be notified of the right to request an administrative hearing on the issue of whether or not the offender failed to comply with the order and relevant conditions. Pending such hearing, or in the absence of a request for the hearing, the offender shall serve the remainder of the term of confinement as total confinement. This subsection shall not affect transfer or placement of offenders committed to the department.

(3) Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility. [2003 c 254 § 2; 2000 c 28 § 29; 1999 c 143 § 15; 1991 c 181 § 4; 1988 c 154 § 4; 1987 c 456 § 3; 1981 c 137 § 18. Formerly RCW 9.94A.180.]

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.734 Home detention—Conditions. (*Effective July 1, 2004.*) (1) Home detention may not be imposed for offenders convicted of:

- (a) A violent offense;
- (b) Any sex offense;
- (c) Any drug offense;
- (d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;
- (e) Assault in the third degree as defined in RCW 9A.36.031;
- (f) Assault of a child in the third degree;
- (g) Unlawful imprisonment as defined in RCW 9A.40.040; or
- (h) Harassment as defined in RCW 9A.46.020.

Home detention may be imposed for offenders convicted of possession of a controlled substance under RCW 69.50.4013 or forged prescription for a controlled substance under RCW 69.50.403 if the offender fulfills the participation conditions set forth in this section and is monitored for drug use by a treatment alternatives to street crime program or a comparable court or agency-referred program.

(2) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender:

- (a) Successfully completing twenty-one days in a work release program;
- (b) Having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary;
- (c) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;
- (d) Having no prior charges of escape; and
- (e) Fulfilling the other conditions of the home detention program.

(3) Participation in a home detention program shall be conditioned upon:

- (a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender;

(b) Abiding by the rules of the home detention program; and

(c) Compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitu-

tion. [2003 c 53 § 62; 2000 c 28 § 30; 1995 c 108 § 2. Formerly RCW 9.94A.185.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Effective date—1995 c 108: See note following RCW 9.94A.030.

9.94A.750 Restitution. This section applies to offenses committed on or before July 1, 1985.

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the offense.

(4) For the purposes of this section, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period is longer. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during either the initial ten-year period or subsequent ten-year period if the criminal judgment is extended, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confine-

ment in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a proceeding in superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order but not longer than a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(7) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(8) This section does not limit civil remedies or defenses available to the victim or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a

civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. [2003 c 379 § 15; 2000 c 28 § 32. Prior: 1997 c 121 § 3; 1997 c 52 § 1; 1995 c 231 § 1; 1994 c 271 § 601; 1989 c 252 § 5; 1987 c 281 § 3; 1982 c 192 § 5; 1981 c 137 § 14. Formerly RCW 9.94A.140.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Retroactive application—1995 c 231 §§ 1 and 2: "Sections 1 and 2 of this act shall apply retroactively to allow courts to set restitution in cases sentenced prior to July 23, 1995, if:

(1) The court failed to set restitution within sixty days of sentencing as required by RCW 9.94A.140 prior to July 23, 1995;

(2) The defendant was sentenced no more than three hundred sixty-five days before July 23, 1995; and

(3) The defendant is not unfairly prejudiced by the delay.

In those cases, the court may set restitution within one hundred eighty days of July 23, 1995, or at a later hearing set by the court for good cause." [1995 c 231 § 5.]

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Effective date—1987 c 281: See note following RCW 7.68.020.

9.94A.753 Restitution—Application dates. This section applies to offenses committed after July 1, 1985.

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days except as provided in subsection (7) of this section. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed dou-

ble the amount of the offender's gain or the victim's loss from the commission of the crime.

(4) For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. For an offense committed on or after July 1, 2000, the offender shall remain under the court's jurisdiction until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The portion of the sentence concerning restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of

the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order for the period provided in RCW 4.16.020 or a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(7) Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(8) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(9) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. [2003 c 379 § 16. Prior: 2000 c 226 § 3; 2000 c 28 § 33; prior: 1997 c 121 § 4; 1997 c 52 § 2; prior: 1995 c 231 § 2; 1995 c 33 § 4; 1994 c 271 § 602; 1989 c 252 § 6; 1987 c 281 § 4; 1985 c 443 § 10. Formerly RCW 9.94A.142.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Finding—Intent—Severability—2000 c 226: See notes following RCW 9.94A.505.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Retroactive application—1995 c 231 §§ 1 and 2: See note following RCW 9.94A.750.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Effective date—1987 c 281: See note following RCW 7.68.020.

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

9.94A.760 Legal financial obligations. (1) Whenever a person is convicted of a felony, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to

whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94A.634, 9.94A.737, or 9.94A.740.

(11)(a) Until January 1, 2004, the department shall mail individualized monthly billings to the address known by the

department for each offender with an unsatisfied legal financial obligation.

(b) Beginning January 1, 2004, the administrative office of the courts shall mail individualized monthly billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

(c) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

(d) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

(e) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(12) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility for collection pursuant to subsection (4) of this section. The costs for collection services shall be paid by the offender.

(13) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any offender who is no longer, or was not, subject to supervision by the department for a term of community custody, community placement, or community supervision, and who remains under the jurisdiction of the court for payment of legal financial obligations. [2003 c 379 § 14; 2001 c 10 § 3. Prior: 2000 c 226 § 4; 2000 c 28 § 31; 1999 c 196 § 6; prior: 1997 c 121 § 5; 1997 c 52 § 3; 1995 c 231 § 3; 1991 c 93 § 2; 1989 c 252 § 3. Formerly RCW 9.94A.145.]

Intent—Purpose—2003 c 379 §§ 13-27: "The legislature intends to revise and improve the processes for billing and collecting legal financial obligations. The purpose of sections 13 through 27, chapter 379, Laws of 2003 is to respond to suggestions and requests made by county government officials, and in particular county clerks, to assume the collection of such obligations in cooperation and coordination with the department of corrections and the administrative office for [of] the courts. The legislature undertakes this effort following a collaboration between local officials, the department of corrections, and the administrative office for [of] the courts. The intent of sections 13 through 27, chapter 379, Laws of 2003 is to promote an increased and more efficient collection of legal financial obligations and, as a result, improve the likelihood that the affected agencies will increase the collections which will provide additional benefits to all parties and, in particular, crime victims whose restitution is dependent upon the collections." [2003 c 379 § 13.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

Finding—Intent—Severability—2000 c 226: See notes following RCW 9.94A.505.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Construction—Short title—1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability—1999 c 196: See note following RCW 9.94A.010.

Retroactive application—Captions not law—1991 c 93: See notes following RCW 9.94A.7601.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

9.94A.772 Legal financial obligations—Monthly payment, starting dates—Construction. Notwithstanding any other provision of state law, monthly payment or starting dates set by the court or the department before or after October 1, 2003, shall not be construed as a limitation on the due date or amount of legal financial obligations, which may be immediately collected by civil means. Monthly payments and commencement dates are to be construed to be applicable solely as a limitation upon the deprivation of an offender's liberty for nonpayment. [2003 c 379 § 22.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

9.94A.775 Legal financial obligations—Termination of supervision—Monitoring of payments. If an offender with an unsatisfied legal financial obligation is not subject to supervision by the department for a term of community placement, community custody, or community supervision, or has not completed payment of all legal financial obligations included in the sentence at the expiration of his or her term of community placement, community custody, or community supervision, the department shall notify the administrative office of the courts of the termination of the offender's supervision and provide information to the administrative office of the courts to enable the county clerk to monitor payment of the remaining obligations. The county clerk is authorized to monitor payment after such notification. The secretary of corrections and the administrator for the courts shall enter into an interagency agreement to facilitate the electronic transfer of information about offenders, unpaid obligations, and payees to carry out the purposes of this section. [2003 c 379 § 17.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

9.94A.780 Offender supervision assessments. (1) Whenever a punishment imposed under this chapter requires supervision services to be provided, the offender shall pay to the department of corrections the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the terms of supervision and which shall be considered as payment or part payment of the cost of providing supervision to the offender. The department may exempt or defer a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the department.

(d) The offender's age prevents him or her from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments that shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment that is less than ten dollars nor more than fifty dollars.

(3) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(4) This section shall not apply to probation services provided under an interstate compact pursuant to chapter 9.95 RCW or to probation services provided for persons placed on probation prior to June 10, 1982.

(5) If a county clerk assumes responsibility for collection of unpaid legal financial obligations under RCW 9.94A.760, or under any agreement with the department under that section, whether before or after the completion of any period of community placement, community custody, or community supervision, the clerk may impose a monthly or annual assessment for the cost of collections. The amount of the assessment shall not exceed the actual cost of collections. The county clerk may exempt or defer payment of all or part of the assessment based upon any of the factors listed in subsection (1) of this section. The offender shall pay the assessment under this subsection to the county clerk who shall apply it to the cost of collecting legal financial obligations under RCW 9.94A.760. [2003 c 379 § 18; 1991 c 104 § 1; 1989 c 252 § 8; 1984 c 209 § 15; 1982 c 207 § 2. Formerly RCW 9.94A.270.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.925 Application—2003 c 379 §§ 13-27. The provisions of sections 13 through 27, chapter 379, Laws of 2003 apply to all offenders currently, or in the future, subject to sentences with unsatisfied legal financial obligations. The provisions of sections 13 through 27, chapter 379, Laws of 2003 do not change the amount of any legal financial obligation or the maximum term for which any offender is, or may be, under the jurisdiction of the court for collection of legal financial obligations. [2003 c 379 § 24.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

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Chapter 9.95 RCW

INDETERMINATE SENTENCES

(Formerly: Prison terms, paroles, and probation)

Sections

9.95.017	Criteria for confinement and parole.
9.95.055	Reduction of sentences during war emergency.
9.95.070	Reductions for good behavior.
9.95.110	Parole.
9.95.120	Suspension, revision of parole—Community corrections officers—Hearing—Retaking violators—Reinstatement.
9.95.240	Dismissal of information or indictment after probation completed—Vacation of conviction.
9.95.435	Sex offenders—Postrelease transfer to more restrictive confinement.
9.95.440	Sex offenders—Reinstatement of release.

9.95.017 Criteria for confinement and parole. (1) The board shall cause to be prepared criteria for duration of confinement, release on parole, and length of parole for persons committed to prison for crimes committed before July 1, 1984.

The proposed criteria should take into consideration RCW 9.95.009(2). Before submission to the governor, the board shall solicit comments and review on their proposed criteria for parole release.

(2) Persons committed to the department of corrections and who are under the authority of the board for crimes committed on or after September 1, 2001, are subject to the provisions for duration of confinement, release to community custody, and length of community custody established in RCW 9.94A.712, 9.94A.713, 72.09.335, and 9.95.420 through 9.95.440. [2003 c 218 § 2; 2001 2nd sp.s. c 12 § 321; 1986 c 224 § 11.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

9.95.055 Reduction of sentences during war emergency. The indeterminate sentence review board is hereby granted authority, in the event of a declaration by the governor that a war emergency exists, including a general mobilization, and for the duration thereof only, to reduce downward the minimum term, as set by the board, of any inmate under the jurisdiction of the board confined in a state correctional facility, who will be accepted by and inducted into the armed services: **PROVIDED,** That a reduction downward shall not be made under this section for those inmates who: (1) Are confined for (a) treason; (b) murder in the first degree; or (c) rape of a child in the first degree where the victim is under ten years of age or an equivalent offense under prior law; (2) are being considered for civil commitment as a sexually violent predator under chapter 71.09 RCW; or (3) were sentenced under RCW 9.94A.712 for a crime committed on or after September 1, 2001. [2003 c 218 § 3; 2001 2nd sp.s. c 12 § 325; 1992 c 7 § 25; 1951 c 239 § 1.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

9.95.070 Reductions for good behavior. (1) Every prisoner, convicted of a crime committed before July 1, 1984, who has a favorable record of conduct at a state correctional institution, and who performs in a faithful, diligent, industrious, orderly and peaceable manner the work, duties, and tasks assigned to him or her to the satisfaction of the superintendent of the institution, and in whose behalf the superintendent of the institution files a report certifying that his or her conduct and work have been meritorious and recommending allowance of time credits to him or her, shall upon, but not until, the adoption of such recommendation by the indeterminate sentence review board, be allowed time credit reductions from the term of imprisonment fixed by the board.

(2) Offenders sentenced under RCW 9.94A.712 for a crime committed on or after September 1, 2001, are subject to the earned release provisions for sex offenders established in RCW 9.94A.728. [2003 c 218 § 4; 2001 2nd sp.s. c 12 § 327; 1999 c 143 § 19; 1955 c 133 § 8. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

9.95.110 Parole. (1) The board may permit an offender convicted of a crime committed before July 1, 1984, to leave the buildings and enclosures of a state correctional institution on parole, after such convicted person has served the period of confinement fixed for him or her by the board, less time credits for good behavior and diligence in work: PROVIDED, That in no case shall an inmate be credited with more than one-third of his or her sentence as fixed by the board.

The board may establish rules and regulations under which an offender may be allowed to leave the confines of a state correctional institution on parole, and may return such person to the confines of the institution from which he or she was paroled, at its discretion.

(2) The board may permit an offender convicted of a crime committed on or after September 1, 2001, and sentenced under RCW 9.94A.712, to leave a state correctional institution on community custody according to the provisions of RCW 9.94A.712, 9.94A.713, 72.09.335, and 9.95.420 through 9.95.440. The person may be returned to the institution following a violation of his or her conditions of release to community custody pursuant to the hearing provisions of RCW 9.95.435. [2003 c 218 § 7; 2001 2nd sp.s. c 12 § 331; 1999 c 143 § 21; 1955 c 133 § 12. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

9.95.120 Suspension, revision of parole—Community corrections officers—Hearing—Retaking violators—Reinstatement. Whenever the board or a community corrections officer of this state has reason to believe a person convicted of a crime committed before July 1, 1984, has breached a condition of his or her parole or violated the law of any state where he or she may then be or the rules and reg-

ulations of the board, any community corrections officer of this state may arrest or cause the arrest and detention and suspension of parole of such convicted person pending a determination by the board whether the parole of such convicted person shall be revoked. All facts and circumstances surrounding the violation by such convicted person shall be reported to the board by the community corrections officer, with recommendations. The board, after consultation with the secretary of corrections, shall make all rules and regulations concerning procedural matters, which shall include the time when state community corrections officers shall file with the board reports required by this section, procedures pertaining thereto and the filing of such information as may be necessary to enable the board to perform its functions under this section. On the basis of the report by the community corrections officer, or at any time upon its own discretion, the board may revise or modify the conditions of parole or order the suspension of parole by the issuance of a written order bearing its seal, which order shall be sufficient warrant for all peace officers to take into custody any convicted person who may be on parole and retain such person in their custody until arrangements can be made by the board for his or her return to a state correctional institution for convicted felons. Any such revision or modification of the conditions of parole or the order suspending parole shall be personally served upon the parolee.

Any parolee arrested and detained in physical custody by the authority of a state community corrections officer, or upon the written order of the board, shall not be released from custody on bail or personal recognizance, except upon approval of the board and the issuance by the board of an order of reinstatement on parole on the same or modified conditions of parole.

All chiefs of police, marshals of cities and towns, sheriffs of counties, and all police, prison, and peace officers and constables shall execute any such order in the same manner as any ordinary criminal process.

Whenever a paroled prisoner is accused of a violation of his or her parole, other than the commission of, and conviction for, a felony or misdemeanor under the laws of this state or the laws of any state where he or she may then be, he or she shall be entitled to a fair and impartial hearing of such charges within thirty days from the time that he or she is served with charges of the violation of conditions of parole after his or her arrest and detention. The hearing shall be held before one or more members of the board at a place or places, within this state, reasonably near the site of the alleged violation or violations of parole.

In the event that the board suspends a parole by reason of an alleged parole violation or in the event that a parole is suspended pending the disposition of a new criminal charge, the board shall have the power to nullify the order of suspension and reinstate the individual to parole under previous conditions or any new conditions that the board may determine advisable. Before the board shall nullify an order of suspension and reinstate a parole they shall have determined that the best interests of society and the individual shall best be served by such reinstatement rather than a return to a correctional institution. [2003 c 218 § 5; 2001 2nd sp.s. c 12 § 333; 1999 c 143 § 22; 1981 c 136 § 37; 1979 c 141 § 2; 1969 c 98

§ 2; 1961 c 106 § 2; 1955 c 133 § 13. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1969 c 98: "If any provision of this act, or its application to any person or circumstance is invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 c 98 § 10.]

Effective date—1969 c 98: "This act shall take effect on July 1, 1969." [1969 c 98 § 11.]

Violations of parole or probation—Revision of parole conditions—Rearrest—Detention: RCW 72.04A.090.

9.95.240 Dismissal of information or indictment after probation completed—Vacation of conviction. (1) Every defendant who has fulfilled the conditions of his or her probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time prior to the expiration of the maximum period of punishment for the offense for which he or she has been convicted be permitted in the discretion of the court to withdraw his or her plea of guilty and enter a plea of not guilty, or if he or she has been convicted after a plea of not guilty, the court may in its discretion set aside the verdict of guilty; and in either case, the court may thereupon dismiss the information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he or she has been convicted. The probationer shall be informed of this right in his or her probation papers: PROVIDED, That in any subsequent prosecution, for any other offense, such prior conviction may be pleaded and proved, and shall have the same effect as if probation had not been granted, or the information or indictment dismissed.

(2)(a) After the period of probation has expired, the defendant may apply to the sentencing court for a vacation of the defendant's record of conviction under RCW 9.94A.640. The court may, in its discretion, clear the record of conviction if it finds the defendant has met the equivalent of the tests in RCW 9.94A.640(2) as those tests would be applied to a person convicted of a crime committed before July 1, 1984.

(b) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. [2003 c 66 § 1; 1957 c 227 § 7. Prior: 1939 c 125 § 1, part; RRS § 10249-5e.]

Severability—1939 c 125: See note following RCW 9.95.200.

Gambling commission—Denial, suspension, or revocation of license, permit—Other provisions not applicable: RCW 9.46.075.

Juvenile courts, probation officers: RCW 13.04.040, 13.04.050.

[2003 RCW Supp—page 76]

State lottery commission—Denial, suspension, and revocation of licenses—Other provisions not applicable: RCW 67.70.090.

9.95.435 Sex offenders—Postrelease transfer to more restrictive confinement. (1) If an offender released by the board under RCW 9.95.420 violates any condition or requirement of community custody, the board may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(2) Following the hearing specified in subsection (3) of this section, the board may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community, or may suspend or revoke the release to community custody whenever an offender released by the board under RCW 9.95.420 violates any condition or requirement of community custody.

(3) If an offender released by the board under RCW 9.95.420 is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the board or a designee of the board prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The board shall develop hearing procedures and a structure of graduated sanctions consistent with the hearing procedures and graduated sanctions developed pursuant to RCW 9.94A.737. The board may suspend the offender's release to community custody and confine the offender in a correctional institution owned, operated by, or operated under contract with the state prior to the hearing unless the offender has been arrested and confined for a new criminal offense.

(4) The hearing procedures required under subsection (3) of this section shall be developed by rule and include the following:

(a) Hearings shall be conducted by members or designees of the board unless the board enters into an agreement with the department to use the hearing officers established under RCW 9.94A.737;

(b) The board shall provide the offender with written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed. The notice shall include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision of the board;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within thirty days of service of notice of the violation, but not less than twenty-four hours after notice of the violation. For offenders in total confinement, the hearing shall be held within thirty days of service of notice of the violation, but not less than twenty-four hours after notice of the violation. The board or its designee shall make a determination whether probable cause exists to believe the violation or violations

occurred. The determination shall be made within forty-eight hours of receipt of the allegation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing examiner if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; (v) question witnesses who appear and testify; and (vi) be represented by counsel if revocation of the release to community custody upon a finding of violation is a probable sanction for the violation. The board may not revoke the release to community custody of any offender who was not represented by counsel at the hearing, unless the offender has waived the right to counsel; and

(e) The sanction shall take effect if affirmed by the hearing examiner.

(5) Within seven days after the hearing examiner's decision, the offender may appeal the decision to a panel of three reviewing examiners designated by the chair of the board or by the chair's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (a) The crime of conviction; (b) the violation committed; (c) the offender's risk of reoffending; or (d) the safety of the community.

(6) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations. [2003 c 218 § 1; 2002 c 175 § 17; 2001 2nd sp.s. c 12 § 309.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

9.95.440 Sex offenders—Reinstatement of release. In the event the board suspends the release status of an offender released under RCW 9.95.420 by reason of an alleged violation of a condition of release, or pending disposition of a new criminal charge, the board may nullify the suspension order and reinstate release under previous conditions or any new conditions the board determines advisable under RCW 9.94A.713(5). Before the board may nullify a suspension order and reinstate release, it shall determine that the best interests of society and the offender shall be served by such reinstatement rather than return to confinement. [2003 c 218 § 6; 2001 2nd sp.s. c 12 § 310.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Title 9A

WASHINGTON CRIMINAL CODE

Chapters

- 9A.16** Defenses.
- 9A.20** Classification of crimes.
- 9A.32** Homicide.
- 9A.36** Assault—Physical harm.

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Chapter 9A.16 RCW

DEFENSES

Sections

9A.16.120 Outdoor music festival, campground—Detention.

9A.16.120 Outdoor music festival, campground—Detention. (1) In a criminal action brought against the detainer by reason of a person having been detained on or in the immediate vicinity of the premises of an outdoor music festival or related campground for the purpose of pursuing an investigation or questioning by a law enforcement officer as to the lawfulness of the consumption or possession of alcohol or illegal drugs, it is a defense that the detained person was detained in a reasonable manner and for not more than a reasonable time to permit the investigation or questioning by a law enforcement officer, and that a peace officer, owner, operator, employee, or agent of the outdoor music festival had reasonable grounds to believe that the person so detained was unlawfully consuming or attempting to unlawfully consume or possess, alcohol or illegal drugs on the premises.

(2) For the purposes of this section:

(a) "Illegal drug" means a controlled substance under chapter 69.50 RCW for which the person detained does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings, or a legend drug under chapter 69.41 RCW for which the person does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings.

(b) "Outdoor music festival" has the same meaning as in RCW 70.108.020, except that no minimum time limit is required.

(c) "Reasonable grounds" include, but are not limited to:

(i) Exhibiting the effects of having consumed liquor, which means that a person has the odor of liquor on his or her breath, or that by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed liquor, and either:

(A) Is in possession of or in close proximity to a container that has or recently had liquor in it; or

(B) Is shown by other evidence to have recently consumed liquor; or

(ii) Exhibiting the effects of having consumed an illegal drug, which means that a person by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed an illegal drug, and either:

(A) Is in possession of an illegal drug; or

(B) Is shown by other evidence to have recently consumed an illegal drug.

(d) "Reasonable time" means the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to allow a law enforcement officer to determine the lawfulness of the consumption or possession of alcohol or illegal drugs. "Reasonable time" may not exceed one hour. [2003 c 219 § 1.]

Chapter 9A.20 RCW

CLASSIFICATION OF CRIMES

Sections

9A.20.021 Maximum sentences for crimes committed July 1, 1984, and after. (*Effective until July 1, 2004.*)

9A.20.021 Maximum sentences for crimes committed July 1, 1984, and after. (*Effective July 1, 2004.*)

9A.20.021 Maximum sentences for crimes committed July 1, 1984, and after. (*Effective until July 1, 2004.*) (1) Felony. Unless a different maximum sentence for a classified felony is specifically established by statute, no person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

(a) For a class A felony, by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine;

(b) For a class B felony, by confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of twenty thousand dollars, or by both such confinement and fine;

(c) For a class C felony, by confinement in a state correctional institution for five years, or by a fine in an amount fixed by the court of ten thousand dollars, or by both such confinement and fine.

(2) Gross misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

(4) This section applies to only those crimes committed on or after July 1, 1984. [2003 c 288 § 7; 1982 c 192 § 10.]

Penalty assessments in addition to fine or bail forfeiture—Crime victim and witness programs in county: RCW 7.68.035.

9A.20.021 Maximum sentences for crimes committed July 1, 1984, and after. (*Effective July 1, 2004.*) (1) Felony. Unless a different maximum sentence for a classified felony is specifically established by a statute of this state, no person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

(a) For a class A felony, by confinement in a state correctional institution for a term of life imprisonment, or by a fine

in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine;

(b) For a class B felony, by confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of twenty thousand dollars, or by both such confinement and fine;

(c) For a class C felony, by confinement in a state correctional institution for five years, or by a fine in an amount fixed by the court of ten thousand dollars, or by both such confinement and fine.

(2) Gross misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

(4) This section applies to only those crimes committed on or after July 1, 1984. [2003 c 288 § 7; 2003 c 53 § 63; 1982 c 192 § 10.]

Reviser's note: This section was amended by 2003 c 53 § 63 and by 2003 c 288 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Penalty assessments in addition to fine or bail forfeiture—Crime victim and witness programs in county: RCW 7.68.035.

Chapter 9A.32 RCW

HOMICIDE

Sections

9A.32.050 Murder in the second degree.

9A.32.050 Murder in the second degree. (1) A person is guilty of murder in the second degree when:

(a) With intent to cause the death of another person but without premeditation, he or she causes the death of such person or of a third person; or

(b) He or she commits or attempts to commit any felony, including assault, other than those enumerated in RCW 9A.32.030(1)(c), and, in the course of and in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants; except that in any prosecution under this subdivision (1)(b) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) Murder in the second degree is a class A felony. [2003 c 3 § 2; 1975-'76 2nd ex.s. c 38 § 4; 1975 1st ex.s. c 260 § 9A.32.050.]

Findings—Intent—2003 c 3: "The legislature finds that the 1975 legislature clearly and unambiguously stated that any felony, including assault, can be a predicate offense for felony murder. The intent was evident: Punish, under the applicable murder statutes, those who commit a homicide in the course and in furtherance of a felony. This legislature reaffirms that original intent and further intends to honor and reinforce the court's decisions over the past twenty-eight years interpreting "in furtherance of" as requiring the death to be sufficiently close in time and proximity to the predicate felony. The legislature does not agree with or accept the court's findings of legislative intent in *State v. Andress, Docket No. 71170-4 (October 24, 2002)*, and reasserts that assault has always been and still remains a predicate offense for felony murder in the second degree.

To prevent a miscarriage of the legislature's original intent, the legislature finds in light of *State v. Andress, Docket No. 71170-4 (October 24, 2002)*, that it is necessary to amend RCW 9A.32.050. This amendment is intended to be curative in nature. The legislature urges the supreme court to apply this interpretation retroactively to July 1, 1976." [2003 c 3 § 1.]

Effective date—2003 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 12, 2003]." [2003 c 3 § 3.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

Chapter 9A.36 RCW

ASSAULT—PHYSICAL HARM

Sections

9A.36.021 Assault in the second degree. (*Effective July 1, 2004.*)

9A.36.021 Assault in the second degree. (*Effective July 1, 2004.*) (1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or

(b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or

(c) Assaults another with a deadly weapon; or

(d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(e) With intent to commit a felony, assaults another; or

(f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture.

(2)(a) Except as provided in (b) of this subsection, assault in the second degree is a class B felony.

(b) Assault in the second degree with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony. [2003 c 53 § 64; 2001 2nd sp.s. c 12 § 355; 1997 c 196 § 2. Prior: 1988 c 266 § 2; 1988 c 206 § 916; 1988 c 158 § 2; 1987 c 324 § 2; 1986 c 257 § 5.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Effective date—1988 c 266: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1988." [1988 c 266 § 3.]

Effective date—1988 c 206 §§ 916, 917: "Sections 916 and 917 of this act shall take effect July 1, 1988." [1988 c 206 § 922.]

Severability—1988 c 206: See RCW 70.24.900.

Effective date—1988 c 158: See note following RCW 9A.04.110.

Effective date—1987 c 324: See note following RCW 9A.04.110.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 3-10: See note following RCW 9A.04.110.

Chapter 9A.40 RCW

KIDNAPPING, UNLAWFUL IMPRISONMENT, AND CUSTODIAL INTERFERENCE

Sections

9A.40.030 Kidnapping in the second degree. (*Effective July 1, 2004.*)

9A.40.070 Custodial interference in the second degree. (*Effective July 1, 2004.*)

9A.40.100 Trafficking.

9A.40.030 Kidnapping in the second degree. (*Effective July 1, 2004.*) (1) A person is guilty of kidnapping in the second degree if he or she intentionally abducts another person under circumstances not amounting to kidnapping in the first degree.

(2) In any prosecution for kidnapping in the second degree, it is a defense if established by the defendant by a preponderance of the evidence that (a) the abduction does not include the use of or intent to use or threat to use deadly force, and (b) the actor is a relative of the person abducted, and (c) the actor's sole intent is to assume custody of that person. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, any other crime.

(3)(a) Except as provided in (b) of this subsection, kidnapping in the second degree is a class B felony.

(b) Kidnapping in the second degree with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony. [2003 c 53 § 65; 2001 2nd sp.s. c 12 § 356; 1975 1st ex.s. c 260 § 9A.40.030.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

9A.40.070 Custodial interference in the second degree. (*Effective July 1, 2004.*) (1) A relative of a person is guilty of custodial interference in the second degree if, with the intent to deny access to such person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the person from a parent, guard-

ian, institution, agency, or other person having a lawful right to physical custody of such person. This subsection shall not apply to a parent's noncompliance with a court-ordered parenting plan.

(2) A parent of a child is guilty of custodial interference in the second degree if: (a) The parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan; or (b) the parent has not complied with the residential provisions of a court-ordered parenting plan after a finding of contempt under RCW 26.09.160(3); or (c) if the court finds that the parent has engaged in a pattern of willful violations of the court-ordered residential provisions.

(3) Nothing in subsection (2)(b) of this section prohibits conviction of custodial interference in the second degree under subsection (2)(a) or (c) of this section in absence of findings of contempt.

(4)(a) The first conviction of custodial interference in the second degree is a gross misdemeanor.

(b) The second or subsequent conviction of custodial interference in the second degree is a class C felony. [2003 c 53 § 66; 1989 c 318 § 2; 1984 c 95 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1989 c 318: See note following RCW 26.09.160.

Severability—1984 c 95: See note following RCW 9A.40.060.

9A.40.100 Trafficking. (1)(a) A person is guilty of trafficking in the first degree when:

(i) Such person:

(A) Recruits, harbors, transports, provides, or obtains by any means another person knowing that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor or involuntary servitude; or

(B) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i)(A) of this subsection; and

(ii) The acts or venture set forth in (a)(i) of this subsection:

(A) Involve committing or attempting to commit kidnapping;

(B) Involve a finding of sexual motivation under RCW 9.94A.835; or

(C) Result in a death.

(b) Trafficking in the first degree is a class A felony.

(2)(a) A person is guilty of trafficking in the second degree when such person:

(i) Recruits, harbors, transports, provides, or obtains by any means another person knowing that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor or involuntary servitude; or

(ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection.

(b) Trafficking in the second degree is a class A felony. [2003 c 267 § 1.]

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Chapter 9A.44 RCW

SEX OFFENSES

Sections

9A.44.100 Indecent liberties. (*Effective July 1, 2004.*)

9A.44.115 Voyeurism.

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9A.44.130 Registration of sex offenders and kidnapping offenders—Procedures—Definition—Penalties. (*Effective July 1, 2004.*)

9A.44.100 Indecent liberties. (*Effective July 1, 2004.*)

(1) A person is guilty of indecent liberties when he or she knowingly causes another person who is not his or her spouse to have sexual contact with him or her or another:

(a) By forcible compulsion;

(b) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless;

(c) When the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment;

(e) When the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who has a significant relationship with the victim.

(2)(a) Except as provided in (b) of this subsection, indecent liberties is a class B felony.

(b) Indecent liberties by forcible compulsion is a class A felony. [2003 c 53 § 67; 2001 2nd sp.s. c 12 § 359; 1997 c 392 § 515; 1993 c 477 § 3; 1988 c 146 § 2; 1988 c 145 § 10; 1986 c 131 § 1; 1975 1st ex.s. c 260 § 9A.88.100. Formerly RCW 9A.88.100.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Severability—Effective dates—1988 c 146: See notes following RCW 9A.44.050.

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

9A.44.115 Voyeurism. (1) As used in this section:

(a) "Intimate areas" means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view;

(b) "Photographs" or "films" means the making of a photograph, motion picture film, videotape, digital image, or any other recording or transmission of the image of a person;

(c) "Place where he or she would have a reasonable expectation of privacy" means:

(i) A place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed or filmed by another; or

(ii) A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance;

(d) "Surveillance" means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person;

(e) "Views" means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity.

(2) A person commits the crime of voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films:

(a) Another person without that person's knowledge and consent while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy; or

(b) The intimate areas of another person without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

(3) Voyeurism is a class C felony.

(4) This section does not apply to viewing, photographing, or filming by personnel of the department of corrections or of a local jail or correctional facility for security purposes or during investigation of alleged misconduct by a person in the custody of the department of corrections or the local jail or correctional facility.

(5) If a person is convicted of a violation of this section, the court may order the destruction of any photograph, motion picture film, digital image, videotape, or any other recording of an image that was made by the person in violation of this section. [2003 c 213 § 1; 1998 c 221 § 1.]

Effective date—2003 c 213: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 213 § 2.]

9A.44.130 Registration of sex offenders and kidnapping offenders—Procedures—Definition—Penalties.

(Effective until July 1, 2004.) (1) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. Where a person required to register under this section is in custody of the state department of corrections, the state

department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person. In addition, any such adult or juvenile: (a) Who is admitted to a public or private institution of higher education shall, within ten days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's intent to attend the institution; (b) who gains employment at a public or private institution of higher education shall, within ten days of accepting employment or by the first business day after commencing work at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's employment by the institution; or (c) whose enrollment or employment at a public or private institution of higher education is terminated shall, within ten days of such termination, notify the sheriff for the county of the person's residence of the person's termination of enrollment or employment at the institution. Persons required to register under this section who are enrolled in a public or private institution of higher education on June 11, 1998, must notify the county sheriff immediately. The sheriff shall notify the institution's department of public safety and shall provide that department with the same information provided to a county sheriff under subsection (3) of this section.

(2) This section may not be construed to confer any powers pursuant to RCW 4.24.500 upon the public safety department of any public or private institution of higher education.

(3)(a) The person shall provide the following information when registering: (i) Name; (ii) address; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints.

(b) Any person who lacks a fixed residence shall provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay.

(4)(a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sher-

iff for the county of the offender's anticipated residence. The offender must also register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) **OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION.** Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) **OFFENDERS UNDER FEDERAL JURISDICTION.** Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990,

must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) **OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(v) **OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) **OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.** Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the

county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

(vii) **OFFENDERS WHO LACK A FIXED RESIDENCE.** Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than twenty-four hours after entering the county and provide the information required in subsection (3)(b) of this section.

(viii) **OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION.** Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) **OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE.** Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within ten days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within ten days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (10) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence. The notice shall include the information required by subsection (3)(b) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require the person to list the locations where the person has stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence and has subsequently complied with the requirements of subsec-

tions (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within five days of the entry of the order.

(8) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means:

(i) Any offense defined as a sex offense by RCW 9.94A.030;

(ii) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);

(iii) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);

(iv) Any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a sex offense under this subsection; and

(v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection.

(b) "Kidnapping offense" means: (i) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent; (ii) any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection (9)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection (9)(b).

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any second-

ary school, trade or professional institution, or institution of higher education.

(10) A person who knowingly fails to register with the county sheriff or notify the county sheriff, or who changes his or her name without notifying the county sheriff and the state patrol, as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex offense as defined in subsection (9)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection (9)(a) of this section. If the crime was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

(11) A person who knowingly fails to register or who moves within the state without notifying the county sheriff as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony kidnapping offense as defined in subsection (9)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection (9)(b) of this section. If the crime was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor. [2003 c 215 § 1; 2002 c 31 § 1. Prior: 2001 c 169 § 1; 2001 c 95 § 2; 2000 c 91 § 2; prior: 1999 sp.s. c 6 § 2; 1999 c 352 § 9; prior: 1998 c 220 § 1; 1998 c 139 § 1; prior: 1997 c 340 § 3; 1997 c 113 § 3; 1996 c 275 § 11; prior: 1995 c 268 § 3; 1995 c 248 § 1; 1995 c 195 § 1; 1994 c 84 § 2; 1991 c 274 § 2; 1990 c 3 § 402.]

Application—2002 c 31: "This act applies to all persons convicted of communication with a minor either on, before, or after July 1, 2001, unless otherwise relieved of the duty to register under RCW 9A.44.140." [2002 c 31 § 2.]

Severability—2002 c 31: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 31 § 3.]

Effective date—2002 c 31: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2002]." [2002 c 31 § 4.]

Effective date—2001 c 95: See note following RCW 9.94A.030.

Intent—1999 sp.s. c 6: "It is the intent of this act to revise the law on registration of sex and kidnapping offenders in response to the case of *State v. Pickett*, Docket number 41562-0-I. The legislature intends that all sex and kidnapping offenders whose history requires them to register shall do so regardless of whether the person has a fixed residence. The lack of a residential address is not to be construed to preclude registration as a sex or kidnapping offender. The legislature intends that persons who lack a residential address shall have an affirmative duty to report to the appropriate county sheriff, based on the level of risk of offending." [1999 sp.s. c 6 § 1.]

Effective date—1999 sp.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 7, 1999]." [1999 sp.s. c 6 § 3.]

Severability—1998 c 220: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 220 § 7.]

Findings—1997 c 113: See note following RCW 4.24.550.

Finding—1996 c 275: See note following RCW 9.94A.505.

Purpose—1995 c 268: See note following RCW 9.94A.030.

Intent—1994 c 84: "This act is intended to clarify existing law and is not intended to reflect a substantive change in the law." [1994 c 84 § 1.]

Finding and intent—1991 c 274: "The legislature finds that sex offender registration has assisted law enforcement agencies in protecting their communities. This act is intended to clarify and amend the deadlines for sex offenders to register. This act's clarification or amendment of RCW 9A.44.130 does not relieve the obligation of sex offenders to comply with the registration requirements of RCW 9A.44.130 as that statute exists before July 28, 1991." [1991 c 274 § 1.]

Finding—Policy—1990 c 3 § 402: "The legislature finds that sex offenders often pose a high risk of reoffense, and that law enforcement's efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the law enforcement agency's jurisdiction. Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by regulating sex offenders by requiring sex offenders to register with local law enforcement agencies as provided in RCW 9A.44.130." [1990 c 3 § 401.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

9A.44.130 Registration of sex offenders and kidnapping offenders—Procedures—Definition—Penalties. (Effective July 1, 2004.) (1) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. Where a person required to register under this section is in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person. In addition, any such adult or juvenile: (a) Who is admitted to a public or private institution of higher education shall, within ten days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's intent to attend the institution; (b) who gains employment at a public or private institution of higher education shall, within ten days of accepting employment or by the first business day after commencing work at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's employment by the institution; or (c) whose enrollment or employment at a public or private institution of higher education is terminated shall, within ten days of such termination, notify the sheriff for the county of the person's residence of the person's termination of enrollment or employment at the institution. Persons required to register under this section who are enrolled in a public or private institution of higher education on June 11, 1998, must notify the county sheriff immediately. The sheriff shall notify the institution's department of public safety and shall provide that department with the same information

provided to a county sheriff under subsection (3) of this section.

(2) This section may not be construed to confer any powers pursuant to RCW 4.24.500 upon the public safety department of any public or private institution of higher education.

(3)(a) The person shall provide the following information when registering: (i) Name; (ii) address; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints.

(b) Any person who lacks a fixed residence shall provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay.

(4)(a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the

department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) **OFFENDERS UNDER FEDERAL JURISDICTION.** Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) **OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(v) **OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) **OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.** Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

(vii) **OFFENDERS WHO LACK A FIXED RESIDENCE.** Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than twenty-four hours after entering the county and provide the information required in subsection (3)(b) of this section.

(viii) OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION. Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE. Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within ten days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within ten days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (10) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of

moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence. The notice shall include the information required by subsection (3)(b) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require the person to list the locations where the person has stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within five days of the entry of the order.

(8) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means:

(i) Any offense defined as a sex offense by RCW 9.94A.030;

(ii) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);

(iii) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);

(iv) Any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a sex offense under this subsection; and

(v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection.

(b) "Kidnapping offense" means: (i) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent; (ii) any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection (9)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection (9)(b).

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

(10)(a) A person who knowingly fails to register with the county sheriff or notify the county sheriff, or who changes his or her name without notifying the county sheriff and the state patrol, as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex offense as defined in subsection (9)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection (9)(a) of this section.

(b) If the crime for which the individual was convicted was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

(11)(a) A person who knowingly fails to register or who moves within the state without notifying the county sheriff as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony kidnapping offense as defined in subsection (9)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection (9)(b) of this section.

(b) If the crime for which the individual was convicted was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor. [2003 c 215 § 1; 2003 c 53 § 68; 2002 c 31 § 1. Prior: 2001 c 169 § 1; 2001 c 95 § 2; 2000 c 91 § 2; prior: 1999 sp.s. c 6 § 2; 1999 c 352 § 9; prior: 1998 c 220 § 1; 1998 c 139 § 1; prior: 1997 c 340 § 3; 1997 c 113 § 3; 1996 c 275 § 11; prior: 1995 c 268 § 3; 1995 c 248 § 1; 1995 c 195 § 1; 1994 c 84 § 2; 1991 c 274 § 2; 1990 c 3 § 402.]

Reviser's note: This section was amended by 2003 c 53 § 68 and by 2003 c 215 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application—2002 c 31: "This act applies to all persons convicted of communication with a minor either on, before, or after July 1, 2001, unless otherwise relieved of the duty to register under RCW 9A.44.140." [2002 c 31 § 2.]

Severability—2002 c 31: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 31 § 3.]

Effective date—2002 c 31: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2002]." [2002 c 31 § 4.]

Effective date—2001 c 95: See note following RCW 9.94A.030.

Intent—1999 sp.s. c 6: "It is the intent of this act to revise the law on registration of sex and kidnapping offenders in response to the case of *State v. Pickett*, Docket number 41562-0-I. The legislature intends that all sex and kidnapping offenders whose history requires them to register shall do so regardless of whether the person has a fixed residence. The lack of a residential address is not to be construed to preclude registration as a sex or kidnapping offender. The legislature intends that persons who lack a residential address shall have an affirmative duty to report to the appropriate county sheriff, based on the level of risk of offending." [1999 sp.s. c 6 § 1.]

Effective date—1999 sp.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 7, 1999]." [1999 sp.s. c 6 § 3.]

Severability—1998 c 220: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 220 § 7.]

Findings—1997 c 113: See note following RCW 4.24.550.

Finding—1996 c 275: See note following RCW 9.94A.505.

Purpose—1995 c 268: See note following RCW 9.94A.030.

Intent—1994 c 84: "This act is intended to clarify existing law and is not intended to reflect a substantive change in the law." [1994 c 84 § 1.]

Finding and intent—1991 c 274: "The legislature finds that sex offender registration has assisted law enforcement agencies in protecting their communities. This act is intended to clarify and amend the deadlines for sex offenders to register. This act's clarification or amendment of RCW 9A.44.130 does not relieve the obligation of sex offenders to comply with the registration requirements of RCW 9A.44.130 as that statute exists before July 28, 1991." [1991 c 274 § 1.]

Finding—Policy—1990 c 3 § 402: "The legislature finds that sex offenders often pose a high risk of reoffense, and that law enforcement's efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the law enforcement agency's jurisdiction. Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by regulating sex offenders by requiring sex offenders to register with local law enforcement agencies as provided in RCW 9A.44.130." [1990 c 3 § 401.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Chapter 9A.46 RCW HARASSMENT

Sections

9A.46.020 Definition—Penalties. (*Effective July 1, 2004.*)
9A.46.110 Stalking. (*Effective July 1, 2004.*)

9A.46.020 Definition—Penalties. (*Effective July 1, 2004.*) (1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) To cause physical damage to the property of a person other than the actor; or

(iii) To subject the person threatened or any other person to physical confinement or restraint; or

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

(2)(a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.

(b) A person who harasses another is guilty of a class C felony if either of the following applies: (i) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order; or (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person.

(3) The penalties provided in this section for harassment do not preclude the victim from seeking any other remedy otherwise available under law. [2003 c 53 § 69; 1999 c 27 § 2; 1997 c 105 § 1; 1992 c 186 § 2; 1985 c 288 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—1999 c 27: "It is the intent of chapter 27, Laws of 1999 to clarify that electronic communications are included in the types of conduct and actions that can constitute the crimes of harassment and stalking. It is not the intent of the legislature, by adoption of chapter 27, Laws of 1999, to restrict in any way the types of conduct or actions that can constitute harassment or stalking." [1999 c 27 § 1.]

Severability—1992 c 186: See note following RCW 9A.46.110.

9A.46.110 Stalking. (*Effective July 1, 2004.*) (1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

(a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and

(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feel-

ing of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person; or

(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2)(a) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and

(b) It is not a defense to the crime of stalking under subsection (1)(c)(ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person.

(3) It shall be a defense to the crime of stalking that the defendant is a licensed private investigator acting within the capacity of his or her license as provided by chapter 18.165 RCW.

(4) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person. "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

(5)(a) Except as provided in (b) of this subsection, a person who stalks another person is guilty of a gross misdemeanor.

(b) A person who stalks another is guilty of a class C felony if any of the following applies: (i) The stalker has previously been convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a protective order; (ii) the stalking violates any protective order protecting the person being stalked; (iii) the stalker has previously been convicted of a gross misdemeanor or felony stalking offense under this section for stalking another person; (iv) the stalker was armed with a deadly weapon, as defined in RCW 9.94A.602, while stalking the person; (v) the stalker's victim is or was a law enforcement officer, judge, juror, attorney, victim advocate, legislator, or community correction's officer, and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or (vi) the stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

(6) As used in this section:

(a) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

(b) "Harasses" means unlawful harassment as defined in RCW 10.14.020.

(c) "Protective order" means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

(d) "Repeatedly" means on two or more separate occasions. [2003 c 53 § 70. Prior: 1999 c 143 § 35; 1999 c 27 § 3; 1994 c 271 § 801; 1992 c 186 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—1999 c 27: See note following RCW 9A.46.020.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Severability—1992 c 186: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 186 § 10.]

Chapter 9A.48 RCW

ARSON, RECKLESS BURNING, AND MALICIOUS MISCHIEF

Sections

9A.48.090 Malicious mischief in the third degree. (*Effective July 1, 2004.*)

9A.48.090 Malicious mischief in the third degree. (*Effective July 1, 2004.*) (1) A person is guilty of malicious mischief in the third degree if he or she:

(a) Knowingly and maliciously causes physical damage to the property of another, under circumstances not amounting to malicious mischief in the first or second degree; or

(b) Writes, paints, or draws any inscription, figure, or mark of any type on any public or private building or other structure or any real or personal property owned by any other person unless the person has obtained the express permission of the owner or operator of the property, under circumstances not amounting to malicious mischief in the first or second degree.

(2)(a) Malicious mischief in the third degree under subsection (1)(a) of this section is a gross misdemeanor if the damage to the property is in an amount exceeding fifty dollars.

(b) Malicious mischief in the third degree under subsection (1)(a) of this section is a misdemeanor if the damage to the property is fifty dollars or less.

(c) Malicious mischief in the third degree under subsection (1)(b) of this section is a gross misdemeanor. [2003 c 53 § 71; 1996 c 35 § 1; 1975 1st ex.s. c 260 § 9A.48.090.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 9A.56 RCW

THEFT AND ROBBERY

Sections

9A.56.070 Taking motor vehicle without permission in the first degree. (*Effective July 1, 2004.*)

9A.56.075 Taking motor vehicle without permission in the second degree. (*Effective July 1, 2004.*)

9A.56.080 Theft of livestock in the first degree. (*Effective July 1, 2004.*)

9A.56.083 Theft of livestock in the second degree. (*Effective July 1, 2004.*)

9A.56.085 Minimum fine for theft of livestock. (*Effective July 1, 2004.*)

9A.56.096 Theft of rental, leased, or lease-purchased property. (*Effective July 1, 2004.*)

9A.56.280 Credit, debit cards, checks, etc.—Definitions.

9A.56.290 Credit, payment cards—Unlawful factoring of transactions.

9A.56.320 Financial fraud—Unlawful possession, production of instruments of.

9A.56.330 Possession of another's identification.

9A.56.070 Taking motor vehicle without permission in the first degree. (*Effective July 1, 2004.*) (1) A person is guilty of taking a motor vehicle without permission in the first degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away an automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, and he or she:

(a) Alters the motor vehicle for the purpose of changing its appearance or primary identification, including obscuring, removing, or changing the manufacturer's serial number or the vehicle identification number plates;

(b) Removes, or participates in the removal of, parts from the motor vehicle with the intent to sell the parts;

(c) Exports, or attempts to export, the motor vehicle across state lines or out of the United States for profit;

(d) Intends to sell the motor vehicle; or

(e) Is engaged in a conspiracy and the central object of the conspiratorial agreement is the theft of motor vehicles for sale to others for profit.

(2) Taking a motor vehicle without permission in the first degree is a class B felony. [2003 c 53 § 72; 2002 c 324 § 1; 1975 1st ex.s. c 260 § 9A.56.070.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Study and report—2002 c 324: "The sentencing guidelines commission shall study the impact of the sentencing changes in this act upon the incidence of the crime of taking a motor vehicle without permission. By December 2004, the commission shall submit a report to the governor and the legislature. The report shall address:

(1) Whether the creation of the crime of taking a motor vehicle without permission in the first degree and the increased penalties for that new crime have resulted in a reduction in the number of convictions for taking a motor vehicle without permission in the first or second degree; and

(2) Whether there are other actions, either civil or criminal, that could have the effect of further decreasing the incidence of these crimes, including but not limited to: The revocation of driving privileges, double scoring of prior convictions, or increasing penalties for juveniles." [2002 c 324 § 4.]

9A.56.075 Taking motor vehicle without permission in the second degree. (*Effective July 1, 2004.*) (1) A person is guilty of taking a motor vehicle without permission in the second degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, or he or she voluntarily rides in or upon the automobile or motor vehicle with knowledge of the fact that the automobile or motor vehicle was unlawfully taken.

(2) Taking a motor vehicle without permission in the second degree is a class C felony. [2003 c 53 § 73.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.56.080 Theft of livestock in the first degree. (*Effective July 1, 2004.*) (1) Every person who, with intent to sell or exchange and to deprive or defraud the lawful owner thereof, willfully takes, leads, or transports away, conceals, withholds, slaughters, or otherwise appropriates any horse, mule, cow, heifer, bull, steer, swine, or sheep is guilty of theft of livestock in the first degree.

(2) Theft of livestock in the first degree is a class B felony. [2003 c 53 § 74; 1986 c 257 § 32; 1977 ex.s. c 174 § 2; 1975 1st ex.s. c 260 § 9A.56.080.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Action by owner of damaged or stolen livestock: RCW 4.24.320.

9A.56.083 Theft of livestock in the second degree. (*Effective July 1, 2004.*) (1) A person who commits what would otherwise be theft of livestock in the first degree but without intent to sell or exchange, and for the person's own use only, is guilty of theft of livestock in the second degree.

(2) Theft of livestock in the second degree is a class C felony. [2003 c 53 § 75.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.56.085 Minimum fine for theft of livestock. (*Effective July 1, 2004.*) (1) Whenever a person is convicted of a violation of RCW 9A.56.080 or 9A.56.083, the convicting court shall order the person to pay the amount of two thousand dollars for each animal killed or possessed.

(2) For the purpose of this section, the term "convicted" includes a plea of guilty, a finding of guilt regardless of whether the imposition of the sentence is deferred or any part of the penalty is suspended, or the levying of a fine.

(3) If two or more persons are convicted of any violation of this section, the amount required under this section shall be imposed upon them jointly and severally.

(4) The fine in this section shall be imposed in addition to and regardless of any penalty, including fines or costs, that is provided for any violation of this section. The amount imposed by this section shall be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect. Nothing in this section may be construed to abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(5) A defaulted payment or any installment payment may be collected by any means authorized by law for the enforcement of orders of the court or collection of a fine or costs, including vacation of a deferral of sentencing or of a suspension of sentence.

(6) The two thousand dollars additional penalty shall be remitted by the county treasurer to the state treasurer as provided under RCW 10.82.070. [2003 c 53 § 76; 1989 c 131 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.56.096 Theft of rental, leased, or lease-purchased property. (*Effective July 1, 2004.*) (1) A person who, with intent to deprive the owner or owner's agent, wrongfully obtains, or exerts unauthorized control over, or by color or aid of deception gains control of personal property that is rented or leased to the person, is guilty of theft of rental, leased, or lease-purchased property.

(2) The finder of fact may presume intent to deprive if the finder of fact finds either of the following:

(a) That the person who rented or leased the property failed to return or make arrangements acceptable to the owner of the property or the owner's agent to return the property to the owner or the owner's agent within seventy-two hours after receipt of proper notice following the due date of the rental, lease, or lease-purchase agreement; or

(b) That the renter or lessee presented identification to the owner or the owner's agent that was materially false, fictitious, or not current with respect to name, address, place of employment, or other appropriate items.

(3) As used in subsection (2) of this section, "proper notice" consists of a written demand by the owner or the owner's agent made after the due date of the rental, lease, or lease-purchase period, mailed by certified or registered mail to the renter or lessee at: (a) The address the renter or lessee gave when the contract was made; or (b) the renter or lessee's last known address if later furnished in writing by the renter, lessee, or the agent of the renter or lessee.

(4) The replacement value of the property obtained must be utilized in determining the amount involved in the theft of rental, leased, or lease-purchased property.

(5)(a) Theft of rental, leased, or lease-purchased property is a class B felony if the rental, leased, or lease-purchased property is valued at one thousand five hundred dollars or more.

(b) Theft of rental, leased, or lease-purchased property is a class C felony if the rental, leased, or lease-purchased property is valued at two hundred fifty dollars or more but less than one thousand five hundred dollars.

(c) Theft of rental, leased, or lease-purchased property is a gross misdemeanor if the rental, leased, or lease-purchased property is valued at less than two hundred fifty dollars.

(6) This section applies to rental agreements that provide that the renter may return the property any time within the rental period and pay only for the time the renter actually retained the property, in addition to any minimum rental fee, to lease agreements, and to lease-purchase agreements as defined under RCW 63.19.010. This section does not apply to rental or leasing of real property under the residential landlord-tenant act, chapter 59.18 RCW. [2003 c 53 § 77; 1997 c 346 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.56.280 Credit, debit cards, checks, etc.—Definitions. As used in RCW 9A.56.280, 9A.56.290, 9A.60.020, 9A.56.320, and 9A.56.330, unless the context requires otherwise:

(1) "Cardholder" means a person to whom a credit card or payment card is issued or a person who otherwise is authorized to use a credit card or payment card.

(2) "Check" means a negotiable instrument that meets the definition of "check" under RCW 62A.3-104 or a blank form instrument that would meet the definition of "check" under RCW 62A.3-104 if it were completed and signed.

(3) "Credit card" means a card, plate, booklet, credit card number, credit card account number, or other identifying symbol, instrument, or device that can be used to pay for, or to obtain on credit, goods or services.

(4) "Credit card or payment card transaction" means a sale or other transaction in which a credit card or payment card is used to pay for, or to obtain on credit, goods or services.

(5) "Credit card or payment card transaction record" means a record or evidence of a credit card or payment card transaction, including, without limitation, a paper, sales draft, instrument, or other writing and an electronic or magnetic transmission or record.

(6) "Debit card" means a card used to obtain goods or services by a transaction that debits the cardholder's account, rather than extending credit.

(7) "Financial information" means financial information as defined in RCW 9.35.005.

(8) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized under state or federal law to do business and accept deposits in Washington.

(9) "Means of identification" means means of identification as defined in RCW 9.35.005.

(10) "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator. "Merchant" also means a person who receives from an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person.

(11) "Payment card" means a credit card, charge card, debit card, stored value card, or any card that is issued to an authorized card user and that allows the user to obtain goods, services, money, or anything else of value from a merchant.

(12) "Person" means an individual, partnership, corporation, trust, or unincorporated association, but does not include a financial institution or its authorized employees, representatives, or agents.

(13) "Personal identification" means any driver's license, passport, or identification card actually or purportedly issued by any federal, state, local or foreign governmental entity; any credit card or debit card; or any employee identification card actually or purportedly issued by any employer, public or private, including but not limited to a badge or identification or access card.

(14) "Reencoder" means an electronic device that places encoded information from a payment card onto a different payment card.

(15) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on a payment card. [2003 c 119 § 3; 2003 c 52 § 1; 1993 c 484 § 1.]

Reviser's note: This section was amended by 2003 c 52 § 1 and by 2003 c 119 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

9A.56.290 Credit, payment cards—Unlawful factoring of transactions. (1) A person commits the crime of unlawful factoring of a credit card or payment card transaction if the person:

(a) Uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on a payment card without the permission of the authorized user of the payment card or with the intent to defraud the authorized user, another person, or a financial institution;

(b) Uses a reencoder to place information encoded on a payment card onto a different card without the permission of the authorized issuer of the card from which the information is being reencoded or with the intent to defraud the authorized user, another person, or a financial institution;

(c) Presents to or deposits with, or causes another to present to or deposit with, a financial institution for payment a credit card or payment card transaction record that is not the result of a credit card or payment card transaction between the cardholder and the person;

(d) Employs, solicits, or otherwise causes a merchant or an employee, representative, or agent of a merchant to present to or deposit with a financial institution for payment a credit card or payment card transaction record that is not the result of a credit card or payment card transaction between the cardholder and the merchant; or

(e) Employs, solicits, or otherwise causes another to become a merchant for purposes of engaging in conduct made unlawful by this section.

(2) Normal transactions conducted by or through airline reporting corporation-appointed travel agents or cruise-only travel agents recognized by passenger cruise lines are not considered factoring for the purposes of this section.

(3) In a proceeding under this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(4)(a) Unlawful factoring of a credit card or payment card transaction is a class C felony.

(b) A second or subsequent violation of subsection (1) of this section is a class B felony. [2003 c 119 § 4; 2003 c 52 § 2; 1993 c 484 § 2.]

Reviser's note: This section was amended by 2003 c 52 § 2 and by 2003 c 119 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

9A.56.320 Financial fraud—Unlawful possession, production of instruments of. (1) A person is guilty of unlawful production of payment instruments if he or she prints or produces a check or other payment instrument in the name of a person or entity, or with the routing number or account number of a person or entity, without the permission of the person or entity to manufacture or reproduce such pay-

ment instrument with such name, routing number, or account number.

(2)(a) A person is guilty of unlawful possession of payment instruments if he or she possesses two or more checks or other payment instruments, alone or in combination:

(i) In the name of a person or entity, or with the routing number or account number of a person or entity, without the permission of the person or entity to possess such payment instrument, and with intent either to deprive the person of possession of such payment instrument or to commit theft, forgery, or identity theft;

(ii) In the name of a fictitious person or entity, or with a fictitious routing number or account number of a person or entity, with intent to use the payment instruments to commit theft, forgery, or identity theft.

(b) (a)(i) of this subsection does not apply to:

(i) A person or financial institution that has lawful possession of a check, which is endorsed to that person or financial institution; and

(ii) A person or financial institution that processes checks for a lawful business purpose.

(3) A person is guilty of unlawful possession of a personal identification device if the person possesses a personal identification device with intent to use such device to commit theft, forgery, or identity theft. "Personal identification device" includes any machine or instrument whose purpose is to manufacture or print any driver's license or identification card issued by any state or the federal government, or any employee identification issued by any employer, public or private, including but not limited to badges and identification cards, or any credit or debit card.

(4) A person is guilty of unlawful possession of fictitious identification if the person possesses a personal identification card with a fictitious person's identification with intent to use such identification card to commit theft, forgery, or identity theft, when the possession does not amount to a violation of RCW 9.35.020.

(5) A person is guilty of unlawful possession of instruments of financial fraud if the person possesses a check-making machine, equipment, or software, with intent to use or distribute checks for purposes of defrauding an account holder, business, financial institution, or any other person or organization.

(6) This section does not apply to:

(a) A person, business, or other entity, that has lawful possession of a check, which is endorsed to that person, business, or other entity;

(b) A financial institution or other entity that processes checks for a lawful business purpose;

(c) A person engaged in a lawful business who obtains another person's personal identification in the ordinary course of that lawful business;

(d) A person who obtains another person's personal identification for the sole purpose of misrepresenting his or her age; and

(e) A law enforcement agency that produces or displays counterfeit credit or debit cards, checks or other payment instruments, or personal identification devices for investigative or educational purposes.

(7) In a proceeding under this section that is related to an identity theft under RCW 9.35.020, the crime will be consid-

ered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(8) A violation of this section is a class C felony. [2003 c 119 § 1.]

9A.56.330 Possession of another's identification. (1)

A person is guilty of possession of another's identification if the person knowingly possesses personal identification bearing another person's identity, when the person possessing the personal identification does not have the other person's permission to possess it, and when the possession does not amount to a violation of RCW 9.35.020.

(2) This section does not apply to:

(a) A person who obtains, by means other than theft, another person's personal identification for the sole purpose of misrepresenting his or her age;

(b) A person engaged in a lawful business who obtains another person's personal identification in the ordinary course of business;

(c) A person who finds another person's lost personal identification, does not intend to deprive the other person of the personal identification or to use it to commit a crime, and takes reasonably prompt steps to return it to its owner; and

(d) A law enforcement agency that produces or displays counterfeit credit or debit cards, checks or other payment instruments, or personal identification for investigative or educational purposes.

(3) In a proceeding under this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(4) A violation of this section is a gross misdemeanor. [2003 c 119 § 2.]

**Chapter 9A.60 RCW
FRAUD**

Sections

9A.60.020	Forgery.
9A.60.040	Criminal impersonation in the first degree. (<i>Effective July 1, 2004.</i>)
9A.60.045	Criminal impersonation in the second degree. (<i>Effective July 1, 2004.</i>)
9A.60.060	Fraudulent creation or revocation of a mental health advance directive.

9A.60.020 Forgery. (1) A person is guilty of forgery if, with intent to injure or defraud:

(a) He falsely makes, completes, or alters a written instrument or;

(b) He possesses, utters, offers, disposes of, or puts off as true a written instrument which he knows to be forged.

(2) In a proceeding under this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was

appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(3) Forgery is a class C felony. [2003 c 119 § 5; 1975-'76 2nd ex.s. c 38 § 13; 1975 1st ex.s. c 260 § 9A.60.020.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.60.040 Criminal impersonation in the first degree. (Effective July 1, 2004.) (1) A person is guilty of criminal impersonation in the first degree if the person:

(a) Assumes a false identity and does an act in his or her assumed character with intent to defraud another or for any other unlawful purpose; or

(b) Pretends to be a representative of some person or organization or a public servant and does an act in his or her pretended capacity with intent to defraud another or for any other unlawful purpose.

(2) Criminal impersonation in the first degree is a gross misdemeanor. [2003 c 53 § 78; 1993 c 457 § 1; 1975 1st ex.s. c 260 § 9A.60.040.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.60.045 Criminal impersonation in the second degree. (Effective July 1, 2004.) (1) A person is guilty of criminal impersonation in the second degree if the person:

(a) Claims to be a law enforcement officer or creates an impression that he or she is a law enforcement officer; and

(b) Under circumstances not amounting to criminal impersonation in the first degree, does an act with intent to convey the impression that he or she is acting in an official capacity and a reasonable person would believe the person is a law enforcement officer.

(2) Criminal impersonation in the second degree is a misdemeanor. [2003 c 53 § 79.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.60.060 Fraudulent creation or revocation of a mental health advance directive. (1) For purposes of this section "mental health advance directive" means a written document that is a "mental health advance directive" as defined in RCW 71.32.020.

(2) A person is guilty of fraudulent creation or revocation of a mental health advance directive if he or she knowingly:

(a) Makes, completes, alters, or revokes the mental health advance directive of another without the principal's consent;

(b) Utters, offers, or puts off as true a mental health advance directive that he or she knows to be forged; or

(c) Obtains or prevents the signature of a principal or witness to a mental health advance directive by deception or duress.

(3) Fraudulent creation or revocation of a mental health advance directive is a class C felony. [2003 c 283 § 31.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

[2003 RCW Supp—page 94]

Chapter 9A.64 RCW FAMILY OFFENSES

Sections

9A.64.020 Incest. (*Effective July 1, 2004.*)

9A.64.030 Child selling—Child buying. (*Effective July 1, 2004.*)

9A.64.020 Incest. (Effective July 1, 2004.) (1)(a) A person is guilty of incest in the first degree if he or she engages in sexual intercourse with a person whom he or she knows to be related to him or her, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(b) Incest in the first degree is a class B felony.

(2)(a) A person is guilty of incest in the second degree if he or she engages in sexual contact with a person whom he or she knows to be related to him or her, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(b) Incest in the second degree is a class C felony.

(3) As used in this section:

(a) "Descendant" includes stepchildren and adopted children under eighteen years of age;

(b) "Sexual contact" has the same meaning as in RCW 9A.44.010; and

(c) "Sexual intercourse" has the same meaning as in RCW 9A.44.010. [2003 c 53 § 80; 1999 c 143 § 39; 1985 c 53 § 1; 1982 c 129 § 3; 1975 1st ex.s. c 260 § 9A.64.020.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1982 c 129: See note following RCW 9A.04.080.

9A.64.030 Child selling—Child buying. (Effective July 1, 2004.) (1) It is unlawful for any person to sell or purchase a minor child.

(2) A transaction shall not be a purchase or sale under subsection (1) of this section if any of the following exists:

(a) The transaction is between the parents of the minor child; or

(b) The transaction is between a person receiving or to receive the child and an agency recognized under RCW 26.33.020; or

(c) The transaction is between the person receiving or to receive the child and a state agency or other governmental agency; or

(d) The transaction is pursuant to chapter 26.34 RCW; or

(e) The transaction is pursuant to court order; or

(f) The only consideration paid by the person receiving or to receive the child is intended to pay for the prenatal hospital or medical expenses involved in the birth of the child, or attorneys' fees and court costs involved in effectuating transfer of child custody.

(3)(a) Child selling is a class C felony.

(b) Child buying is a class C felony. [2003 c 53 § 81; 1985 c 7 § 3; 1980 c 85 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1980 c 85: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 85 § 5.]

Chapter 9A.76 RCW

OBSTRUCTING GOVERNMENTAL OPERATION

Sections

- 9A.76.023 Disarming a law enforcement or corrections officer. (*Effective July 1, 2004.*)
- 9A.76.070 Rendering criminal assistance in the first degree. (*Effective July 1, 2004.*)
- 9A.76.080 Rendering criminal assistance in the second degree. (*Effective July 1, 2004.*)
- 9A.76.200 Harming a police dog, accelerant detection dog, or police horse.

9A.76.023 Disarming a law enforcement or corrections officer. (*Effective July 1, 2004.*) (1) A person is guilty of disarming a law enforcement officer if with intent to interfere with the performance of the officer's duties the person knowingly removes a firearm or weapon from the person of a law enforcement officer or corrections officer or deprives a law enforcement officer or corrections officer of the use of a firearm or weapon, when the officer is acting within the scope of the officer's duties, does not consent to the removal, and the person has reasonable cause to know or knows that the individual is a law enforcement or corrections officer.

(2)(a) Except as provided in (b) of this subsection, disarming a law enforcement or corrections officer is a class C felony.

(b) Disarming a law enforcement or corrections officer is a class B felony if the firearm involved is discharged when the person removes the firearm. [2003 c 53 § 82; 1998 c 252 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.76.070 Rendering criminal assistance in the first degree. (*Effective July 1, 2004.*) (1) A person is guilty of rendering criminal assistance in the first degree if he or she renders criminal assistance to a person who has committed or is being sought for murder in the first degree or any class A felony or equivalent juvenile offense.

(2)(a) Except as provided in (b) of this subsection, rendering criminal assistance in the first degree is a class C felony.

(b) Rendering criminal assistance in the first degree is a gross misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in RCW 9A.76.060. [2003 c 53 § 83; 1982 1st ex.s. c 47 § 21; 1975 1st ex.s. c 260 § 9A.76.070.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.76.080 Rendering criminal assistance in the second degree. (*Effective July 1, 2004.*) (1) A person is guilty of rendering criminal assistance in the second degree if he or she renders criminal assistance to a person who has committed or is being sought for a class B or class C felony or an equivalent juvenile offense or to someone being sought for violation of parole, probation, or community supervision.

(2)(a) Except as provided in (b) of this subsection, rendering criminal assistance in the second degree is a gross misdemeanor.

(b) Rendering criminal assistance in the second degree is a misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in RCW 9A.76.060. [2003 c 53 § 84; 1982 1st ex.s. c 47 § 22; 1975 1st ex.s. c 260 § 9A.76.080.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.76.200 Harming a police dog, accelerant detection dog, or police horse. (1) A person is guilty of harming a police dog, accelerant detection dog, or police horse, if he or she maliciously injures, disables, shoots, or kills by any means any dog or horse that the person knows or has reason to know to be a police dog or accelerant detection dog, as defined in RCW 4.24.410, or police horse, as defined in subsection (2) of this section, whether or not the dog or horse is actually engaged in police or accelerant detection work at the time of the injury.

(2) "Police horse" means any horse used or kept for use by a law enforcement officer in discharging any legal duty or power of his or her office.

(3) Harming a police dog, accelerant detection dog, or police horse is a class C felony. [2003 c 269 § 1; 1993 c 180 § 2; 1989 c 26 § 2; 1982 c 22 § 2.]

Chapter 9A.82 RCW

CRIMINAL PROFITEERING ACT

(Formerly: Racketeering)

Sections

- 9A.82.010 Definitions. (*Effective until July 1, 2004.*)
- 9A.82.010 Definitions. (*Effective July 1, 2004.*)
- 9A.82.050 Trafficking in stolen property in the first degree. (*Effective July 1, 2004.*)
- 9A.82.055 Trafficking in stolen property in the second degree. (*Effective July 1, 2004.*)
- 9A.82.060 Leading organized crime. (*Effective July 1, 2004.*)
- 9A.82.080 Use of proceeds of criminal profiteering—Controlling enterprise or realty—Conspiracy or attempt. (*Effective July 1, 2004.*)
- 9A.82.090 Orders restraining criminal profiteering—When issued.
- 9A.82.100 Remedies and procedures.
- 9A.82.120 Criminal profiteering lien—Authority, procedures.
- 9A.82.160 Criminal profiteering lien—Trustee's failure to comply, evasion of procedures or lien. (*Effective July 1, 2004.*)

9A.82.010 Definitions. (*Effective until July 1, 2004.*)

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

(1)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest is considered to be located where the real property owned by the trustee is located.

(2) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(3) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(4) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

(a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

(b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

(c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

(d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

(e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and 9A.56.080;

(f) Unlawful sale of subscription television services, as defined in RCW 9A.56.230;

(g) Theft of telecommunication services or unlawful manufacture of a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;

(h) Child selling or child buying, as defined in RCW 9A.64.030;

(i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;

(j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;

(k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

(l) Unlawful production of payment instruments, unlawful possession of payment instruments, unlawful possession of a personal identification device, unlawful possession of fictitious identification, or unlawful possession of instruments of financial fraud, as defined in RCW 9A.56.320;

(m) Extortionate extension of credit, as defined in RCW 9A.82.020;

(n) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;

(o) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;

(p) Collection of an unlawful debt, as defined in RCW 9A.82.045;

(q) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;

(r) Trafficking in stolen property, as defined in RCW 9A.82.050;

(s) Leading organized crime, as defined in RCW 9A.82.060;

(t) Money laundering, as defined in RCW 9A.83.020;

(u) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;

(v) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;

(w) Promoting pornography, as defined in RCW 9.68.140;

(x) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;

(y) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;

(z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

(aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

(bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;

(cc) A pattern of equity skimming, as defined in RCW 61.34.020;

(dd) Commercial telephone solicitation in violation of RCW 19.158.040(1);

(ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;

(ff) Unlawful practice of law, as defined in RCW 2.48.180;

(gg) Commercial bribery, as defined in RCW 9A.68.060;

(hh) Health care false claims, as defined in RCW 48.80.030;

(ii) Unlicensed practice of a profession or business, as defined in RCW 18.130.190(7);

(jj) Improperly obtaining financial information, as defined in RCW 9.35.010;

(kk) Identity theft, as defined in RCW 9.35.020;

(ll) Unlawful shipment of cigarettes in violation of RCW 70.155.105(6) (a) or (b); or

(mm) Unlawful shipment of cigarettes in violation of RCW 82.24.110(2).

(5) "Dealer in property" means a person who buys and sells property as a business.

(6) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(7) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(8) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(9) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made

that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(10) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(11) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(12) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(13) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(14) "Records" means any book, paper, writing, record, computer program, or other material.

(15) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(16) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(17) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(18) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(19) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(20)(a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under (a)(i) or (ii) of this subsection.

(b) "Trustee" does not mean a person appointed or acting as:

(i) A personal representative under Title 11 RCW;

(ii) A trustee of any testamentary trust;

(iii) A trustee of any indenture of trust under which a bond is issued; or

(iv) A trustee under a deed of trust.

(21) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury. [2003 c 119 § 6; 2003 c 113 § 3. Prior: 2001 c 222 § 3; 2001 c 217 § 11; prior: 1999 c 143 § 40; prior: 1995 c 285 § 34; 1995 c 92 § 5; 1994 c 218 § 17; prior: 1992 c 210 § 6; 1992 c 145 § 13; 1989 c 20 § 17; 1988 c 33 § 5; 1986 c 78 § 1; 1985 c 455 § 2; 1984 c 270 § 1.]

Reviser's note: This section was amended by 2003 c 113 § 3 and by 2003 c 119 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

Captions not law—2001 c 217: See note following RCW 9.35.005.

Effective date—1995 c 285: See RCW 48.30A.900.

Effective date—1994 c 218: See note following RCW 9.46.010.

Severability—Effective date—1989 c 20: See RCW 19.158.900 and 19.158.901.

Effective date—1988 c 33 § 5: "Section 5 of this act shall take effect July 1, 1988." [1988 c 33 § 8.]

Severability—1988 c 33: See RCW 61.34.900.

9A.82.010 Definitions. (Effective July 1, 2004.)

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

(1)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest is considered to be located where the real property owned by the trustee is located.

(2) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(3) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(4) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

(a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

(b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

(c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

(d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

(e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, 9A.56.080, and 9A.56.083;

(f) Unlawful sale of subscription television services, as defined in RCW 9A.56.230;

(g) Theft of telecommunication services or unlawful manufacture of a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;

(h) Child selling or child buying, as defined in RCW 9A.64.030;

(i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;

(j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;

(k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

(l) Unlawful production of payment instruments, unlawful possession of payment instruments, unlawful possession of a personal identification device, unlawful possession of fictitious identification, or unlawful possession of instruments of financial fraud, as defined in RCW 9A.56.320;

(m) Extortionate extension of credit, as defined in RCW 9A.82.020;

(n) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;

(o) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;

(p) Collection of an unlawful debt, as defined in RCW 9A.82.045;

(q) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;

(r) Trafficking in stolen property, as defined in RCW 9A.82.050;

(s) Leading organized crime, as defined in RCW 9A.82.060;

(t) Money laundering, as defined in RCW 9A.83.020;

(u) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;

(v) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;

(w) Promoting pornography, as defined in RCW 9.68.140;

(x) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;

(y) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;

(z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

(aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

(bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;

(cc) A pattern of equity skimming, as defined in RCW 61.34.020;

(dd) Commercial telephone solicitation in violation of RCW 19.158.040(1);

(ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;

(ff) Unlawful practice of law, as defined in RCW 2.48.180;

(gg) Commercial bribery, as defined in RCW 9A.68.060;

(hh) Health care false claims, as defined in RCW 48.80.030;

(ii) Unlicensed practice of a profession or business, as defined in RCW 18.130.190(7);

(jj) Improperly obtaining financial information, as defined in RCW 9.35.010;

(kk) Identity theft, as defined in RCW 9.35.020;

(ll) Unlawful shipment of cigarettes in violation of RCW 70.155.105(6) (a) or (b); or

(mm) Unlawful shipment of cigarettes in violation of RCW 82.24.110(2).

(5) "Dealer in property" means a person who buys and sells property as a business.

(6) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(7) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(8) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(9) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to

cause harm to the person, reputation, or property of any person.

(10) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(11) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(12) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(13) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(14) "Records" means any book, paper, writing, record, computer program, or other material.

(15) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(16) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(17) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(18) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(19) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(20)(a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under (a)(i) or (ii) of this subsection.

(b) "Trustee" does not mean a person appointed or acting as:

(i) A personal representative under Title 11 RCW;

(ii) A trustee of any testamentary trust;

(iii) A trustee of any indenture of trust under which a bond is issued; or

(iv) A trustee under a deed of trust.

(21) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury. [2003 c 119 § 6; 2003 c 113 § 3; 2003 c 53 § 85. Prior: 2001 c 222 § 3; 2001 c 217 § 11; prior: 1999 c 143 § 40; prior: 1995 c 285 § 34; 1995 c 92 § 5; 1994 c 218 § 17; prior: 1992 c 210 § 6; 1992 c 145 § 13; 1989 c 20 § 17; 1988 c 33 § 5; 1986 c 78 § 1; 1985 c 455 § 2; 1984 c 270 § 1.]

Reviser's note: This section was amended by 2003 c 53 § 85, 2003 c 113 § 3, and by 2003 c 119 § 6, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

Captions not law—2001 c 217: See note following RCW 9.35.005.

Effective date—1995 c 285: See RCW 48.30A.900.

Effective date—1994 c 218: See note following RCW 9.46.010.

Severability—Effective date—1989 c 20: See RCW 19.158.900 and 19.158.901.

Effective date—1988 c 33 § 5: "Section 5 of this act shall take effect July 1, 1988." [1988 c 33 § 8.]

Severability—1988 c 33: See RCW 61.34.900.

9A.82.050 Trafficking in stolen property in the first degree. (Effective July 1, 2004.) (1) A person who knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or who knowingly traffics in stolen property, is guilty of trafficking in stolen property in the first degree.

(2) Trafficking in stolen property in the first degree is a class B felony. [2003 c 53 § 86; 2001 c 222 § 8. Prior: 1984 c 270 § 5.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.055 Trafficking in stolen property in the second degree. (Effective July 1, 2004.) (1) A person who recklessly traffics in stolen property is guilty of trafficking in stolen property in the second degree.

(2) Trafficking in stolen property in the second degree is a class C felony. [2003 c 53 § 87.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

9A.82.060 Leading organized crime. (*Effective July 1, 2004.*) (1) A person commits the offense of leading organized crime by:

(a) Intentionally organizing, managing, directing, supervising, or financing any three or more persons with the intent to engage in a pattern of criminal profiteering activity; or

(b) Intentionally inciting or inducing others to engage in violence or intimidation with the intent to further or promote the accomplishment of a pattern of criminal profiteering activity.

(2)(a) Leading organized crime as defined in subsection (1)(a) of this section is a class A felony.

(b) Leading organized crime as defined in subsection (1)(b) of this section is a class B felony. [2003 c 53 § 88; 2001 c 222 § 9. Prior: 1985 c 455 § 7; 1984 c 270 § 6.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.080 Use of proceeds of criminal profiteering—Controlling enterprise or realty—Conspiracy or attempt. (*Effective July 1, 2004.*) (1)(a) It is unlawful for a person who has knowingly received any of the proceeds derived, directly or indirectly, from a pattern of criminal profiteering activity to use or invest, whether directly or indirectly, any part of the proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(b) A violation of this subsection is a class B felony.

(2)(a) It is unlawful for a person knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through a pattern of criminal profiteering activity.

(b) A violation of this subsection is a class B felony.

(3)(a) It is unlawful for a person knowingly to conspire or attempt to violate subsection (1) or (2) of this section.

(b) A violation of this subsection is a class C felony. [2003 c 53 § 89; 2001 c 222 § 11. Prior: 1985 c 455 § 8; 1984 c 270 § 8.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.090 Orders restraining criminal profiteering—When issued. During the pendency of any criminal case charging a violation of RCW 9A.82.060 or 9A.82.080, or an offense defined in RCW 9A.40.100, the superior court may, in addition to its other powers, issue an order pursuant to RCW 9A.82.100 (2) or (3). Upon conviction of a person for a violation of RCW 9A.82.060 or 9A.82.080, or an offense defined in RCW 9A.40.100, the superior court may, in addition to its other powers of disposition, issue an order pursuant to RCW 9A.82.100. [2003 c 267 § 5; 2001 c 222 § 13. Prior: 1985 c 455 § 10; 1984 c 270 § 9.]

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Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.100 Remedies and procedures. (1)(a) A person who sustains injury to his or her person, business, or property by an act of criminal profiteering that is part of a pattern of criminal profiteering activity, or by an offense defined in RCW 9A.40.100, or by a violation of RCW 9A.82.060 or 9A.82.080 may file an action in superior court for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(b) The attorney general or county prosecuting attorney may file an action: (i) On behalf of those persons injured or, respectively, on behalf of the state or county if the entity has sustained damages, or (ii) to prevent, restrain, or remedy a pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, or a violation of RCW 9A.82.060 or 9A.82.080.

(c) An action for damages filed by or on behalf of an injured person, the state, or the county shall be for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(d) In an action filed to prevent, restrain, or remedy a pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, or a violation of RCW 9A.82.060 or 9A.82.080, the court, upon proof of the violation, may impose a civil penalty not exceeding two hundred fifty thousand dollars, in addition to awarding the cost of the suit, including reasonable investigative and attorney's fees.

(2) The superior court has jurisdiction to prevent, restrain, and remedy a pattern of criminal profiteering, or an offense defined in RCW 9A.40.100, or a violation of RCW 9A.82.060 or 9A.82.080 after making provision for the rights of all innocent persons affected by the violation and after hearing or trial, as appropriate, by issuing appropriate orders.

(3) Prior to a determination of liability, orders issued under subsection (2) of this section may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture, or other restraints pursuant to this section as the court deems proper. The orders may also include attachment, receivership, or injunctive relief in regard to personal or real property pursuant to Title 7 RCW. In shaping the reach or scope of receivership, attachment, or injunctive relief, the superior court shall provide for the protection of bona fide interests in property, including community property, of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture under RCW 9A.82.100(4)(f).

(4) Following a determination of liability, orders may include, but are not limited to:

(a) Ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise.

(b) Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws

of this state, to the extent the Constitutions of the United States and this state permit.

(c) Ordering dissolution or reorganization of any enterprise.

(d) Ordering the payment of actual damages sustained to those persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or an offense defined in RCW 9A.40.100, or an act of criminal profiteering that is part of a pattern of criminal profiteering, and in the court's discretion, increasing the payment to an amount not exceeding three times the actual damages sustained.

(e) Ordering the payment of all costs and expenses of the prosecution and investigation of a pattern of criminal profiteering, or an offense defined in RCW 9A.40.100, activity or a violation of RCW 9A.82.060 or 9A.82.080, civil and criminal, incurred by the state or county, including any costs of defense provided at public expense, as appropriate to the state general fund or the antiprofitteering revolving fund of the county.

(f) Ordering forfeiture first as restitution to any person damaged by an act of criminal profiteering that is part of a pattern of criminal profiteering, or by an offense defined in RCW 9A.40.100, then to the state general fund or antiprofitteering revolving fund of the county, as appropriate, to the extent not already ordered to be paid in other damages, of the following:

(i) Any property or other interest acquired or maintained in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds, and any appreciation or income attributable to the investment, from a violation of RCW 9A.82.060 or 9A.82.080.

(ii) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.

(iii) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense.

(g) Ordering payment to the state general fund or antiprofitteering revolving fund of the county, as appropriate, of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of criminal profiteering.

(5) In addition to or in lieu of an action under this section, the attorney general or county prosecuting attorney may file an action for forfeiture to the state general fund or antiprofitteering revolving fund of the county, as appropriate, to the extent not already ordered paid pursuant to this section, of the following:

(a) Any interest acquired or maintained by a person in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any appreciation or income attributable to the investment.

(b) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated

in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.

(c) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate the commission of the offense.

(6) A defendant convicted in any criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial in which the defendant was convicted. For the purposes of this subsection, a conviction shall be deemed to have occurred upon a verdict, finding, or plea of guilty, notwithstanding the fact that appellate review of the conviction and sentence has been or may be sought. If a subsequent reversal of the conviction occurs, any judgment that was based upon that conviction may be reopened upon motion of the defendant.

(7) The initiation of civil proceedings under this section shall be commenced within three years after discovery of the pattern of criminal profiteering activity or after the pattern should reasonably have been discovered or, in the case of an offense that is defined in RCW 9A.40.100, within three years after the final disposition of any criminal charges relating to the offense, whichever is later.

(8) The attorney general or county prosecuting attorney may, in a civil action brought pursuant to this section, file with the clerk of the superior court a certificate stating that the case is of special public importance. A copy of that certificate shall be furnished immediately by the clerk to the presiding chief judge of the superior court in which the action is pending and, upon receipt of the copy, the judge shall immediately designate a judge to hear and determine the action. The judge so designated shall promptly assign the action for hearing, participate in the hearings and determination, and cause the action to be expedited.

(9) The standard of proof in actions brought pursuant to this section is the preponderance of the evidence test.

(10) A person other than the attorney general or county prosecuting attorney who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. The notice shall identify the action, the person, and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under this section or intervene in a pending action nor does it authorize the person to name the state or the attorney general as a party to the action.

(11) Except in cases filed by a county prosecuting attorney, the attorney general may, upon timely application, intervene in any civil action or proceeding brought under this section if the attorney general certifies that in the attorney general's opinion the action is of special public importance. Upon intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general had instituted a separate action.

(12) In addition to the attorney general's right to intervene as a party in any action under this section, the attorney general may appear as amicus curiae in any proceeding in which a claim under this section has been asserted or in

which a court is interpreting RCW 9A.82.010, 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

(13) A private civil action under this section does not limit any other civil or criminal action under this chapter or any other provision. Private civil remedies provided under this section are supplemental and not mutually exclusive.

(14) Upon motion by the defendant, the court may authorize the sale or transfer of assets subject to an order or lien authorized by this chapter for the purpose of paying actual attorney's fees and costs of defense. The motion shall specify the assets for which sale or transfer is sought and shall be accompanied by the defendant's sworn statement that the defendant has no other assets available for such purposes. No order authorizing such sale or transfer may be entered unless the court finds that the assets involved are not subject to possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of the motion, the court shall notify the state of the assets sought to be sold or transferred and shall hear argument on the issue of whether the assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a motion may be made from time to time and shall be heard by the court on an expedited basis.

(15) In an action brought under subsection (1)(a) and (b)(i) of this section, either party has the right to a jury trial. [2003 c 267 § 6; 2001 c 222 § 14. Prior: 1989 c 271 § 111; 1985 c 455 § 11; 1984 c 270 § 10.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability—1989 c 271: See note following RCW 9.94A.510.

9A.82.120 Criminal profiteering lien—Authority, procedures. (1) The state, upon filing a criminal action under RCW 9A.82.060 or 9A.82.080 or for an offense defined in RCW 9A.40.100, or a civil action under RCW 9A.82.100, may file in accordance with this section a criminal profiteering lien. A filing fee or other charge is not required for filing a criminal profiteering lien.

(2) A criminal profiteering lien shall be signed by the attorney general or the county prosecuting attorney representing the state in the action and shall set forth the following information:

- (a) The name of the defendant whose property or other interests are to be subject to the lien;
- (b) In the discretion of the attorney general or county prosecuting attorney filing the lien, any aliases or fictitious names of the defendant named in the lien;
- (c) If known to the attorney general or county prosecuting attorney filing the lien, the present residence or principal place of business of the person named in the lien;
- (d) A reference to the proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number for the proceeding;
- (e) The name and address of the attorney representing the state in the proceeding pursuant to which the lien is filed;
- (f) A statement that the notice is being filed pursuant to this section;
- (g) The amount that the state claims in the action or, with respect to property or other interests that the state has

requested forfeiture to the state or county, a description of the property or interests sought to be paid or forfeited;

(h) If known to the attorney general or county prosecuting attorney filing the lien, a description of property that is subject to forfeiture to the state or property in which the defendant has an interest that is available to satisfy a judgment entered in favor of the state; and

(i) Such other information as the attorney general or county prosecuting attorney filing the lien deems appropriate.

(3) The attorney general or the county prosecuting attorney filing the lien may amend a lien filed under this section at any time by filing an amended criminal profiteering lien in accordance with this section that identifies the prior lien amended.

(4) The attorney general or the county prosecuting attorney filing the lien shall, as soon as practical after filing a criminal profiteering lien, furnish to any person named in the lien a notice of the filing of the lien. Failure to furnish notice under this subsection does not invalidate or otherwise affect a criminal profiteering lien filed in accordance with this section.

(5)(a) A criminal profiteering lien is perfected against interests in personal property in the same manner as a security interest in like property pursuant to RCW 62A.9A-301 through 62A.9A-316 or as otherwise required to perfect a security interest in like property under applicable law. In the case of perfection by filing, the state shall file, in lieu of a financing statement in the form prescribed by RCW 62A.9A-502, a notice of lien in substantially the following form:

NOTICE OF LIEN

Pursuant to RCW 9A.82.120, the state of Washington claims a criminal profiteering lien on all real and personal property of:

Name:

Address:

.....

State of Washington

.....

By (authorized signature)

On receipt of such a notice from the state, a filing officer shall, without payment of filing fee, file and index the notice as if it were a financing statement naming the state as secured party and the defendant as debtor.

(b) A criminal profiteering lien is perfected against interests in real property by filing the lien in the office where a mortgage on the real estate would be filed or recorded. The filing officer shall file and index the criminal profiteering lien, without payment of a filing fee, in the same manner as a mortgage.

(6) The filing of a criminal profiteering lien in accordance with this section creates a lien in favor of the state in:

- (a) Any interest of the defendant, in real property situated in the county in which the lien is filed, then maintained, or thereafter acquired in the name of the defendant identified in the lien;
- (b) Any interest of the defendant, in personal property situated in this state, then maintained or thereafter acquired in the name of the defendant identified in the lien; and

(c) Any property identified in the lien to the extent of the defendant's interest therein.

(7) The lien created in favor of the state in accordance with this section, when filed or otherwise perfected as provided in subsection (5) of this section, has, with respect to any of the property described in subsection (6) of this section, the same priority determined pursuant to the laws of this state as a mortgage or security interest given for value (but not a purchase money security interest) and perfected in the same manner with respect to such property; except that any lien perfected pursuant to Title 60 RCW by any person who, in the ordinary course of his or her business, furnishes labor, services, or materials, or rents, leases, or otherwise supplies equipment, without knowledge of the criminal profiteering lien, is superior to the criminal profiteering lien.

(8) Upon entry of judgment in favor of the state, the state may proceed to execute thereon as in the case of any other judgment, except that in order to preserve the state's lien priority as provided in this section the state shall, in addition to such other notice as is required by law, give at least thirty days' notice of the execution to any person possessing at the time the notice is given, an interest recorded subsequent to the date the state's lien was perfected.

(9) Upon the entry of a final judgment in favor of the state providing for forfeiture of property to the state, the title of the state to the property:

(a) In the case of real property or a beneficial interest in real property, relates back to the date of filing the criminal profiteering lien or, if no criminal profiteering lien is filed, then to the date of recording of the final judgment or the abstract thereof; or

(b) In the case of personal property or a beneficial interest in personal property, relates back to the date the personal property was seized by the state, or the date of filing of a criminal profiteering lien in accordance with this section, whichever is earlier, but if the property was not seized and no criminal profiteering lien was filed then to the date the final judgment was filed with the department of licensing and, if the personal property is an aircraft, with the federal aviation administration.

(10) This section does not limit the right of the state to obtain any order or injunction, receivership, writ, attachment, garnishment, or other remedy authorized under RCW 9A.82.100 or appropriate to protect the interests of the state or available under other applicable law.

(11) In a civil or criminal action under this chapter, the superior court shall provide for the protection of bona fide interests in property, including community property, subject to liens of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture pursuant to RCW 9A.82.100(4)(f). [2003 c 267 § 7; 2001 c 222 § 16. Prior: 1985 c 455 § 13; 1984 c 270 § 12.]

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

9A.82.160 Criminal profiteering lien—Trustee's failure to comply, evasion of procedures or lien. (*Effective July 1, 2004.*) (1) A trustee who knowingly fails to comply with RCW 9A.82.130(1) is guilty of a gross misdemeanor.

(2) A trustee who conveys title to real property after service of the notice as provided in RCW 9A.82.130(1) with the intent to evade the provisions of RCW 9A.82.100 or 9A.82.120 with respect to such property is guilty of a class C felony. [2003 c 53 § 90; 2001 c 222 § 20. Prior: 1985 c 455 § 17; 1984 c 270 § 16.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

Chapter 9A.84 RCW PUBLIC DISTURBANCE

Sections

9A.84.010 Riot. (*Effective July 1, 2004.*)

9A.84.010 Riot. (*Effective July 1, 2004.*) (1) A person is guilty of the crime of riot if, acting with three or more other persons, he or she knowingly and unlawfully uses or threatens to use force, or in any way participates in the use of such force, against any other person or against property.

(2)(a) Except as provided in (b) of this subsection, the crime of riot is a gross misdemeanor.

(b) The crime of riot is a class C felony if the actor is armed with a deadly weapon. [2003 c 53 § 91; 1975 1st ex.s. c 260 § 9A.84.010.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 9A.88 RCW INDECENT EXPOSURE—PROSTITUTION (Formerly: Public indecency—Prostitution)

Sections

9A.88.010 Indecent exposure. (*Effective July 1, 2004.*)

9A.88.010 Indecent exposure. (*Effective July 1, 2004.*) (1) A person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. The act of breastfeeding or expressing breast milk is not indecent exposure.

(2)(a) Except as provided in (b) and (c) of this subsection, indecent exposure is a misdemeanor.

(b) Indecent exposure is a gross misdemeanor on the first offense if the person exposes himself or herself to a person under the age of fourteen years.

(c) Indecent exposure is a class C felony if the person has previously been convicted under this section or of a sex offense as defined in RCW 9.94A.030. [2003 c 53 § 92; 2001 c 88 § 2; 1990 c 3 § 904; 1987 c 277 § 1; 1975 1st ex.s. c 260 § 9A.88.010.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Acknowledgment—Declaration—Findings—2001 c 88: See note following RCW 43.70.640.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Title 10
CRIMINAL PROCEDURE

Chapters

- 10.05** Deferred prosecution—Courts of limited jurisdiction.
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Chapter 10.05 RCW**DEFERRED PROSECUTION—COURTS OF LIMITED JURISDICTION**

Sections

- 10.05.120 Dismissal of charges.
 10.05.140 Conditions of granting.

10.05.120 Dismissal of charges. (1) Three years after receiving proof of successful completion of the two-year treatment program, and following proof to the court that the petitioner has complied with the conditions imposed by the court following successful completion of the two-year treatment program, but not before five years following entry of the order of deferred prosecution pursuant to a petition brought under RCW 10.05.020(1), the court shall dismiss the charges pending against the petitioner.

(2) When a deferred prosecution is ordered pursuant to a petition brought under RCW 10.05.020(2) and the court has received proof that the petitioner has successfully completed the child welfare service plan, or the plan has been terminated because the alleged victim has reached his or her majority and there are no other minor children in the home, the court shall dismiss the charges pending against the petitioner: PROVIDED, That in any case where the petitioner's parental rights have been terminated with regard to the alleged victim due to abuse or neglect that occurred during the pendency of the deferred prosecution, the termination shall be per se evidence that the petitioner did not successfully complete the child welfare service plan. [2003 c 220 § 1; 2002 c 219 § 14; 1998 c 208 § 3; 1994 c 275 § 19; 1985 c 352 § 15; 1983 c 165 § 45; 1975 1st ex.s. c 244 § 12.]

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

Effective date—1998 c 208: See note following RCW 10.05.010.

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

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

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

10.05.140 Conditions of granting. As a condition of granting a deferred prosecution petition, the court shall order that the petitioner shall not operate a motor vehicle upon the public highways without a valid operator's license and proof of liability insurance. The amount of liability insurance shall

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be established by the court at not less than that established by RCW 46.29.490. As a condition of granting a deferred prosecution petition, the court shall also order the installation of an interlock or other device under RCW 46.20.720 for a petitioner who has previously been convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and had an alcohol concentration of at least .15, or by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration. For any other petitioner, the court may order the installation of an interlock device under RCW 46.20.720(1) as a condition of granting a deferred prosecution petition. As a condition of granting a deferred prosecution petition, the court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160. To help ensure continued sobriety and reduce the likelihood of reoffense, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for alcoholism or drugs, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. The court may terminate the deferred prosecution program upon violation of the deferred prosecution order. [2003 c 220 § 2; 1999 c 331 § 4; 1997 c 229 § 2; 1991 c 247 § 1; 1985 c 352 § 16.]

Effective date—1999 c 331: See note following RCW 9.94A.525.

Effective date—1997 c 229: See note following RCW 10.05.090.

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Chapter 10.58 RCW**EVIDENCE**

Sections

- 10.58.035 Statement of defendant—Admissibility.

10.58.035 Statement of defendant—Admissibility. (1) In criminal and juvenile offense proceedings where independent proof of the corpus delicti is absent, and the alleged victim of the crime is dead or incompetent to testify, a lawfully obtained and otherwise admissible confession, admission, or other statement of the defendant shall be admissible into evidence if there is substantial independent evidence that would tend to establish the trustworthiness of the confession, admission, or other statement of the defendant.

(2) In determining whether there is substantial independent evidence that the confession, admission, or other statement of the defendant is trustworthy, the court shall consider, but is not limited to:

(a) Whether there is any evidence corroborating or contradicting the facts set out in the statement, including the elements of the offense;

(b) The character of the witness reporting the statement and the number of witnesses to the statement;

(c) Whether a record of the statement was made and the timing of the making of the record in relation to the making of the statement; and/or

(d) The relationship between the witness and the defendant.

(3) Where the court finds that the confession, admission, or other statement of the defendant is sufficiently trustworthy to be admitted, the court shall issue a written order setting forth the rationale for admission.

(4) Nothing in this section may be construed to prevent the defendant from arguing to the jury or judge in a bench trial that the statement is not trustworthy or that the evidence is otherwise insufficient to convict. [2003 c 179 § 1.]

Chapter 10.66 RCW

DRUG TRAFFICKERS—OFF-LIMITS ORDERS

Sections

10.66.090 Penalties. (*Effective July 1, 2004.*)

10.66.090 Penalties. (*Effective July 1, 2004.*) (1) A person who willfully disobeys an off-limits order issued under this chapter is guilty of a gross misdemeanor.

(2) A person is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person willfully disobeys an off-limits order in violation of the terms of the order and also either:

(a) Enters or remains in a PADT area that is within one thousand feet of any school; or

(b) Is convicted of a second or subsequent violation of this chapter. [2003 c 53 § 93; 1989 c 271 § 223.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 10.73 RCW

CRIMINAL APPEALS

Sections

10.73.170 DNA testing requests.

10.73.170 DNA testing requests. (1) On or before December 31, 2004, a person in this state who has been convicted of a felony and is currently serving a term of imprisonment and who has been denied postconviction DNA testing may submit a request to the state Office of Public Defense, which will transmit the request to the county prosecutor in the county where the conviction was obtained for postconviction DNA testing, if DNA evidence was not admitted because the court ruled DNA testing did not meet acceptable scientific standards or DNA testing technology was not sufficiently developed to test the DNA evidence in the case. On and after January 1, 2005, a person must raise the DNA issues at trial or on appeal.

(2) The prosecutor shall screen the request. The request shall be reviewed based upon the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis. The prosecutor shall inform the requestor and the state Office of Public Defense of the decision, and shall, in the case of an adverse decision, advise the requestor of appeals rights. Upon determining that testing should occur and the evidence still exists, the prosecutor shall request DNA testing by the Washington state patrol crime laboratory. Contact with victims shall be handled through victim/witness divisions.

(3) A person denied a request made pursuant to subsections (1) and (2) of this section has a right to appeal his or her

request within thirty days of denial of the request by the prosecutor. The appeal shall be to the attorney general's office. If the attorney general's office determines that it is likely that the DNA testing would demonstrate innocence on a more probable than not basis, then the attorney general's office shall request DNA testing by the Washington state patrol crime laboratory.

(4) Notwithstanding any other provision of law, any biological material that has been secured in connection with a criminal case prior to July 22, 2001, may not be destroyed before January 1, 2005. [2003 c 100 § 1; 2001 c 301 § 1; 2000 c 92 § 1.]

Construction—2001 c 301: "Nothing in this act may be construed to create a new or additional cause of action in any court. Nothing in this act shall be construed to limit any rights offenders might otherwise have to court access under any other statutory or constitutional provision." [2001 c 301 § 2.]

Report on DNA testing—2000 c 92: "By December 1, 2001, the office of public defense shall prepare a report detailing the following: (1) The number of postconviction DNA test requests approved by the respective prosecutor; (2) the number of postconviction DNA test requests denied by the respective prosecutor and a summary of the basis for the denials; (3) the number of appeals for postconviction DNA testing approved by the attorney general's office; (4) the number of appeals for postconviction DNA testing denied by the attorney general's office and a summary of the basis for the denials; and (5) a summary of the results of the postconviction DNA tests conducted pursuant to RCW 10.73.170 (2) and (3). The report shall also provide an estimate of the number of persons convicted of crimes where DNA evidence was not admitted because the court ruled DNA testing did not meet acceptable scientific standards or where DNA testing technology was not sufficiently developed to test the DNA evidence in the case." [2000 c 92 § 2.]

Intent—2000 c 92: "Nothing in chapter 92, Laws of 2000 is intended to create a legal right or cause of action. Nothing in chapter 92, Laws of 2000 is intended to deny or alter any existing legal right or cause of action. Nothing in chapter 92, Laws of 2000 should be interpreted to deny postconviction DNA testing requests under existing law by convicted and incarcerated persons who were sentenced to confinement for a term less than life or the death penalty." [2000 c 92 § 4.]

Chapter 10.79 RCW

SEARCHES AND SEIZURES

Sections

10.79.015 Other grounds for issuance of search warrant. (*Effective July 1, 2004.*)

10.79.040 Search without warrant unlawful—Penalty. (*Effective July 1, 2004.*)

10.79.045 Repealed. (*Effective July 1, 2004.*)

10.79.015 Other grounds for issuance of search warrant. (*Effective July 1, 2004.*) Any such magistrate, when satisfied that there is reasonable cause, may also, upon like complaint made on oath, issue search warrant in the following cases, to wit:

(1) To search for and seize any counterfeit or spurious coin, or forged instruments, or tools, machines or materials, prepared or provided for making either of them.

(2) To search for and seize any gaming apparatus used or kept, and to be used in any unlawful gaming house, or in any building, apartment or place, resorted to for the purpose of unlawful gaming.

(3) To search for and seize any evidence material to the investigation or prosecution of any homicide or any felony: PROVIDED, That if the evidence is sought to be secured from any radio or television station or from any regularly

published newspaper, magazine or wire service, or from any employee of such station, wire service or publication, the evidence shall be secured only through a subpoena duces tecum unless: (a) There is probable cause to believe that the person or persons in possession of the evidence may be involved in the crime under investigation; or (b) there is probable cause to believe that the evidence sought to be seized will be destroyed or hidden if subpoena duces tecum procedures are followed. As used in this subsection, "person or persons" includes both natural and judicial persons.

(4) To search for and seize any instrument, apparatus or device used to obtain telephone or telegraph service in violation of RCW 9.26A.110 or 9.26A.115. [2003 c 53 § 94; 1980 c 52 § 1; 1972 ex.s. c 75 § 2; 1969 c 83 § 1; 1949 c 86 § 1; Code 1881 § 986; 1873 p 216 § 154; 1854 p 101 § 2; Rem. Supp. 1949 § 2238. Formerly RCW 10.79.010, part.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

10.79.040 Search without warrant unlawful—Penalty. (*Effective July 1, 2004.*) (1) It shall be unlawful for any policeman or other peace officer to enter and search any private dwelling house or place of residence without the authority of a search warrant issued upon a complaint as by law provided.

(2) Any policeman or other peace officer violating the provisions of this section is guilty of a gross misdemeanor. [2003 c 53 § 95; 1921 c 71 § 1; RRS § 2240-1. FORMER PART OF SECTION: 1921 c 71 § 2; RRS § 2240-2, now codified as RCW 10.79.045.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

10.79.045 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 10.95 RCW

CAPITAL PUNISHMENT—AGGRAVATED FIRST DEGREE MURDER

Sections

10.95.020 Definition. (*Effective July 1, 2004.*)

10.95.020 Definition. (*Effective July 1, 2004.*) A person is guilty of aggravated first degree murder, a class A felony, if he or she commits first degree murder as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one or more of the following aggravating circumstances exist:

(1) The victim was a law enforcement officer, corrections officer, or fire fighter who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the person to be such at the time of the killing;

(2) At the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;

(3) At the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony;

(4) The person committed the murder pursuant to an agreement that he or she would receive money or any other thing of value for committing the murder;

(5) The person solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for committing the murder;

(6) The person committed the murder to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group;

(7) The murder was committed during the course of or as a result of a shooting where the discharge of the firearm, as defined in RCW 9.41.010, is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge;

(8) The victim was:

(a) A judge; juror or former juror; prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney; a member of the indeterminate sentence review board; or a probation or parole officer; and

(b) The murder was related to the exercise of official duties performed or to be performed by the victim;

(9) The person committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, including, but specifically not limited to, any attempt to avoid prosecution as a persistent offender as defined in RCW 9.94A.030;

(10) There was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person;

(11) The murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes:

(a) Robbery in the first or second degree;

(b) Rape in the first or second degree;

(c) Burglary in the first or second degree or residential burglary;

(d) Kidnapping in the first degree; or

(e) Arson in the first degree;

(12) The victim was regularly employed or self-employed as a newsreporter and the murder was committed to obstruct or hinder the investigative, research, or reporting activities of the victim;

(13) At the time the person committed the murder, there existed a court order, issued in this or any other state, which prohibited the person from either contacting the victim, molesting the victim, or disturbing the peace of the victim, and the person had knowledge of the existence of that order;

(14) At the time the person committed the murder, the person and the victim were "family or household members" as that term is defined in RCW 10.99.020(1), and the person had previously engaged in a pattern or practice of three or more of the following crimes committed upon the victim within a five-year period, regardless of whether a conviction resulted:

(a) Harassment as defined in RCW 9A.46.020; or

(b) Any criminal assault. [2003 c 53 § 96; 1998 c 305 § 1. Prior: 1995 c 129 § 17 (Initiative Measure No. 159); 1994 c 121 § 3; 1981 c 138 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Chapter 10.98 RCW

CRIMINAL JUSTICE INFORMATION ACT

Sections

10.98.160	Procedures, development considerations—Washington integrated justice information board, review and recommendations.
10.98.200	Findings—Intent.
10.98.210	Washington integrated justice information board—Members.
10.98.220	Washington integrated justice information board—Meetings.
10.98.230	Washington integrated justice information board—Powers and duties.
10.98.240	Washington integrated justice information board—Report.

10.98.160 Procedures, development considerations—Washington integrated justice information board, review and recommendations. In the development and modification of the procedures, definitions, and reporting capabilities of the section, the department, the office of financial management, and the responsible agencies and persons shall consider the needs of other criminal justice agencies such as the administrator for the courts, local law enforcement agencies, local jails, the sentencing guidelines commission, the indeterminate sentence review board, the clemency board, prosecuting attorneys, and affected state agencies such as the office of financial management and legislative committees dealing with criminal justice issues. The Washington integrated justice information board shall review and provide recommendations to state justice agencies and the courts for development and modification of the statewide justice information network. [2003 c 104 § 2; 1999 c 143 § 53; 1987 c 462 § 5; 1984 c 17 § 16.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

10.98.200 Findings—Intent. (1) The legislature finds that each of the state's justice agencies and the courts have developed independent information systems to address independent management and planning needs, that the state's justice information system is fragmented, and that access to complete, accurate, and timely justice information is difficult and inefficient.

(2) The legislature declares that the purpose of chapter 104, Laws of 2003 is to develop and maintain, in a cost-effective manner, a statewide network of criminal justice information that enables sharing and integrated delivery of justice information maintained in the state's independent information systems and that will:

(a) Maximize standardization of data and communications technology among law enforcement agencies, jails, prosecuting attorneys, the courts, corrections, and licensing;

(b) Reduce redundant data collection and input efforts;

(c) Reduce or eliminate paper-based information exchanges;

(d) Improve work flow within the criminal justice system;

(e) Provide complete, accurate, and timely information to criminal justice agencies and courts in a single computer session; and

(f) Maintain security and privacy rights respecting criminal justice information.

(3) Statewide coordination of criminal justice information will improve:

(a) The safety of the public and the safety of law enforcement officers and other public servants, by making more complete, accurate, and timely information concerning offenders available to all criminal justice agencies and courts;

(b) Decision making, by increasing the availability of statistical measures for review, evaluation, and promulgation of public policy; and

(c) Access to complete, accurate, and timely information by the public, to the extent permitted pursuant to chapters 10.97 and 42.17 RCW.

(4) The legislature encourages state and local criminal justice agencies and courts to collaborate in the development of justice information systems, as criminal justice agencies and courts collect the most complete, accurate, and timely information regarding offenders.

(5) The legislature finds that the implementation, operation, and continuing enhancement of a statewide justice information network that enables sharing and integrated delivery of information maintained in the state's independent information systems is critical to the complete, accurate, and timely performance of criminal background checks and to the effective communications between and among law enforcement, the courts, executive agencies, and political subdivisions of the state. The legislature further finds and declares that it is in the best interests of the citizens of the state and for the enhancement of public safety that the Washington integrated justice information board be created as soon as possible.

(6) The legislature finds that the intent, purpose, and goals of chapter 104, Laws of 2003 will be implemented most effectively by a board having the power, authority, and responsibility to develop, maintain, and enhance a statewide justice information network that enables sharing and integrated delivery of justice information maintained in the state's independent information systems. [2003 c 104 § 1.]

10.98.210 Washington integrated justice information board—Members. (1) There is created the Washington integrated justice information board. The board shall be composed of the following members:

(a) A representative appointed by the governor;

(b) The attorney general;

(c) The chief of the state patrol;

(d) The secretary of the department of corrections;

(e) The director of the department of licensing;

(f) The administrator for the courts;

(g) The director of the office of financial management;

(h) The director of the department of information services;

(i) The assistant secretary of the department of social and health services responsible for juvenile rehabilitation programs;

(j) A sheriff appointed by the Washington association of sheriffs and police chiefs;

- (k) A police chief appointed by the Washington association of sheriffs and police chiefs;
- (l) A county legislative authority member appointed by the Washington state association of counties;
- (m) An elected county clerk appointed by the Washington association of county clerks;
- (n) A representative appointed by the Washington association of city and county information systems;
- (o) Two representatives appointed by the judicial information system committee;
- (p) A representative appointed by the association of Washington cities; and
- (q) An elected prosecutor appointed by the Washington association of prosecuting attorneys.

These members shall constitute the membership of the board with full voting rights and shall serve at the pleasure of the appointing authority. Each member may, in writing, appoint a designee to serve in the member's absence. Any member of the board shall immediately cease to be a member if he or she ceases to hold the particular office or employment that was the basis of the appointment. Vacancies shall be filled in the same manner that the original appointments were made to the board.

(2) The board may appoint additional justice information stakeholders as nonvoting members to the board.

(3) In making the appointments, the appointing authorities shall endeavor to assure that there is committed board membership having expertise relating to state and local criminal justice business practices and to information sharing and integration technology. [2003 c 104 § 3.]

10.98.220 Washington integrated justice information board—Meetings. The board shall elect a chair and vice-chair from among its voting members. Nine voting members of the board shall constitute a quorum. Meetings may be called by the chair or upon the written request of three members of the board. Meeting participation may be by means of conference call or any other communication equipment that allows all persons participating in the meeting to speak and hear all participants. [2003 c 104 § 4.]

10.98.230 Washington integrated justice information board—Powers and duties. (1) The board shall have the following powers and duties related to integration of justice information:

- (a) Meet at such times and places as may be designated by the chair or by three voting members of the board;
- (b) Adopt its own bylaws, and such other rules governing the board and the conduct of its meetings as the board may deem reasonable or convenient;
- (c) Coordinate and facilitate the governance, implementation, operation, maintenance, and enhancement of sharing and integrated delivery of complete, accurate, and timely justice information;
- (d) Increase the use of automated electronic data transfer among state justice agencies, local justice agencies, and courts;
- (e) Establish and implement uniform data standards and protocols for data transfer and sharing, interface applications, and connectivity standards;

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(f) Provide state agency and court justice information to criminal justice agencies and courts through connections and applications that enable single session access from multiple platforms;

(g) Pursue, develop, and coordinate grants and other funding opportunities for state and local justice information projects that will expand or enhance the sharing and integrated delivery of statewide justice information;

(h) Assess state and local agencies' projects and plans for sharing and delivery of integrated justice information, as may be requested by the agencies, the director of the office of financial management, the supreme court, or the legislature;

(i) Assist the office of financial management with budgetary and policy review of state agency plans affecting the justice information network;

(j) Recommend to the governor, the supreme court, and the legislature those legislative changes and appropriations needed to implement, maintain, and enhance a statewide justice information network and to assure the availability of complete, accurate, and timely justice information;

(k) Encourage coordination, consistency, and compatibility among courts, state agency, and local agency justice information systems and projects; and

(l) Adopt strategic and tactical planning goals and objectives that implement, maintain, and enhance sharing and integrated delivery of justice information for the state.

(2)(a) Nothing in this section supersedes the authority of the information services board under chapter 43.105 RCW.

(b) Nothing in this section supersedes the authority of courts, state agencies, and local agencies to control and maintain access to information within their independent systems. [2003 c 104 § 5.]

10.98.240 Washington integrated justice information board—Report. The board shall file a report with the governor, the supreme court, and the chairs and ranking minority members of the senate and house committees with jurisdiction over criminal justice funding and policy by September 1, 2004, and not less than every two years thereafter. The report shall include specific goals for improving criminal justice information systems integration, a timeline and identifiable benchmarks for achieving those goals, and recommendations concerning legislative changes and appropriations needed to implement, operate, and enhance a statewide justice information network to assure the availability of complete, accurate, and timely justice information. [2003 c 104 § 6.]

Chapter 10.105 RCW

PROPERTY INVOLVED IN A FELONY

Sections

10.105.900 Application.

10.105.900 Application. This chapter does not apply to property subject to forfeiture under chapter 66.32 RCW, RCW 69.50.505, 9.41.098, 9.46.231, 9A.82.100, 9A.83.030, 7.48.090, or 77.15.070. [2003 c 39 § 6; 1994 c 218 § 18; 1993 c 288 § 1.]

Effective date—1994 c 218: See note following RCW 9.46.010.

Title 11

PROBATE AND TRUST LAW

Chapters

- 11.68 Settlement of estates without administration.
- 11.94 Power of attorney.
- 11.97 Effect of trust instrument.

Chapter 11.68 RCW

SETTLEMENT OF ESTATES WITHOUT ADMINISTRATION

Sections

- 11.68.090 Powers of personal representative under nonintervention will—Scope—Relief from duties, restrictions, liabilities by will.

11.68.090 Powers of personal representative under nonintervention will—Scope—Relief from duties, restrictions, liabilities by will. (1) Any personal representative acting under nonintervention powers may borrow money on the general credit of the estate and may mortgage, encumber, lease, sell, exchange, convey, and otherwise have the same powers, and be subject to the same limitations of liability, that a trustee has under RCW 11.98.070 and chapters 11.100 and 11.102 RCW with regard to the assets of the estate, both real and personal, all without an order of court and without notice, approval, or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court. Except as otherwise specifically provided in this title or by order of court, a personal representative acting under nonintervention powers may exercise the powers granted to a personal representative under chapter 11.76 RCW but is not obligated to comply with the duties imposed on personal representatives by that chapter. A party to such a transaction and the party's successors in interest are entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate.

(2) Except as otherwise provided in chapter 11.108 RCW or elsewhere in order to preserve a marital deduction from estate taxes, a testator may by a will relieve the personal representative from any or all of the duties, restrictions, and liabilities imposed: Under common law; by chapters 11.54, 11.56, 11.100, 11.102, and 11.104A RCW; or by RCW 11.28.270 and 11.28.280, 11.68.095, and 11.98.070. In addition, a testator may likewise alter or deny any or all of the privileges and powers conferred by this title, and may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by this title. If any common law or any statute referenced earlier in this subsection is in conflict with a will, the will controls whether or not specific reference is made in the will to this section. However, notwithstanding the rest of this subsection, a personal representative may not be relieved of the duty to act in good faith and with honest judgment. [2003 c 254 § 3; 1997 c 252 § 66; 1988 c 29 § 3; 1985 c 30 § 7. Prior: 1984 c 149 § 10; 1974 ex.s. c 117 § 21.]

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

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

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

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

Chapter 11.94 RCW

POWER OF ATTORNEY

Sections

- 11.94.010 Designation—Authority—Effect of acts done—Appointment of guardian, effect—Accounting—Reliance on instrument.
- 11.94.150 Mental health treatment decisions—Compensation of agent prohibited—Reimbursement of expenses allowed.

11.94.010 Designation—Authority—Effect of acts done—Appointment of guardian, effect—Accounting—Reliance on instrument. (1) Whenever a principal designates another as his or her attorney in fact or agent, by a power of attorney in writing, and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney in fact or agent is exercisable on behalf of the principal as provided notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or the principal's guardian or heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. A principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. If a guardian thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the guardian rather than the principal. The guardian has the same power the principal would have had if the principal were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency.

(2) Persons shall place reasonable reliance on any determination of disability or incompetence as provided in the instrument that specifies the time and the circumstances under which the power of attorney document becomes effective.

(3)(a) A principal may authorize his or her attorney-in-fact to provide informed consent for health care decisions on the principal's behalf. If a principal has appointed more than one agent with authority to make mental health treatment decisions in accordance with a directive under chapter 71.32 RCW, to the extent of any conflict, the most recently appointed agent shall be treated as the principal's agent for mental health treatment decisions unless provided otherwise in either appointment.

(b) Unless he or she is the spouse, or adult child or brother or sister of the principal, none of the following persons may act as the attorney-in-fact for the principal: Any of the principal's physicians, the physicians' employees, or the owners, administrators, or employees of the health care facility or long-term care facility as defined in RCW 43.190.020 where the principal resides or receives care. Except when the principal has consented in a mental health advance directive executed under chapter 71.32 RCW to inpatient admission or electroconvulsive therapy, this authorization is subject to the same limitations as those that apply to a guardian under RCW 11.92.043(5) (a) through (c). [2003 c 283 § 27; 1995 c 297 § 9; 1989 c 211 § 1; 1985 c 30 § 25. Prior: 1984 c 149 § 26; 1974 ex.s. c 117 § 52.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

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

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

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

11.94.150 Mental health treatment decisions—Compensation of agent prohibited—Reimbursement of expenses allowed. No person appointed by a principal as an agent to make mental health treatment decisions pursuant to a mental health advance directive under chapter 71.32 RCW shall be compensated for the performance of his or her duties as an agent to make mental health treatment decisions. This section does not prohibit an agent from receiving reimbursement for reasonable expenses incurred in the performance of his or her duties under chapter 71.32 RCW. [2003 c 283 § 28.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

Chapter 11.97 RCW

EFFECT OF TRUST INSTRUMENT

Sections

11.97.010 Power of trustor—Trust provisions control.
11.97.900 Application of chapter.

11.97.010 Power of trustor—Trust provisions control. The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters 11.95, 11.98, 11.100, and 11.104A RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters, except as provided in RCW 11.98.200 through 11.98.240 and 11.95.100 through 11.95.150. In no event may a trustee be relieved of the duty to act in good faith and with honest judgment. [2003 c 254 § 4; 1993 c 339 § 1; 1985 c 30 § 38. Prior: 1984 c 149 § 64; 1959 c 124 § 2. Formerly RCW 30.99.020.]

Severability—1993 c 339: See note following RCW 11.98.200.

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

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

11.97.900 Application of chapter. This chapter applies to the provisions of chapters 11.95, 11.98, 11.100, and 11.104A RCW and to RCW 11.106.020. [2003 c 254 § 5; 1985 c 30 § 39. Prior: 1984 c 149 § 65.]

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

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

Title 13

JUVENILE COURTS AND JUVENILE OFFENDERS

Chapters

- 13.24 Interstate compact on juveniles.**
13.34 Juvenile court act—Dependency and termination of parent-child relationship.
13.40 Juvenile justice act of 1977.
13.50 Keeping and release of records by juvenile justice or care agencies.

Chapter 13.24 RCW

INTERSTATE COMPACT ON JUVENILES

Sections

13.24.010 Repealed. (*Contingent effective date.*)
13.24.011 Execution of compact. (*Contingent effective date.*)
13.24.020 Repealed. (*Contingent effective date.*)
13.24.021 Designation of state council. (*Contingent effective date.*)

13.24.010 Repealed. (*Contingent effective date.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

13.24.011 Execution of compact. (*Contingent effective date.*)

EXECUTION OF THE COMPACT

The governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows. No provision of this compact will interfere with this state's authority to determine policy regarding juvenile offenders and nonoffenders within this state.

THE INTERSTATE COMPACT FOR JUVENILES

ARTICLE I - Purpose

The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of resi-

dence. The compacting states also recognize that congress, by enacting the crime control act, 4 U.S.C. Sec. 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to: (1) Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (2) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (3) return juveniles who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting their return; (4) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (5) provide for the effective tracking and supervision of juveniles; (6) equitably allocate the costs, benefits, and obligations of the compacting states; (7) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders; (8) ensure immediate notice to jurisdictions where defined offenders may travel or relocate across state lines; (9) establish procedures to resolve pending charges (detainers) against juvenile offenders before transfer or release to the community under the terms of this compact; (10) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (11) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance; (12) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (13) coordinate the implementation and operation of the compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision, and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the interstate commission created in this section are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II - Definitions

As used in this compact, unless the context clearly requires a different construction:

(1) "Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or controlling its actions or conduct.

(2) "Commissioner" means the voting representative of each compacting state appointed under Article III of this compact.

(3) "Compact administrator" means the individual in each compacting state appointed under the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

(4) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(5) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(6) "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator under the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

(7) "Interstate commission" means the interstate commission for juveniles created by Article III of this compact.

(8) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the interstate commission, including:

(a) An accused delinquent, meaning a person charged with an offense that, if committed by an adult, would be a criminal offense;

(b) An adjudicated delinquent, meaning a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(c) An accused status offender, meaning a person charged with an offense that would not be a criminal offense if committed by an adult;

(d) An adjudicated status offender, meaning a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(e) A nonoffender, meaning a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

(9) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

(10) "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(11) "Rule" means a written statement by the interstate commission issued under Article VI of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a compacting state. This includes the amendment, repeal, or suspension of an existing rule.

(12) "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

ARTICLE III - Interstate Commission for Juveniles

(1) The compacting states hereby create the "interstate commission for juveniles." The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers, and duties set forth in this section, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(2) The interstate commission shall consist of commissioners appointed by the appropriate appointing authority in each state under the rules and requirements of each compacting state and in consultation with the state council for interstate juvenile supervision. The commissioner shall be the compact administrator, deputy compact administrator, or designee from that state who shall serve on the interstate commission in such capacity under the applicable law of the compacting state.

(3) In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners, but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, interstate compact for adult offender supervision, interstate compact for the placement of children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the interstate commission shall be nonvoting members. The interstate commission may provide in its bylaws for such additional nonvoting members, including members of other national organizations, in such numbers as shall be determined by the commission.

(4) Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(5) The interstate commission shall meet at least once each calendar year. The chair may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(6) The interstate commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rule making and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and interstate commission staff, administer enforcement and compliance with the compact, its bylaws, and rules, and perform such other duties as directed by the interstate commission or set forth in the bylaws.

(7) Each member of the interstate commission may cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person and shall not delegate a vote

to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(8) The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(9) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(a) Relate solely to the interstate commission's internal personnel practices and procedures;

(b) Disclose matters specifically exempted from disclosure by statute;

(c) Disclose trade secrets or commercial or financial information that is privileged or confidential;

(d) Involve accusing any person of a crime, or formally censuring any person;

(e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) Disclose investigative records compiled for law enforcement purposes;

(g) Disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

(h) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

(i) Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(10) For every closed meeting, the interstate commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes that fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote reflected in the vote of each member on the question. All documents considered in connection with any action shall be identified in the minutes.

(11) The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules that specify the data to be collected, the means of collection and data exchange, and reporting requirements. Such methods of data collection, exchange,

and reporting shall insofar as is reasonably possible conform to current technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV - Powers and Duties of the Interstate Commission

The commission has the following powers and duties:

- (1) Provide for dispute resolution among compacting states;
- (2) Adopt rules to effect the purposes and obligations of this compact which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;
- (3) Oversee, supervise, and coordinate the interstate movement of juveniles subject to this compact and any bylaws adopted and rules adopted by the interstate commission;
- (4) Enforce compliance with the compact provisions, the rules adopted by the interstate commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;
- (5) Establish and maintain offices that are located within one or more of the compacting states;
- (6) Purchase and maintain insurance and bonds;
- (7) Borrow, accept, hire, or contract for personnel services;
- (8) Establish and appoint committees and hire staff that it deems necessary to carry out its functions including, but not limited to, an executive committee as required by Article III of this compact that may act on behalf of the interstate commission in carrying out its powers and duties;
- (9) Elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications, and to establish the interstate commission's personnel policies and programs relating to inter alia, conflicts of interest, rates of compensation, and qualifications of personnel;
- (10) Accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, use, and dispose of the donations and grants;
- (11) Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;
- (12) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- (13) Establish a budget and make expenditures and levy dues as provided in Article VIII of this compact;
- (14) Sue and be sued;
- (15) Adopt a seal and bylaws governing the management and operation of the interstate commission;
- (16) Perform such functions as may be necessary or appropriate to achieve the purposes of this compact;
- (17) Report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Reports shall also include any recommendations adopted by the interstate commission;
- (18) Coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity;

(19) Establish uniform standards of the reporting, collecting, and exchanging of data; and

(20) Maintain its corporate books and records in accordance with the bylaws.

ARTICLE V - Organization and Operation of the Interstate Commission

Section A. Bylaws

The interstate commission shall, by a majority of the members present and voting, within twelve months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

- (1) Establishing the fiscal year of the interstate commission;
- (2) Establishing an executive committee and such other committees as may be necessary;
- (3) Providing for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission;
- (4) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;
- (5) Establishing the titles and responsibilities of the officers of the interstate commission;
- (6) Providing a mechanism for concluding the operations of the interstate commission and the return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;
- (7) Providing "start-up" rules for initial administration of the compact; and
- (8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and staff

(1) The interstate commission shall, by a majority of the members, elect annually from among its members a chair and a vice-chair, each of whom has the authority and duties that are specified in the bylaws. The chair or, in the chair's absence or disability, the vice-chair shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission. However, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the interstate commission deems appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member and shall hire and supervise such other staff as authorized by the interstate commission.

Section C. Qualified immunity, defense, and indemnification

(1) The commission's executive director and employees are immune from suit and liability, either personally or in their official capacity, for any claim for damage to, loss of property, personal injury, or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, any such person is not protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(3) The interstate commission shall defend the executive director or the employees or representatives of the interstate commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(4) The interstate commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI - Rule-making Functions of the Interstate Commission

(1) The interstate commission shall adopt and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(2) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the "model state administrative procedures act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or

such other administrative procedures act, as the interstate commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States supreme court. All rules and amendments become binding as of the date specified, as published with the final version of the rule as approved by the commission.

(3) When adopting a rule, the interstate commission shall, at a minimum:

(a) Publish the proposed rule's entire text stating the reason or reasons for that proposed rule;

(b) Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record, and be made publicly available;

(c) Provide an opportunity for an informal hearing if petitioned by ten or more persons; and

(d) Adopt a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

(4) The interstate commission shall allow, not later than sixty days after a rule is adopted, any interested person to file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rule-making record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the model state administrative procedures act.

(5) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that rule to have no further force and effect in any compacting state.

(6) The existing rules governing the operation of the interstate compact on juveniles superseded by chapter 180, Laws of 2003 shall be null and void twelve months after the first meeting of the interstate commission created under this section.

(7) Upon determination by the interstate commission that a state of emergency exists, it may adopt an emergency rule that becomes effective immediately upon adoption. However, the usual rule-making procedures shall be retroactively applied to the rule as soon as reasonably possible, but no later than ninety days after the effective date of the emergency rule.

ARTICLE VII - Oversight, Enforcement, and Dispute Resolution by the Interstate Commission

Section A. Oversight

(1) The interstate commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states that may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the

rules adopted under this section shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute resolution

(1) The compacting states shall report to the interstate commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the compact and its bylaws and rules.

(2) The interstate commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and non-compacting states. The commission shall adopt a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(3) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII - Finance

(1) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall adopt a rule binding upon all compacting states that governs the assessment.

(3) The interstate commission shall not incur any obligations of any kind before securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(4) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE IX - The State Council

Each member state shall create a state council for interstate juvenile supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator, or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in interstate commission activities and other duties as may be determined by that state, including but not limited to development of policy concerning operations and procedures of the compact within that state.

Pursuant to this compact, the governor shall designate an individual who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. The governor shall designate the compact administrator from a list of six individuals, three of whom are recommended by the Washington association of juvenile court administrators and three of whom are recommended by the juvenile rehabilitation administration of the department of social and health services. The administrator shall serve subject to the pleasure of the governor. The administrator shall cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state.

ARTICLE X - Compacting States, Effective Date, and Amendment

(1) Any state, the District of Columbia or its designee, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the interstate commission on a non-voting basis before adoption of the compact by all states and territories of the United States.

(3) The interstate commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI - Withdrawal, Default, Termination,
and Judicial Enforcement

Section A. Withdrawal

(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state. However, a compacting state may withdraw from the compact by repealing the statute that enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chair of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

Section B. Technical Assistance, Fines, Suspension,
Termination, and Default

(1) If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or adopted rules, the interstate commission may impose any or all of the following penalties:

(a) Remedial training and technical assistance as directed by the interstate commission;

(b) Alternative dispute resolution;

(c) Fines, fees, and costs in such amounts as set by the interstate commission; and

(d) Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has determined that the offending state is in default. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or rules and any other grounds designated in commission bylaws and rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights,

privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(2) Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(5) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

Section C. Judicial enforcement

The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices, to enforce compliance with the provisions of the compact, its rules, and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

Section D. Dissolution of compact

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII - Severability and Construction

(1) The provisions of this compact are severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact are enforceable.

(2) The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII - Binding Effect of Compact and Other Laws

Section A. Other laws

(1) Nothing in this section prevents the enforcement of any other law of a compacting state that is consistent with this compact.

(2) All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding effect of the compact

(1) All lawful actions of the interstate commission, including all rules and bylaws adopted by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective. [2003 c 180 § 1.]

Contingent effective date—2003 c 180: "This act takes effect July 1, 2004, or when the interstate compact for juveniles is adopted by thirty-five or more states, whichever occurs later." [2003 c 180 § 4.]

13.24.020 Repealed. (Contingent effective date.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

13.24.021 Designation of state council. (Contingent effective date.) Pursuant to the compact created in RCW 13.24.011, the governor is hereby authorized and empowered to designate a state council as required in Article IX of the compact. [2003 c 180 § 2.]

Contingent effective date—2003 c 180: See note following RCW 13.24.011.

Chapter 13.34 RCW

JUVENILE COURT ACT—DEPENDENCY AND TERMINATION OF PARENT-CHILD RELATIONSHIP

Sections

13.34.030 Definitions.
 13.34.115 Hearings—Public excluded when in the best interests of the child—Notes and records—Video recordings.
 13.34.130 Order of disposition for a dependent child, alternatives—Petition seeking termination of parent-child relationship—Contact with siblings—Placement with relatives.
 13.34.136 Permanency plan of care.
 13.34.138 Review hearings—Findings—Housing assistance.
 13.34.145 Permanency plan required—Permanency planning hearing—Time limits—Review hearing—Petition for termination of parental rights—Guardianship petition—Agency responsibility to provide services to parents—Due process rights.
 13.34.200 Order terminating parent and child relationship—Rights of parties when granted.
 13.34.210 Order terminating parent and child relationship—Custody where no one has parental rights.
 13.34.260 Foster home placement—Parental preferences—Foster parent contact with birth parents encouraged.

13.34.030 Definitions. For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child" and "juvenile" means any individual under the age of eighteen years.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(5) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

(6) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual.

(7) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding other than a proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" shall not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(8) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(9) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is

filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(10) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(11) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(12) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing services, capable of preventing the need for out-of-home placement while protecting the child. Housing services may include, but are not limited to, referrals to federal, state, local, or private agencies or organizations, assistance with forms and applications, or financial subsidies for housing.

(13) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(14) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in 25 U.S.C. Sec. 1903(4).

(15) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be

protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary. [2003 c 227 § 2; 2002 c 52 § 3; 2000 c 122 § 1; 1999 c 267 § 6; 1998 c 130 § 1; 1997 c 386 § 7; 1995 c 311 § 23; 1994 c 288 § 1; 1993 c 241 § 1; 1988 c 176 § 901; 1987 c 524 § 3; 1983 c 311 § 2; 1982 c 129 § 4; 1979 c 155 § 37; 1977 ex.s. c 291 § 31.]

Intent—2003 c 227: See note following RCW 13.34.130.

Intent—2002 c 52: See note following RCW 13.34.025.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Conflict with federal requirements—1993 c 241: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1993 c 241 § 5.]

Severability—1988 c 176: See RCW 71A.10.900.

Legislative finding—1983 c 311: "The legislature finds that in order for the state to receive federal funds for family foster care under Title IV-B and Title IV-E of the social security act, all children in family foster care must be subjected to periodic court review. Unfortunately, this includes children who are developmentally disabled and who are placed in family foster care solely because their parents have determined that the children's service needs require out-of-home placement. Except for providing such needed services, the parents of these children are completely competent to care for the children. The legislature intends by this act to minimize the embarrassment and inconvenience of developmentally disabled persons and their families caused by complying with these federal requirements." [1983 c 311 § 1.]

Severability—1982 c 129: See note following RCW 9A.04.080.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.115 Hearings—Public excluded when in the best interests of the child—Notes and records—Video recordings. (1) All hearings shall be public, and conducted at any time or place within the limits of the county, except if the judge finds that excluding the public is in the best interests of the child.

(2) Either parent, or the child's attorney or guardian ad litem, may move to close a hearing at any time. If the judge finds that it is in the best interests of the child the court shall exclude the public.

(3) If the public is excluded from the hearing, the following people may attend the closed hearing unless the judge finds it is not in the best interests of the child:

(a) The child's relatives;

(b) The child's foster parents if the child resides in foster care; and

(c) Any person requested by the parent.

(4) Stenographic notes or any device which accurately records the proceedings may be required as provided in other civil cases pursuant to RCW 2.32.200.

(5) Any video recording of the proceedings may be released pursuant to RCW 13.50.100, however, the video recording may not be televised, broadcast, or further disseminated to the public. [2003 c 228 § 1; 2000 c 122 § 12.]

13.34.130 Order of disposition for a dependent child, alternatives—Petition seeking termination of parent-child relationship—Contact with siblings—Placement with relatives. If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after consideration of the social study prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose those services, including housing assistance, that least interfere with family autonomy and are adequate to protect the child.

(b) Order the child to be removed from his or her home and into the custody, control, and care of a relative or the department or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a person who is: (i) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; and (ii) willing and available to care for the child.

(2) Placement of the child with a relative under this subsection shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer seri-

ous abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

(3) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.

(a) There shall be a presumption that such placement, contact, or visits are in the best interests of the child provided that:

(i) The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation pursuant to petitions filed under this chapter or the parents of a child for whom there is no jurisdiction are willing to agree; and

(ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(b) The court may also order placement, contact, or visitation of a child with a step-brother or step-sister provided that in addition to the factors in (a) of this subsection, the child has a relationship and is comfortable with the step-sibling.

(4) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the requirements of RCW 13.34.132 are met.

(5) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon cooperation by the relative with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's home, subject to review by the court. [2003 c 227 § 3; 2002 c 52 § 5; 2000 c 122 § 15. Prior: 1999 c 267 § 16; 1999 c 267 § 9; 1999 c 173 § 3; prior: 1998 c 314 § 2; 1998 c 130 § 2; 1997 c 280 § 1; prior: 1995 c 313 § 2; 1995 c 311 § 19; 1995 c 53 § 1; 1994 c 288 § 4; 1992 c 145 § 14; 1991 c 127 § 4; prior: 1990 c 284 § 32; 1990 c 246 § 5; 1989 1st ex.s. c 17 § 17; prior: 1988 c 194 § 1; 1988 c 190 § 2; 1988 c 189 § 2; 1984 c 188 § 4; prior: 1983 c 311 § 5; 1983 c 246 § 2; 1979 c 155 § 46; 1977 ex.s. c 291 § 41.]

Intent—2003 c 227: "It is the intent of the legislature to recognize the importance of emotional ties formed by siblings with each other, especially

in those circumstances which warrant court intervention into family relationships. It is the intent of the legislature to encourage the courts and public agencies which deal with families to acknowledge and give thoughtful consideration to the quality and nature of sibling relationships when intervening in family relationships. It is not the intent of the legislature to create legal obligations or responsibilities between siblings and other family members whether by blood or marriage, step families, foster families, or adopted families that do not already exist. Neither is it the intent of the legislature to mandate sibling placement, contact, or visitation if there is reasonable cause to believe that the health, safety, or welfare of a child or siblings would be jeopardized. Finally, it is not the intent of the legislature to manufacture or anticipate family relationships which do not exist at the time of the court intervention, or to disrupt already existing positive family relationships." [2003 c 227 § 1.]

Intent—2002 c 52: See note following RCW 13.34.025.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Severability—1999 c 173: See note following RCW 13.34.125.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Severability—1990 c 246: See note following RCW 13.34.060.

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.136 Permanency plan of care. (1) Whenever a child is ordered removed from the child's home, the agency charged with his or her care shall provide the court with:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to RCW 13.34.130(4), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the agency will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The agency plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(ii) The agency shall encourage the maximum parent and child and sibling contact possible, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation may be limited or denied

only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(4), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(2) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(3) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(3). [2003 c 227 § 4; 2002 c 52 § 6; 2000 c 122 § 18.]

Intent—2003 c 227: See note following RCW 13.34.130.

Intent—2002 c 52: See note following RCW 13.34.025.

13.34.138 Review hearings—Findings—Housing assistance. (1) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first, at a hearing in which it shall be determined whether court supervision should continue. The initial review hearing shall be an in-court review and shall be set six months from the beginning date of the placement episode or no more than ninety days from the entry of the disposition order, whichever comes first. The initial review hearing may be a permanency planning hearing when necessary to meet the time frames set forth in RCW 13.34.145(3) or 13.34.134. The review shall include findings regarding the agency and parental completion of disposition plan requirements, and if necessary, revised permanency time limits. This review shall consider both the agency's and parent's efforts that demonstrate consistent measurable progress over time in meeting the disposition plan requirements. The requirements for the initial review hearing, including the in-court requirement,

shall be accomplished within existing resources. The supervising agency shall provide a foster parent, preadoptive parent, or relative with notice of, and their right to an opportunity to be heard in, a review hearing pertaining to the child, but only if that person is currently providing care to that child at the time of the hearing. This section shall not be construed to grant party status to any person who has been provided an opportunity to be heard.

(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) If the child is not returned home, the court shall establish in writing:

(i) Whether reasonable services have been provided to or offered to the parties to facilitate reunion, specifying the services provided or offered;

(ii) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration and preference has been given to placement with the child's relatives;

(iii) Whether there is a continuing need for placement and whether the placement is appropriate;

(iv) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(v) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(vi) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(vii) Whether additional services, including housing assistance, are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered specifying such services; and

(viii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(c) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

(2) The court's ability to order housing assistance under RCW 13.34.130 and this section is: (a) Limited to cases in which homelessness or the lack of adequate and safe housing is the primary reason for an out-of-home placement; and (b) subject to the availability of funds appropriated for this specific purpose.

(3) The court shall consider the child's relationship with siblings in accordance with RCW 13.34.130(3). [2003 c 227 § 5; 2001 c 332 § 5; 2000 c 122 § 19.]

Intent—2003 c 227: See note following RCW 13.34.130.

13.34.145 Permanency plan required—Permanency planning hearing—Time limits—Review hearing—Petition for termination of parental rights—Guardianship petition—Agency responsibility to provide services to

parents—Due process rights. (1) A permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(a) Whenever a child is placed in out-of-home care pursuant to RCW 13.34.130, the agency that has custody of the child shall provide the court with a written permanency plan of care directed towards securing a safe, stable, and permanent home for the child as soon as possible. The plan shall identify one of the following outcomes as the primary goal and may also identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; a responsible living skills program; and independent living, if appropriate and if the child is age sixteen or older and the provisions of subsection (2) of this section are met.

(b) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(d) For purposes related to permanency planning:

(i) "Guardianship" means a dependency guardianship, a legal guardianship pursuant to chapter 11.88 RCW, or equivalent laws of another state or a federally recognized Indian tribe.

(ii) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(iii) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or of a federally recognized Indian tribe.

(2) Whenever a permanency plan identifies independent living as a goal, the plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living. Before the court approves independent living as a permanency plan of care, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial, personal, social, educational, and nonfinancial affairs. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(3) A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree, guardianship

order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(4) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve months, as provided in subsection (3) of this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree, guardianship order, or a permanent custody order is entered, or the dependency is dismissed.

(5) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(6) At the permanency planning hearing, the court shall enter findings as required by RCW 13.34.138 and shall review the permanency plan prepared by the agency. If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall also enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280 and 13.34.138. If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate. In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. In all cases, the court shall:

(a)(i) Order the permanency plan prepared by the agency to be implemented; or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(7) If the court orders the child returned home, casework supervision shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.138, and the court shall determine the need for continued intervention.

(8) The juvenile court may hear a petition for permanent legal custody when: (a) The court has ordered implementation of a permanency plan that includes permanent legal custody; and (b) the party pursuing the permanent legal custody is the party identified in the permanency plan as the prospective legal custodian. During the pendency of such proceeding, the court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At

the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(9) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when the requirements of subsection (8) of this section are met.

(10) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

(11) Except as provided in RCW 13.34.235, the status of all dependent children shall continue to be reviewed by the court at least once every six months, in accordance with RCW 13.34.138, until the dependency is dismissed. Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

(12) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

(13) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights. The court shall consider the child's relationships with siblings in accordance with RCW 13.34.130.

(14) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter. [2003 c 227 § 6. Prior: 2000 c 135 § 4; 2000 c 122 § 20; 1999 c 267 § 17; prior: 1998 c 314 § 3; 1998 c 130 § 3; prior: 1995 c 311 § 20; 1995 c 53 § 2; 1994 c 288 § 5; 1993 c 412 § 1; 1989 1st ex.s. c 17 § 18; 1988 c 194 § 3.]

Intent—2003 c 227: See note following RCW 13.34.130.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

13.34.200 Order terminating parent and child relationship—Rights of parties when granted. (1) Upon the termination of parental rights pursuant to RCW 13.34.180, all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent shall be severed and terminated and the parent shall have no standing to appear at any further legal proceedings concerning the child: PROVIDED, That any support obligation existing prior to the effective date of the order terminating parental rights shall

not be severed or terminated. The rights of one parent may be terminated without affecting the rights of the other parent and the order shall so state.

(2) An order terminating the parent and child relationship shall not disentitle a child to any benefit due the child from any third person, agency, state, or the United States, nor shall any action under this chapter be deemed to affect any rights and benefits that an Indian child derives from the child's descent from a member of a federally recognized Indian tribe.

(3) An order terminating the parent-child relationship shall include a statement addressing the status of the child's sibling relationships and the nature and extent of sibling placement, contact, or visits. [2003 c 227 § 7; 2000 c 122 § 27; 1977 ex.s. c 291 § 48.]

Intent—2003 c 227: See note following RCW 13.34.130.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.210 Order terminating parent and child relationship—Custody where no one has parental rights. If, upon entering an order terminating the parental rights of a parent, there remains no parent having parental rights, the court shall commit the child to the custody of the department or to a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption. If an adoptive home has not been identified, the department or agency shall place the child in a licensed foster home, or take other suitable measures for the care and welfare of the child. The custodian shall have authority to consent to the adoption of the child consistent with chapter 26.33 RCW, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary surgical and other medical treatment for the child, and to consent to such other matters as might normally be required of the parent of the child.

If a child has not been adopted within six months after the date of the order and a guardianship of the child under RCW 13.34.231 or chapter 11.88 RCW, or a permanent custody order under chapter 26.10 RCW, has not been entered by the court, the court shall review the case every six months until a decree of adoption is entered except for those cases which are reviewed by a citizen review board under chapter 13.70 RCW. The supervising agency shall take reasonable steps to ensure that the child maintains relationships with siblings as provided in RCW 13.34.130(3) and shall report to the court the status and extent of such relationships. [2003 c 227 § 8; 2000 c 122 § 28; 1991 c 127 § 6; 1988 c 203 § 2; 1979 c 155 § 49; 1977 ex.s. c 291 § 49.]

Intent—2003 c 227: See note following RCW 13.34.130.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.260 Foster home placement—Parental preferences—Foster parent contact with birth parents encouraged. (1) In an attempt to minimize the inherent intrusion in the lives of families involved in the foster care system and to maintain parental authority where appropriate, the department, absent good cause, shall follow the wishes of the natural parent regarding the placement of the child. Preferences

such as family constellation, sibling relationships, ethnicity, and religion shall be considered when matching children to foster homes. Parental authority is appropriate in areas that are not connected with the abuse or neglect that resulted in the dependency and shall be integrated through the foster care team.

(2) When a child is placed in out-of-home care foster parents are encouraged to:

(a) Provide consultation to the foster care team based upon their experience with the child placed in their care;

(b) Assist the birth parents by helping them understand their child's needs and correlating appropriate parenting responses;

(c) Participate in educational activities, and enter into community-building activities with birth families and other foster families;

(d) Transport children to family time visits with birth families and assist children and their families in maximizing the purposefulness of family time.

(3) For purposes of this section, "foster care team" means the foster parent currently providing care, the currently assigned social worker, and the parent or parents; and "birth family" means the persons described in RCW 74.15.020(2)(a). [2003 c 226 § 2; 2002 c 52 § 7; 2000 c 122 § 32; 1990 c 284 § 25.]

Findings—Intent—2003 c 226: "The legislature finds that a large group of children spend a significant part of their lives in foster care. Each individual connected to a child in an out-of-home placement must have an abiding appreciation of the seriousness of the child's separation from his or her family and the past, whether that separation is short, long, or permanent in nature. It is the intent of the legislature to recognize and honor the history and the family connections that each child brings to an out-of-home placement.

The legislature finds that creating and sanctioning a connection between a child's birth parents and foster family, when appropriate, can result in better relationships among birth families, children, foster families, and social workers. Creating and sanctioning this connection can result in greater foster placement stability and fewer disruptions for children, as well as greater satisfaction for foster parents and social workers." [2003 c 226 § 1.]

Intent—2002 c 52: See note following RCW 13.34.025.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Chapter 13.40 RCW

JUVENILE JUSTICE ACT OF 1977

Sections

- 13.40.030 Security guidelines—Legislative review—Limitations on permissible ranges of confinement.
- 13.40.0357 Juvenile offender sentencing standards. (*Effective until July 1, 2004.*)
- 13.40.0357 Juvenile offender sentencing standards. (*Effective July 1, 2004.*)
- 13.40.070 Complaints—Screening—Filing information—Diversion—Modification of community supervision—Notice to parent or guardian—Probation counselor acting for prosecutor—Referral to mediation or reconciliation programs. (*Effective July 1, 2004.*)
- 13.40.160 Disposition order—Court's action prescribed—Disposition outside standard range—Right of appeal—Special sex offender disposition alternative. (*Effective until July 1, 2004.*)
- 13.40.160 Disposition order—Court's action prescribed—Disposition outside standard range—Right of appeal—Special sex offender disposition alternative. (*Effective July 1, 2004.*)
- 13.40.165 Chemical dependency disposition alternative.
- 13.40.167 Mental health disposition alternative.

- 13.40.169 Community commitment disposition alternative—Pilot project. (*Expires July 1, 2005.*)
- 13.40.193 Firearms—Length of confinement. (*Effective July 1, 2004.*)
- 13.40.265 Firearm, alcohol, and drug violations. (*Effective July 1, 2004.*)
- 13.40.430 Disparity in disposition of juvenile offenders—Data collection.
- 13.40.460 Juvenile rehabilitation programs—Administration.

13.40.030 Security guidelines—Legislative review—Limitations on permissible ranges of confinement. (1)

The secretary shall submit guidelines pertaining to the nature of the security to be imposed on youth placed in his or her custody based on the age, offense(s), and criminal history of the juvenile offender. Such guidelines shall be submitted to the legislature for its review no later than November 1st of each year. The department shall include security status definitions in the security guidelines it submits to the legislature pursuant to this section.

(2) The permissible ranges of confinement resulting from a finding of manifest injustice under RCW 13.40.0357 are subject to the following limitations:

(a) Where the maximum term in the range is ninety days or less, the minimum term in the range may be no less than fifty percent of the maximum term in the range;

(b) Where the maximum term in the range is greater than ninety days but not greater than one year, the minimum term in the range may be no less than seventy-five percent of the maximum term in the range; and

(c) Where the maximum term in the range is more than one year, the minimum term in the range may be no less than eighty percent of the maximum term in the range. [2003 c 207 § 5; 1996 c 232 § 5; 1989 c 407 § 3; 1985 c 73 § 1; 1983 c 191 § 6; 1981 c 299 § 5; 1979 c 155 § 55; 1977 ex.s. c 291 § 57.]

Effective dates—1996 c 232: See note following RCW 9.94A.850.

Legislative ratification—1989 c 271: "The legislature ratifies the juvenile disposition standards commission guidelines submitted to the 1989 legislature and endorses the action to increase penalties for juvenile drug offenders." [1989 c 271 § 602.]

Effective date—1985 c 73: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1985." [1985 c 73 § 3.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.0357 Juvenile offender sentencing standards. (Effective until July 1, 2004.)

DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
Arson and Malicious Mischief		
A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D

- D Malicious Mischief 3 (<\$50 is E class) (9A.48.090) E
- E Tampering with Fire Alarm Apparatus (9.40.100) E
- A Possession of Incendiary Device (9.40.120) B+

Assault and Other Crimes Involving Physical Harm

- A Assault 1 (9A.36.011) B+
- B+ Assault 2 (9A.36.021) C+
- C+ Assault 3 (9A.36.031) D+
- D+ Assault 4 (9A.36.041) E
- B+ Drive-By Shooting (9A.36.045) C+
- D+ Reckless Endangerment (9A.36.050) E
- C+ Promoting Suicide Attempt (9A.36.060) D+
- D+ Coercion (9A.36.070) E
- C+ Custodial Assault (9A.36.100) D+

Burglary and Trespass

- B+ Burglary 1 (9A.52.020) C+
- B Residential Burglary (9A.52.025) C
- B Burglary 2 (9A.52.030) C
- D Burglary Tools (Possession of) (9A.52.060) E
- D Criminal Trespass 1 (9A.52.070) E
- E Criminal Trespass 2 (9A.52.080) E
- C Mineral Trespass (78.44.330) C
- C Vehicle Prowling 1 (9A.52.095) D
- D Vehicle Prowling 2 (9A.52.100) E

Drugs

- E Possession/Consumption of Alcohol (66.44.270) E
- C Illegally Obtaining Legend Drug (69.41.020) D
- C+ Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030) D+
- E Possession of Legend Drug (69.41.030) E
- B+ Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401(a)(1) (i) or (ii)) B+
- C Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(a)(1)(iii)) C
- E Possession of Marijuana <40 grams (69.50.401(e)) E
- C Fraudulently Obtaining Controlled Substance (69.50.403) C
- C+ Sale of Controlled Substance for Profit (69.50.410) C+
- E Unlawful Inhalation (9.47A.020) E
- B Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.401(b)(1) (i) or (ii)) B
- C Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (69.50.401(b)(1) (iii), (iv), (v)) C
- C Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.401(d)) C
- C Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.401(c)) C

Firearms and Weapons	
B	Theft of Firearm (9A.56.300)
B	Possession of Stolen Firearm (9A.56.310)
E	Carrying Loaded Pistol Without Permit (9.41.050)
C	Possession of Firearms by Minor (<18) (9.41.040(1)(b)(iii))
D+	Possession of Dangerous Weapon (9.41.250)
D	Intimidating Another Person by use of Weapon (9.41.270)
Homicide	
A+	Murder 1 (9A.32.030)
A+	Murder 2 (9A.32.050)
B+	Manslaughter 1 (9A.32.060)
C+	Manslaughter 2 (9A.32.070)
B+	Vehicular Homicide (46.61.520)
Kidnapping	
A	Kidnap 1 (9A.40.020)
B+	Kidnap 2 (9A.40.030)
C+	Unlawful Imprisonment (9A.40.040)
Obstructing Governmental Operation	
D	Obstructing a Law Enforcement Officer (9A.76.020)
E	Resisting Arrest (9A.76.040)
B	Introducing Contraband 1 (9A.76.140)
C	Introducing Contraband 2 (9A.76.150)
E	Introducing Contraband 3 (9A.76.160)
B+	Intimidating a Public Servant (9A.76.180)
B+	Intimidating a Witness (9A.72.110)
Public Disturbance	
C+	Riot with Weapon (9A.84.010)
D+	Riot Without Weapon (9A.84.010)
E	Failure to Disperse (9A.84.020)
E	Disorderly Conduct (9A.84.030)
Sex Crimes	
A	Rape 1 (9A.44.040)
A-	Rape 2 (9A.44.050)
C+	Rape 3 (9A.44.060)
A-	Rape of a Child 1 (9A.44.073)
B+	Rape of a Child 2 (9A.44.076)
B	Incest 1 (9A.64.020(1))
C	Incest 2 (9A.64.020(2))
D+	Indecent Exposure (Victim <14) (9A.88.010)
E	Indecent Exposure (Victim 14 or over) (9A.88.010)
B+	Promoting Prostitution 1 (9A.88.070)
C+	Promoting Prostitution 2 (9A.88.080)
E	O & A (Prostitution) (9A.88.030)
B+	Indecent Liberties (9A.44.100)
A-	Child Molestation 1 (9A.44.083)
B	Child Molestation 2 (9A.44.086)
Theft, Robbery, Extortion, and Forgery	
B	Theft 1 (9A.56.030)
C	Theft 2 (9A.56.040)
D	Theft 3 (9A.56.050)
B	Theft of Livestock (9A.56.080)

C	Forgery (9A.60.020)	D
A	Robbery 1 (9A.56.200)	B+
B+	Robbery 2 (9A.56.210)	C+
B+	Extortion 1 (9A.56.120)	C+
C+	Extortion 2 (9A.56.130)	D+
C	Identity Theft 1 (9.35.020(2)(a))	D
D	Identity Theft 2 (9.35.020(2)(b))	E
D	Improperly Obtaining Financial Information (9.35.010)	E
B	Possession of Stolen Property 1 (9A.56.150)	C
C	Possession of Stolen Property 2 (9A.56.160)	D
D	Possession of Stolen Property 3 (9A.56.170)	E
C	Taking Motor Vehicle Without Permission 1 and 2 (9A.56.070 (1) and (2))	D

Motor Vehicle Related Crimes

E	Driving Without a License (46.20.005)	E
B+	Hit and Run - Death (46.52.020(4)(a))	C+
C	Hit and Run - Injury (46.52.020(4)(b))	D
D	Hit and Run-Attended (46.52.020(5))	E
E	Hit and Run-Unattended (46.52.010)	E
C	Vehicular Assault (46.61.522)	D
C	Attempting to Elude Pursuing Police Vehicle (46.61.024)	D
E	Reckless Driving (46.61.500)	E
D	Driving While Under the Influence (46.61.502 and 46.61.504)	E

Other

B	Bomb Threat (9.61.160)	C
C	Escape 1 ¹ (9A.76.110)	C
C	Escape 2 ¹ (9A.76.120)	C
D	Escape 3 (9A.76.130)	E
E	Obscene, Harassing, Etc., Phone Calls (9.61.230)	E
A	Other Offense Equivalent to an Adult Class A Felony	B+
B	Other Offense Equivalent to an Adult Class B Felony	C
C	Other Offense Equivalent to an Adult Class C Felony	D
D	Other Offense Equivalent to an Adult Gross Misdemeanor	E
E	Other Offense Equivalent to an Adult Misdemeanor	E
V	Violation of Order of Restitution, Community Supervision, or Confinement (13.40.200) ²	V

¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

1st escape or attempted escape during 12-month period - 4 weeks confinement

2nd escape or attempted escape during 12-month period - 8 weeks confinement

3rd and subsequent escape or attempted escape during 12-month period - 12 weeks confinement

²If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

JUVENILE SENTENCING STANDARDS

This schedule must be used for juvenile offenders. The court may select sentencing option A, B, C, D, or RCW 13.40.167.

**OPTION A
JUVENILE OFFENDER
SENTENCING GRID
STANDARD RANGE**

A+	180 WEEKS TO AGE 21 YEARS						
A	103 WEEKS TO 129 WEEKS						
A-	15-36 WEEKS EXCEPT 30-40 WEEKS FOR 15-17 YEAR OLDS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS			
Current Offense Category	B+	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS		
	B	LOCAL SANCTIONS (LS)	15-36 WEEKS	52-65 WEEKS			
	C+	LS	15-36 WEEKS				
	C	LS		15-36 WEEKS			
	D+	LS	Local Sanctions: 0 to 30 Days 0 to 12 Months Community Supervision				
	D	LS	0 to 150 Hours Community Restitution \$0 to \$500 Fine				
	E	LS					
			0	1	2	3	4 or more
			PRIOR ADJUDICATIONS				

NOTE: References in the grid to days or weeks mean periods of confinement.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

OR

**OPTION B
SUSPENDED DISPOSITION ALTERNATIVE**

(1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on

condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee.

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

(3) An offender is ineligible for the suspended disposition option under this section if the offender is:

(a) Adjudicated of an A+ offense;

(b) Fourteen years of age or older and is adjudicated of one or more of the following offenses:

(i) A class A offense, or an attempt, conspiracy, or solicitation to commit a class A offense;

(ii) Manslaughter in the first degree (RCW 9A.32.060);

or

(iii) Assault in the second degree (RCW 9A.36.021), extortion in the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential burglary (RCW 9A.52.025), burglary in the second degree (RCW 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a witness (RCW 9A.72.110), violation of the uniform controlled substances act (*RCW 69.50.401(a)(1) (i) or (ii)), or manslaughter 2 (RCW 9A.32.070), when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon;

(c) Ordered to serve a disposition for a firearm violation under RCW 13.40.193; or

(d) Adjudicated of a sex offense as defined in RCW 9.94A.030.

OR

**OPTION C
CHEMICAL DEPENDENCY
DISPOSITION ALTERNATIVE**

If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose a disposition under RCW 13.40.160(4) and 13.40.165.

OR

**OPTION D
MANIFEST INJUSTICE**

If the court determines that a disposition under option A, B, or C would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2). [2003 c 378 § 2; 2003 c 335 § 6. Prior: 2002 c 324 § 3; 2002 c 175 § 20; 2001 c 217 § 13; 2000 c 66 § 3; 1998 c 290 § 5; prior: 1997 c 338 § 12; (1997 c 338 § 11 expired July 1, 1998); 1997 c 66 § 6; 1996 c 205 § 6; 1995 c 395 § 3; 1994 sp.s. c 7 § 522; 1989 c 407 § 7.]

Reviser's note: *(1) RCW 69.50.401 was amended by 2003 c 53 § 331, effective July 1, 2004, changing subsection (a)(1)(i) and (ii) to subsection

(2)(a) and (b).

(2) This section was amended by 2003 c 335 § 6 and by 2003 c 378 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Study and report—2002 c 324: See note following RCW 9A.56.070.

Effective date—2002 c 175: See note following RCW 7.80.130.

Captions not law—2001 c 217: See note following RCW 9.35.005.

Application—Effective date—Severability—1998 c 290: See notes following RCW 69.50.401.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Evaluation—Report—1997 c 338: "The legislature finds it critical to evaluate the effectiveness of the revisions made in this act to juvenile sentencing for purposes of measuring improvements in public safety and reduction of recidivism.

To accomplish this evaluation, the Washington state institute for public policy shall conduct a study of the sentencing revisions. The study shall: (1) Be conducted starting January 1, 2001; (2) examine whether the revisions have affected the rate of initial offense commission and recidivism; (3) determine the impacts of the revisions by age, race, and gender impacts of the revisions; (4) compare the utilization and effectiveness of sentencing alternatives and manifest injustice determinations before and after the revisions; and (5) examine the impact and effectiveness of changes made in the exclusive original jurisdiction of juvenile court over juvenile offenders.

The institute shall report the results of the study to the governor and legislature not later than July 1, 2002." [1997 c 338 § 59.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

13.40.0357 Juvenile offender sentencing standards. (Effective July 1, 2004.)

DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
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Arson and Malicious Mischief

A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (9A.48.090(2) (a) and (c))	E
E	Malicious Mischief 3 (9A.48.090(2)(b))	E
E	Tampering with Fire Alarm Apparatus (9.40.100)	E
E	Tampering with Fire Alarm Apparatus with Intent to Commit Arson (9.40.105)	E
A	Possession of Incendiary Device (9.40.120)	B+

Assault and Other Crimes Involving Physical Harm

A	Assault 1 (9A.36.011)	B+
B+	Assault 2 (9A.36.021)	C+
C+	Assault 3 (9A.36.031)	D+
D+	Assault 4 (9A.36.041)	E
B+	Drive-By Shooting (9A.36.045)	C+
D+	Reckless Endangerment (9A.36.050)	E
C+	Promoting Suicide Attempt (9A.36.060)	D+
D+	Coercion (9A.36.070)	E

C+	Custodial Assault (9A.36.100)	D+
Burglary and Trespass		
B+	Burglary 1 (9A.52.020)	C+
B	Residential Burglary (9A.52.025)	C
B	Burglary 2 (9A.52.030)	C
D	Burglary Tools (Possession of) (9A.52.060)	E
D	Criminal Trespass 1 (9A.52.070)	E
E	Criminal Trespass 2 (9A.52.080)	E
C	Mineral Trespass (78.44.330)	C
C	Vehicle Prowling 1 (9A.52.095)	D
D	Vehicle Prowling 2 (9A.52.100)	E

Drugs

E	Possession/Consumption of Alcohol (66.44.270)	E
C	Illegally Obtaining Legend Drug (69.41.020)	D
C+	Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030(2)(a))	D+
E	Possession of Legend Drug (69.41.030(2)(b))	E
B+	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401(2) (a) or (b))	B+
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(2)(c))	C
E	Possession of Marihuana <40 grams (69.50.4014)	E
C	Fraudulently Obtaining Controlled Substance (69.50.403)	C
C+	Sale of Controlled Substance for Profit (69.50.410)	C+
E	Unlawful Inhalation (9.47A.020)	E
B	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.4011(2) (a) or (b))	B
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (69.50.4011(2) (c), (d), or (e))	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4013)	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4012)	C

Firearms and Weapons

B	Theft of Firearm (9A.56.300)	C
B	Possession of Stolen Firearm (9A.56.310)	C
E	Carrying Loaded Pistol Without Permit (9.41.050)	E
C	Possession of Firearms by Minor (<18) (9.41.040(2)(a)(iii))	C
D+	Possession of Dangerous Weapon (9.41.250)	E
D	Intimidating Another Person by use of Weapon (9.41.270)	E

Homicide

A+	Murder 1 (9A.32.030)	A
A+	Murder 2 (9A.32.050)	B+

B+	Manslaughter 1 (9A.32.060)	C+
C+	Manslaughter 2 (9A.32.070)	D+
B+	Vehicular Homicide (46.61.520)	C+
Kidnapping		
A	Kidnap 1 (9A.40.020)	B+
B+	Kidnap 2 (9A.40.030)	C+
C+	Unlawful Imprisonment (9A.40.040)	D+
Obstructing Governmental Operation		
D	Obstructing a Law Enforcement Officer (9A.76.020)	E
E	Resisting Arrest (9A.76.040)	E
B	Introducing Contraband 1 (9A.76.140)	C
C	Introducing Contraband 2 (9A.76.150)	D
E	Introducing Contraband 3 (9A.76.160)	E
B+	Intimidating a Public Servant (9A.76.180)	C+
B+	Intimidating a Witness (9A.72.110)	C+
Public Disturbance		
C+	Riot with Weapon (9A.84.010(2)(b))	D+
D+	Riot Without Weapon (9A.84.010(2)(a))	E
E	Failure to Disperse (9A.84.020)	E
E	Disorderly Conduct (9A.84.030)	E
Sex Crimes		
A	Rape 1 (9A.44.040)	B+
A-	Rape 2 (9A.44.050)	B+
C+	Rape 3 (9A.44.060)	D+
A-	Rape of a Child 1 (9A.44.073)	B+
B+	Rape of a Child 2 (9A.44.076)	C+
B	Incest 1 (9A.64.020(1))	C
C	Incest 2 (9A.64.020(2))	D
D+	Indecent Exposure (Victim <14) (9A.88.010)	E
E	Indecent Exposure (Victim 14 or over) (9A.88.010)	E
B+	Promoting Prostitution 1 (9A.88.070)	C+
C+	Promoting Prostitution 2 (9A.88.080)	D+
E	O & A (Prostitution) (9A.88.030)	E
B+	Indecent Liberties (9A.44.100)	C+
A-	Child Molestation 1 (9A.44.083)	B+
B	Child Molestation 2 (9A.44.086)	C+
Theft, Robbery, Extortion, and Forgery		
B	Theft 1 (9A.56.030)	C
C	Theft 2 (9A.56.040)	D
D	Theft 3 (9A.56.050)	E
B	Theft of Livestock 1 and 2 (9A.56.080 and 9A.56.083)	C
C	Forgery (9A.60.020)	D
A	Robbery 1 (9A.56.200)	B+
B+	Robbery 2 (9A.56.210)	C+
B+	Extortion 1 (9A.56.120)	C+
C+	Extortion 2 (9A.56.130)	D+
C	Identity Theft 1 (9.35.020(2))	D
D	Identity Theft 2 (9.35.020(3))	E
D	Improperly Obtaining Financial Information (9.35.010)	E
B	Possession of Stolen Property 1 (9A.56.150)	C
C	Possession of Stolen Property 2 (9A.56.160)	D
D	Possession of Stolen Property 3 (9A.56.170)	E

C	Taking Motor Vehicle Without Permission 1 and 2 (9A.56.070 and 9A.56.075)	D
Motor Vehicle Related Crimes		
E	Driving Without a License (46.20.005)	E
B+	Hit and Run - Death (46.52.020(4)(a))	C+
C	Hit and Run - Injury (46.52.020(4)(b))	D
D	Hit and Run-Attended (46.52.020(5))	E
E	Hit and Run-Unattended (46.52.010)	E
C	Vehicular Assault (46.61.522)	D
C	Attempting to Elude Pursuing Police Vehicle (46.61.024)	D
E	Reckless Driving (46.61.500)	E
D	Driving While Under the Influence (46.61.502 and 46.61.504)	E
Other		
B	Bomb Threat (9.61.160)	C
C	Escape 1 ¹ (9A.76.110)	C
C	Escape 2 ¹ (9A.76.120)	C
D	Escape 3 (9A.76.130)	E
E	Obscene, Harassing, Etc., Phone Calls (9.61.230)	E
A	Other Offense Equivalent to an Adult Class A Felony	B+
B	Other Offense Equivalent to an Adult Class B Felony	C
C	Other Offense Equivalent to an Adult Class C Felony	D
D	Other Offense Equivalent to an Adult Gross Misdemeanor	E
E	Other Offense Equivalent to an Adult Misdemeanor	E
V	Violation of Order of Restitution, Community Supervision, or Confinement (13.40.200) ²	V

¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

- 1st escape or attempted escape during 12-month period - 4 weeks confinement
- 2nd escape or attempted escape during 12-month period - 8 weeks confinement
- 3rd and subsequent escape or attempted escape during 12-month period - 12 weeks confinement

²If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

JUVENILE SENTENCING STANDARDS

This schedule must be used for juvenile offenders. The court may select sentencing option A, B, C, D, or RCW 13.40.167.

**OPTION A
JUVENILE OFFENDER
SENTENCING GRID
STANDARD RANGE**

A+	180 WEEKS TO AGE 21 YEARS			
A	103 WEEKS TO 129 WEEKS			
A-	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS

		EXCEPT 30-40 WEEKS FOR 15-17 YEAR OLDS			
Current Offense Category	B+	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS
	B	LOCAL SANCTIONS (LS)	15-36 WEEKS		52-65 WEEKS
	C+	LS		15-36 WEEKS	
	C	LS			15-36 WEEKS
	D+	LS	Local Sanctions: 0 to 30 Days 0 to 12 Months Community Supervision 0 to 150 Hours Community Restitution \$0 to \$500 Fine		
	D	LS			
	E	LS			
		0	1	2	3
		PRIOR ADJUDICATIONS			
					4 or more

NOTE: References in the grid to days or weeks mean periods of confinement.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

OR

**OPTION B
SUSPENDED DISPOSITION ALTERNATIVE**

(1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee.

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

(3) An offender is ineligible for the suspended disposition option under this section if the offender is:

(a) Adjudicated of an A+ offense;

(b) Fourteen years of age or older and is adjudicated of one or more of the following offenses:

(i) A class A offense, or an attempt, conspiracy, or solicitation to commit a class A offense;

(ii) Manslaughter in the first degree (RCW 9A.32.060);
or

(iii) Assault in the second degree (RCW 9A.36.021), extortion in the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential burglary (RCW 9A.52.025), burglary in the second degree (RCW 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a witness (RCW 9A.72.110), violation of the uniform controlled substances act (*RCW 69.50.401(a)(1) (i) or (ii)), or manslaughter 2 (RCW 9A.32.070), when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon;

(c) Ordered to serve a disposition for a firearm violation under RCW 13.40.193; or

(d) Adjudicated of a sex offense as defined in RCW 9.94A.030.

OR

**OPTION C
CHEMICAL DEPENDENCY
DISPOSITION ALTERNATIVE**

If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose a disposition under RCW 13.40.160(4) and 13.40.165.

OR

**OPTION D
MANIFEST INJUSTICE**

If the court determines that a disposition under option A, B, or C would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2). [2003 c 378 § 2; 2003 c 335 § 6; 2003 c 53 § 97. Prior: 2002 c 324 § 3; 2002 c 175 § 20; 2001 c 217 § 13; 2000 c 66 § 3; 1998 c 290 § 5; prior: 1997 c 338 § 12; (1997 c 338 § 11 expired July 1, 1998); 1997 c 66 § 6; 1996 c 205 § 6; 1995 c 395 § 3; 1994 sp.s. c 7 § 522; 1989 c 407 § 7.]

Reviser's note: *(1) RCW 69.50.401 was amended by 2003 c 53 § 331, effective July 1, 2004, changing subsection (a)(1)(i) and (ii) to subsection (2)(a) and (b).

(2) This section was amended by 2003 c 53 § 97, 2003 c 335 § 6, and by 2003 c 378 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Study and report—2002 c 324: See note following RCW 9A.56.070.

Effective date—2002 c 175: See note following RCW 7.80.130.

Captions not law—2001 c 217: See note following RCW 9.35.005.

Application—Effective date—Severability—1998 c 290: See notes following RCW 69.50.401.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Evaluation—Report—1997 c 338: "The legislature finds it critical to evaluate the effectiveness of the revisions made in this act to juvenile sentencing for purposes of measuring improvements in public safety and reduction of recidivism.

To accomplish this evaluation, the Washington state institute for public policy shall conduct a study of the sentencing revisions. The study shall: (1) Be conducted starting January 1, 2001; (2) examine whether the revisions have affected the rate of initial offense commission and recidivism; (3) determine the impacts of the revisions by age, race, and gender impacts of the revisions; (4) compare the utilization and effectiveness of sentencing alternatives and manifest injustice determinations before and after the revisions; and (5) examine the impact and effectiveness of changes made in the exclusive original jurisdiction of juvenile court over juvenile offenders.

The institute shall report the results of the study to the governor and legislature not later than July 1, 2002." [1997 c 338 § 59.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

13.40.070 Complaints—Screening—Filing information—Diversion—Modification of community supervision—Notice to parent or guardian—Probation counselor acting for prosecutor—Referral to mediation or reconciliation programs. (Effective July 1, 2004.) (1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

(a) The alleged facts bring the case within the jurisdiction of the court; and

(b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1)(a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (7) of this section. If the prosecutor finds that the requirements of subsection (1)(a) and (b) of this section are not met, the prosecutor shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

(4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

(5) Where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, a class C felony listed in RCW 9.94A.411(2) as a crime against persons or listed in RCW 9A.46.060 as a crime of harassment, or a class C felony that is a violation of RCW 9.41.080 or 9.41.040(2)(a)(iii); or

(b) An alleged offender is accused of a felony and has a criminal history of any felony, or at least two gross misdemeanors, or at least two misdemeanors; or

(c) An alleged offender has previously been committed to the department; or

(d) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion; or

(e) An alleged offender has two or more diversion agreements on the alleged offender's criminal history; or

(f) A special allegation has been filed that the offender or an accomplice was armed with a firearm when the offense was committed.

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender's first offense or violation. If the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (7) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

(8) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversion interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile. Where a case involves victims of crimes against persons or victims whose property has not been recovered at the time a juvenile is referred to a diversion unit, the victim shall be notified of the referral and informed how to contact the unit.

(9) The responsibilities of the prosecutor under subsections (1) through (8) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints.

(10) The prosecutor, juvenile court probation counselor, or diversion unit may, in exercising their authority under this section or RCW 13.40.080, refer juveniles to mediation or victim offender reconciliation programs. Such mediation or victim offender reconciliation programs shall be voluntary for victims. [2003 c 53 § 98; 2001 c 175 § 2; 1997 c 338 § 17; 1994 sp.s. c 7 § 543; 1992 c 205 § 107; 1989 c 407 § 9; 1983 c 191 § 18; 1981 c 299 § 7; 1979 c 155 § 60; 1977 ex.s. c 291 § 61.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Application—1994 sp.s. c 7 §§ 540-545: See note following RCW 13.50.010.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.160 Disposition order—Court's action prescribed—Disposition outside standard range—Right of appeal—Special sex offender disposition alternative. (Effective until July 1, 2004.) (1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.

(a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall impose a determinate disposition within the standard ranges, except as provided in subsection (2), (3), (4), (5), or (6) of this section. The disposition may be comprised of one or more local sanctions.

(b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsection (2), (3), (4), (5), or (6) of this section.

(2) If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option D of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

(3) When a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of problems in addition to alleged deviant behaviors, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(a)(i) Frequency and type of contact between the offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions, that such disposition would cause a manifest injustice, the court shall impose a disposition under option D, and the court may suspend the execution of the disposition and place the offender on community supervision for at least two years. As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

(b)(i) Devote time to a specific education, employment, or occupation;

(ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;

(iii) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;

(iv) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;

(v) Report as directed to the court and a probation counselor;

(vi) Pay all court-ordered legal financial obligations, perform community restitution, or any combination thereof;

(vii) Make restitution to the victim for the cost of any counseling reasonably related to the offense;

(viii) Comply with the conditions of any court-ordered probation bond; or

(ix) The court shall order that the offender may not attend the public or approved private elementary, middle, or high school attended by the victim or the victim's siblings.

The parents or legal guardians of the offender are responsible for transportation or other costs associated with the offender's change of school that would otherwise be paid by the school district. The court shall send notice of the disposition and restriction on attending the same school as the victim or victim's siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the approved private schools and the public school district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.

The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

Except as provided in this subsection (3), after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW. A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (3) and the rules adopted by the department of health.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days' confinement for violating conditions of the disposition. The court may order both execution of the disposition and up to thirty days' confinement for the violation of the conditions of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

A disposition entered under this subsection (3) is not appealable under RCW 13.40.230.

(4) If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose the disposition alternative under RCW 13.40.165.

(5) If a juvenile is subject to a commitment of 15 to 65 weeks of confinement, the court may impose the disposition alternative under RCW 13.40.167.

(6) When the offender is subject to a standard range commitment of 15 to 36 weeks and is ineligible for a suspended disposition alternative, a manifest injustice disposition below the standard range, special sex offender disposition alternative, chemical dependency disposition alternative, or mental health disposition alternative, the court in a county with a pilot program under RCW 13.40.169 may impose the disposition alternative under RCW 13.40.169.

(7) RCW 13.40.193 shall govern the disposition of any juvenile adjudicated of possessing a firearm in violation of RCW 9.41.040(1)(b)(iii) or any crime in which a special finding is entered that the juvenile was armed with a firearm.

(8) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(9) Except as provided under subsection (3), (4), (5), or (6) of this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the court shall not suspend or defer the imposition or the execution of the disposition.

(10) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense. [2003 c 378 § 3; 2002 c 175 § 22; 1999 c 91 § 2. Prior: 1997 c 338 § 25; 1997 c 265 § 1; 1995 c 395 § 7; 1994 sp.s. c 7 § 523; 1992 c 45 § 6; 1990 c 3 § 302; 1989 c 407 § 4; 1983 c 191 § 8; 1981 c 299 § 13; 1979 c 155 § 68; 1977 ex.s. c 291 § 70.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Severability—1997 c 265: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 265 § 9.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Severability—Application—1992 c 45: See notes following RCW 9.94A.840.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.160 Disposition order—Court's action prescribed—Disposition outside standard range—Right of appeal—Special sex offender disposition alternative. (Effective July 1, 2004.) (1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.

(a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall impose a determinate disposition within the standard ranges, except as provided in subsection (2), (3), (4), (5), or (6) of this section. The disposition may be comprised of one or more local sanctions.

(b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsection (2), (3), (4), (5), or (6) of this section.

(2) If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option D of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

(3) When a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of problems in addition to alleged deviant behaviors, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (a)(i) Frequency and type of contact between the offender and therapist;
- (ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;
- (iv) Anticipated length of treatment; and
- (v) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the

offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions, that such disposition would cause a manifest injustice, the court shall impose a disposition under option D, and the court may suspend the execution of the disposition and place the offender on community supervision for at least two years. As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

(b)(i) Devote time to a specific education, employment, or occupation;

(ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;

(iii) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;

(iv) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;

(v) Report as directed to the court and a probation counselor;

(vi) Pay all court-ordered legal financial obligations, perform community restitution, or any combination thereof;

(vii) Make restitution to the victim for the cost of any counseling reasonably related to the offense;

(viii) Comply with the conditions of any court-ordered probation bond; or

(ix) The court shall order that the offender may not attend the public or approved private elementary, middle, or high school attended by the victim or the victim's siblings. The parents or legal guardians of the offender are responsible for transportation or other costs associated with the offender's change of school that would otherwise be paid by the school district. The court shall send notice of the disposition and restriction on attending the same school as the victim or victim's siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the approved private schools and the public school district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.

The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of

attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

Except as provided in this subsection (3), after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW. A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (3) and the rules adopted by the department of health.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days' confinement for violating conditions of the disposition. The court may order both execution of the disposition and up to thirty days' confinement for the violation of the conditions of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

A disposition entered under this subsection (3) is not appealable under RCW 13.40.230.

(4) If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose the disposition alternative under RCW 13.40.165.

(5) If a juvenile is subject to a commitment of 15 to 65 weeks of confinement, the court may impose the disposition alternative under RCW 13.40.167.

(6) When the offender is subject to a standard range commitment of 15 to 36 weeks and is ineligible for a suspended disposition alternative, a manifest injustice disposition below the standard range, special sex offender disposition alternative, chemical dependency disposition alternative, or mental health disposition alternative, the court in a county with a pilot program under RCW 13.40.169 may impose the disposition alternative under RCW 13.40.169.

(7) RCW 13.40.193 shall govern the disposition of any juvenile adjudicated of possessing a firearm in violation of RCW 9.41.040(2)(a)(iii) or any crime in which a special finding is entered that the juvenile was armed with a firearm.

(8) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(9) Except as provided under subsection (3), (4), (5), or (6) of this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the court shall not suspend or defer the imposition or the execution of the disposition.

(10) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense. [2003 c 378 § 3; 2003 c 53 § 99; 2002 c 175 § 22; 1999 c 91 § 2. Prior: 1997 c 338 § 25; 1997 c 265 § 1; 1995 c 395 § 7; 1994 sp.s. c 7 § 523; 1992 c 45 § 6; 1990 c 3 § 302; 1989 c 407 § 4; 1983 c 191 § 8; 1981 c 299 § 13; 1979 c 155 § 68; 1977 ex.s. c 291 § 70.]

Reviser's note: This section was amended by 2003 c 53 § 99 and by 2003 c 378 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Severability—1997 c 265: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 265 § 9.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Severability—Application—1992 c 45: See notes following RCW 9.94A.840.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.165 Chemical dependency disposition alternative. (1) The purpose of this disposition alternative is to ensure that successful treatment options to reduce recidivism are available to eligible youth, pursuant to RCW 70.96A.520. The court must consider eligibility for the chemical dependency disposition alternative when a juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, other than a first time B+ offense under chapter 69.50 RCW. The court, on its own motion or the motion of the state or the respondent if the evidence shows that the offender may be chemically dependent or substance abusing, may order an examination by a chemical dependency counselor from a chemical dependency treatment facility approved under chapter 70.96A RCW to determine if the youth is chemically dependent or substance abusing. The offender shall pay the cost of any examination ordered under this subsection unless the court finds that the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(2) The report of the examination shall include at a minimum the following: The respondent's version of the facts

and the official version of the facts, the respondent's offense history, an assessment of drug-alcohol problems and previous treatment attempts, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the examiner's information.

(3) The examiner shall assess and report regarding the respondent's relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (a) Whether inpatient and/or outpatient treatment is recommended;
- (b) Availability of appropriate treatment;
- (c) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;
- (d) Anticipated length of treatment; and
- (e) Recommended crime-related prohibitions.

(4) The court on its own motion may order, or on a motion by the state or the respondent shall order, a second examination. The evaluator shall be selected by the party making the motion. The requesting party shall pay the cost of any examination ordered under this subsection unless the requesting party is the offender and the court finds that the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(5)(a) After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this chemical dependency disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section.

(b) If the court determines that this chemical dependency disposition alternative is appropriate, then the court shall impose the standard range for the offense, or if the court concludes, and enters reasons for its conclusion, that such disposition would effectuate a manifest injustice, the court shall impose a disposition above the standard range as indicated in option D of RCW 13.40.0357 if the disposition is an increase from the standard range and the confinement of the offender does not exceed a maximum of fifty-two weeks, suspend execution of the disposition, and place the offender on community supervision for up to one year. As a condition of the suspended disposition, the court shall require the offender to undergo available outpatient drug/alcohol treatment and/or inpatient drug/alcohol treatment. For purposes of this section, inpatient treatment may not exceed ninety days. As a condition of the suspended disposition, the court may impose conditions of community supervision and other sanctions, including up to thirty days of confinement, one hundred fifty hours of community restitution, and payment of legal financial obligations and restitution.

(6) The drug/alcohol treatment provider shall submit monthly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may impose sanctions pursuant to RCW 13.40.200 or revoke the suspension and order execution of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

(7) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the offense charged.

(8) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(9) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

(10) A disposition under this section is not appealable under RCW 13.40.230. [2003 c 378 § 6. Prior: 2002 c 175 § 23; 2002 c 42 § 1; 2001 c 164 § 1; 1997 c 338 § 26.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Effectiveness standards—1997 c 338 § 26: "The University of Washington shall develop standards for measuring effectiveness of treatment programs established under section 26 of this act. The standards shall be developed and presented to the governor and legislature not later than January 1, 1998. The standards shall include methods for measuring success factors following treatment. Success factors shall include, but need not be limited to, continued use of alcohol or controlled substances, arrests, violations of terms of community supervision, and convictions for subsequent offenses." [1997 c 338 § 27.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

13.40.167 Mental health disposition alternative. (1)

When an offender is subject to a standard range commitment of 15 to 65 weeks, the court may:

- (a) Impose the standard range; or
- (b) Suspend the standard range disposition on condition that the offender complies with the terms of this mental health disposition alternative.

(2) The court may impose this disposition alternative when the court finds the following:

(a) The offender has a current diagnosis, consistent with the American psychiatry association diagnostic and statistical manual of mental disorders, of axis I psychiatric disorder, excluding youth that are diagnosed as solely having a conduct disorder, oppositional defiant disorder, substance abuse disorder, paraphilia, or pedophilia;

(b) An appropriate treatment option is available in the local community;

(c) The plan for the offender identifies and addresses requirements for successful participation and completion of the treatment intervention program including: Incentives and graduated sanctions designed specifically for amenable youth, including the use of detention, detoxication, and inpatient or outpatient substance abuse treatment and psychiat-

ric hospitalization, and structured community support consisting of mental health providers, probation, educational and vocational advocates, child welfare services, and family and community support. For any mental health treatment ordered for an offender under this section, the treatment option selected shall be chosen from among programs which have been successful in addressing mental health needs of juveniles and successful in mental health treatment of juveniles and identified as research-based best practice programs. A list of programs which meet these criteria shall be agreed upon by: The Washington association of juvenile court administrators, the juvenile rehabilitation administration of the department of social and health services, a representative of the division of public behavioral health and justice policy at the University of Washington, and the Washington institute for public policy. The list of programs shall be created not later than July 1, 2003. The group shall provide the list to all superior courts, its own membership, the legislature, and the governor. The group shall meet annually and revise the list as appropriate; and

(d) The offender, offender's family, and community will benefit from use of the mental health disposition alternative.

(3) The court on its own motion may order, or on motion by either party, shall order a comprehensive mental health evaluation to determine if the offender has a designated mental disorder. The court may also order a chemical dependency evaluation to determine if the offender also has a co-occurring chemical dependency disorder. The evaluation shall include at a minimum the following: The offender's version of the facts and the official version of the facts, the offender's offense, an assessment of the offender's mental health and drug-alcohol problems and previous treatment attempts, and the offender's social, criminal, educational, and employment history and living situation.

(4) The evaluator shall determine if the offender is amenable to research-based treatment. A proposed case management and treatment plan shall include at a minimum:

- (a) The availability of treatment;
- (b) Anticipated length of treatment;
- (c) Whether one or more treatment interventions are proposed and the anticipated sequence of those treatment interventions;
- (d) The education plan;
- (e) The residential plan; and
- (f) The monitoring plan.

(5) The court on its own motion may order, or on motion by either party, shall order a second mental health or chemical dependency evaluation. The party making the motion shall select the evaluator. The requesting party shall pay the cost of any examination ordered under this subsection and subsection (3) of this section unless the court finds the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(6) Upon receipt of the assessments, evaluations, and reports the court shall consider whether the offender and the community will benefit from use of the mental health disposition alternative. The court shall consider the victim's opinion whether the offender should receive the option.

(7) If the court determines that the mental health disposition alternative is appropriate, the court shall impose a standard range disposition of not more than 65 weeks, suspend

execution of the disposition, and place the offender on community supervision up to one year and impose one or more other local sanctions. Confinement in a secure county detention facility, other than county group homes, inpatient psychiatric treatment facilities, and substance abuse programs, shall be limited to thirty days. As a condition of a suspended disposition, the court shall require the offender to participate in the recommended treatment interventions.

(8) The treatment providers shall submit monthly reports to the court and parties on the offender's progress in treatment. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, medication management, the offender's relative progress in treatment, and any other material specified by the court at the time of the disposition.

(9) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

(10) An offender is ineligible for the mental health disposition option under this section if the offender is adjudicated of a sex or violent offense as defined in RCW 9.94A.030. [2003 c 378 § 4.]

13.40.169 Community commitment disposition alternative—Pilot project. (Expires July 1, 2005.) Any charter county with a population of not more than seventy thousand shall establish a pilot program to implement the community commitment disposition alternative contained in this section. The pilot project shall be limited to five beds.

(1) When the offender is subject to a standard range commitment of 15 to 36 weeks and is ineligible for a suspended disposition alternative, a manifest injustice disposition below the standard range, special sex offender disposition alternative, chemical dependency disposition alternative, or mental health disposition alternative, the court in a county with a pilot program under this section may impose a community commitment disposition alternative and:

- (a) Retain juvenile court jurisdiction over the youth;
- (b) Confine the youth in a county detention facility for a period of time not to exceed thirty days; and
- (c) Impose a term of postrelease community supervision for up to one year.

If the youth receives a standard range disposition, the court shall set the release date within the standard range. The court shall determine the release date prior to expiration of sixty percent of the juvenile's minimum term of confinement.

(2) The court may impose this community commitment disposition alternative if the court finds the following:

- (a) Placement in a local detention facility in close proximity to the youth's family or local support systems will facilitate a smoother reintegration to the youth's family and community;
- (b) Placement in the local detention facility will allow the youth to benefit from locally provided family intervention programs and other research-based treatment programs, school, employment, and drug and alcohol or mental health counseling; or

(c) Confinement in a facility operated by the department would result in a negative disruption to local services, school,

or employment or impede or delay developing those services and support systems in the community.

(3) The court shall consider the youth's offense, prior criminal history, security classification, risk level, and treatment needs and history when determining whether the youth is appropriate for the community commitment disposition alternative. If the court finds that a community commitment disposition alternative is appropriate, the court shall order the youth into secure detention while the details of the reintegration program are developed.

(4) Upon approval of the treatment and community reintegration plan, the court may order the youth to serve the term of confinement in one or more of the following placements or combination of placements: Secure detention, an alternative to secure detention such as electronic home monitoring, county group care, day or evening reporting, or home detention. The court may order the youth to serve time in detention on weekends or intermittently. The court shall set periodic reviews to review the youth's progress in the program. At least fifty percent of the term of confinement shall be served in secure detention.

(5) If the youth violates the conditions of the community commitment program, the court may impose sanctions under RCW 13.40.200 or modify the terms of the reintegration plan and order the youth to serve all or a portion of the remaining confinement term in secure detention.

(6) A county may enter into interlocal agreements with other counties to develop joint community commitment programs or to allow one county to send a youth appropriate for this alternative to another county that has a community commitment program.

(7) Implementation of this alternative is subject to available state funding for the costs of the community commitment program, including costs of detention and community supervision.

The Washington association of juvenile court administrators shall submit an interim report on the pilot program established in this section to the legislature and appropriate committees by December 31, 2004, and submit a final report to the legislature and the appropriate committees by June 30, 2005.

This section expires July 1, 2005. [2003 c 378 § 5.]

13.40.193 Firearms—Length of confinement. (*Effective July 1, 2004.*) (1) If a respondent is found to have been in possession of a firearm in violation of RCW 9.41.040(2)(a)(iii), the court shall impose a minimum disposition of ten days of confinement. If the offender's standard range of disposition for the offense as indicated in RCW 13.40.0357 is more than thirty days of confinement, the court shall commit the offender to the department for the standard range disposition. The offender shall not be released until the offender has served a minimum of ten days in confinement.

(2) If the court finds that the respondent or an accomplice was armed with a firearm, the court shall determine the standard range disposition for the offense pursuant to RCW 13.40.160. If the offender or an accomplice was armed with a firearm when the offender committed any felony other than possession of a machine gun, possession of a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, or use of a machine

gun in a felony, the following periods of total confinement must be added to the sentence: For a class A felony, six months; for a class B felony, four months; and for a class C felony, two months. The additional time shall be imposed regardless of the offense's juvenile disposition offense category as designated in RCW 13.40.0357.

(3) When a disposition under this section would effectuate a manifest injustice, the court may impose another disposition. When a judge finds a manifest injustice and imposes a disposition of confinement exceeding thirty days, the court shall commit the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. When a judge finds a manifest injustice and imposes a disposition of confinement less than thirty days, the disposition shall be comprised of confinement or community supervision or both.

(4) Any term of confinement ordered pursuant to this section shall run consecutively to any term of confinement imposed in the same disposition for other offenses. [2003 c 53 § 100; 1997 c 338 § 30; 1994 sp.s. c 7 § 525.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

13.40.265 Firearm, alcohol, and drug violations.

(*Effective July 1, 2004.*) (1)(a) If a juvenile thirteen years of age or older is found by juvenile court to have committed an offense while armed with a firearm or an offense that is a violation of RCW 9.41.040(2)(a)(iii) or chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(b) Except as otherwise provided in (c) of this subsection, upon petition of a juvenile who has been found by the court to have committed an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court may at any time the court deems appropriate notify the department of licensing that the juvenile's driving privileges should be reinstated.

(c) If the offense is the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered, whichever is later. If the offense is the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the date the juvenile turns seventeen or one year after the date judgment was entered, whichever is later.

(2)(a) If a juvenile enters into a diversion agreement with a diversion unit pursuant to RCW 13.40.080 concerning an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the diversion unit shall notify the department of

licensing within twenty-four hours after the diversion agreement is signed.

(b) If a diversion unit has notified the department pursuant to (a) of this subsection, the diversion unit shall notify the department of licensing when the juvenile has completed the agreement. [2003 c 53 § 101; 1997 c 338 § 37; 1994 sp.s. c 7 § 435; 1989 c 271 § 116; 1988 c 148 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Severability—1989 c 271: See note following RCW 9.94A.510.

Legislative finding—1988 c 148: "The legislature finds that many persons under the age of eighteen unlawfully use intoxicating liquor and controlled substances. The use of these substances by juveniles can cause serious damage to their physical, mental, and emotional well-being, and in some instances results in life-long disabilities.

The legislature also finds that juveniles who unlawfully use alcohol and controlled substances frequently operate motor vehicles while under the influence of and impaired by alcohol or drugs. Juveniles who use these substances often have seriously impaired judgment and motor skills and pose an unduly high risk of causing injury or death to themselves or other persons on the public highways.

The legislature also finds that juveniles will be deterred from the unlawful use of alcohol and controlled substances if their driving privileges are suspended or revoked for using illegal drugs or alcohol." [1988 c 148 § 1.]

Severability—1988 c 148: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 148 § 10.]

13.40.430 Disparity in disposition of juvenile offenders—Data collection. The administrator for the courts shall collect such data as may be necessary to monitor any disparity in processing or disposing of cases involving juvenile offenders due to economic, gender, geographic, or racial factors that may result from implementation of section 1, chapter 373, Laws of 1993. The administrator for the courts may, in consultation with juvenile courts, determine a format for the collection of such data and a schedule for the reporting of such data and shall keep a minimum of five years of data at any given time. [2003 c 207 § 13; 1993 c 373 § 2.]

Severability—1993 c 373: See note following RCW 13.40.020.

13.40.460 Juvenile rehabilitation programs—Administration. The secretary, assistant secretary, or the secretary's designee shall manage and administer the department's juvenile rehabilitation responsibilities, including but not limited to the operation of all state institutions or facilities used for juvenile rehabilitation.

The secretary or assistant secretary shall:

(1) Prepare a biennial budget request sufficient to meet the confinement and rehabilitative needs of the juvenile rehabilitation program, as forecast by the office of financial management;

(2) Create by rule a formal system for inmate classification. This classification system shall consider:

- (a) Public safety;
- (b) Internal security and staff safety;
- (c) Rehabilitative resources both within and outside the department;

(d) An assessment of each offender's risk of sexually aggressive behavior as provided in RCW 13.40.470; and

(e) An assessment of each offender's vulnerability to sexually aggressive behavior as provided in RCW 13.40.470;

(3) Develop agreements with local jurisdictions to develop regional facilities with a variety of custody levels;

(4) Adopt rules establishing effective disciplinary policies to maintain order within institutions;

(5) Develop a comprehensive diagnostic evaluation process to be used at intake, including but not limited to evaluation for substance addiction or abuse, literacy, learning disabilities, fetal alcohol syndrome or effect, attention deficit disorder, and mental health;

(6) Develop placement criteria:

(a) To avoid assigning youth who present a moderate or high risk of sexually aggressive behavior to the same sleeping quarters as youth assessed as vulnerable to sexual victimization under RCW 13.40.470(1)(c); and

(b) To avoid placing a juvenile offender on parole status who has been assessed as a moderate to high risk for sexually aggressive behavior in a department community residential program with another child who is: (i) Dependent under chapter 13.34 RCW, or an at-risk youth or child in need of services under chapter 13.32A RCW; and (ii) not also a juvenile offender on parole status;

(7) Develop a plan to implement, by July 1, 1995:

(a) Substance abuse treatment programs for all state juvenile rehabilitation facilities and institutions;

(b) Vocational education and instruction programs at all state juvenile rehabilitation facilities and institutions; and

(c) An educational program to establish self-worth and responsibility in juvenile offenders. This educational program shall emphasize instruction in character-building principles such as: Respect for self, others, and authority; victim awareness; accountability; work ethics; good citizenship; and life skills; and

(8)(a) The juvenile rehabilitation administration shall develop uniform policies related to custodial assaults consistent with RCW 72.01.045 and 9A.36.100 that are to be followed in all juvenile rehabilitation administration facilities; and

(b) The juvenile rehabilitation administration will report assaults in accordance with the policies developed in (a) of this subsection. [2003 c 229 § 1; 1999 c 372 § 2; 1997 c 386 § 54; 1994 sp.s. c 7 § 516.]

Implementation deadline—1997 c 386 § 54: "The policy developed under RCW 13.40.460(6)(b) shall be implemented within the juvenile rehabilitation administration and the division of children and family services by July 1, 1998." [1997 c 386 § 55.]

Finding—Intent—1997 c 386 §§ 50-55: See note following RCW 13.40.470.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Chapter 13.50 RCW

KEEPING AND RELEASE OF RECORDS BY JUVENILE JUSTICE OR CARE AGENCIES

Sections

13.50.100 Records not relating to commission of juvenile offenses—Maintenance and access—Release of information for child custody hearings—Disclosure of unfounded allegations prohibited.

13.50.100 Records not relating to commission of juvenile offenses—Maintenance and access—Release of information for child custody hearings—Disclosure of unfounded allegations prohibited. (1) This section governs records not covered by RCW 13.50.050.

(2) Records covered by this section shall be confidential and shall be released only pursuant to this section and RCW 13.50.010.

(3) Records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility of supervising the juvenile. Records covered under this section and maintained by the juvenile courts which relate to the official actions of the agency may be entered in the statewide judicial information system. However, truancy records associated with a juvenile who has no other case history, and records of a juvenile's parents who have no other case history, shall be removed from the judicial information system when the juvenile is no longer subject to the compulsory attendance laws in chapter 28A.225 RCW. A county clerk is not liable for unauthorized release of this data by persons or agencies not in his or her employ or otherwise subject to his or her control, nor is the county clerk liable for inaccurate or incomplete information collected from litigants or other persons required to provide identifying data pursuant to this section.

(4) Subject to (a) of this subsection, the department of social and health services may release information retained in the course of conducting child protective services investigations to a family or juvenile court hearing a petition for custody under chapter 26.10 RCW.

(a) Information that may be released shall be limited to information regarding investigations in which: (i) The juvenile was an alleged victim of abandonment or abuse or neglect; or (ii) the petitioner for custody of the juvenile, or any individual aged sixteen or older residing in the petitioner's household, is the subject of a founded or currently pending child protective services investigation made by the department subsequent to October 1, 1998.

(b) Additional information may only be released with the written consent of the subject of the investigation and the juvenile alleged to be the victim of abandonment or abuse and neglect, or the parent, custodian, guardian, or personal representative of the juvenile, or by court order obtained with notice to all interested parties.

(5) Any disclosure of records or information by the department of social and health services pursuant to this section shall not be deemed a waiver of any confidentiality or privilege attached to the records or information by operation of any state or federal statute or regulation, and any recipient

of such records or information shall maintain it in such a manner as to comply with such state and federal statutes and regulations and to protect against unauthorized disclosure.

(6) A contracting agency or service provider of the department of social and health services that provides counseling, psychological, psychiatric, or medical services may release to the office of the family and children's ombudsman information or records relating to services provided to a juvenile who is dependent under chapter 13.34 RCW without the consent of the parent or guardian of the juvenile, or of the juvenile if the juvenile is under the age of thirteen years, unless such release is otherwise specifically prohibited by law.

(7) A juvenile, his or her parents, the juvenile's attorney and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except:

(a) If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the information subject to other order of the court: PROVIDED, That if the court determines that limited release of the information is appropriate, the court may specify terms and conditions for the release of the information; or

(b) If the information or record has been obtained by a juvenile justice or care agency in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, when the services have been sought voluntarily by the juvenile, and the juvenile has a legal right to receive those services without the consent of any person or agency, then the information or record may not be disclosed to the juvenile's parents without the informed consent of the juvenile unless otherwise authorized by law; or

(c) That the department of social and health services may delete the name and identifying information regarding persons or organizations who have reported alleged child abuse or neglect.

(8) A juvenile or his or her parent denied access to any records following an agency determination under subsection (7) of this section may file a motion in juvenile court requesting access to the records. The court shall grant the motion unless it finds access may not be permitted according to the standards found in subsection (7)(a) and (b) of this section.

(9) The person making a motion under subsection (8) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(10) Subject to the rules of discovery in civil cases, any party to a proceeding seeking a declaration of dependency or a termination of the parent-child relationship and any party's counsel and the guardian ad litem of any party, shall have access to the records of any natural or adoptive child of the parent, subject to the limitations in subsection (7) of this section. A party denied access to records may request judicial review of the denial. If the party prevails, he or she shall be awarded attorneys' fees, costs, and an amount not less than five dollars and not more than one hundred dollars for each day the records were wrongfully denied.

(11) No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020(12) may be disclosed to a

Title 14

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child-placing agency, private adoption agency, or any other licensed provider. [2003 c 105 § 2; 2001 c 162 § 2; 2000 c 162 § 18; 1999 c 390 § 3; 1997 c 386 § 22; 1995 c 311 § 16; 1990 c 246 § 9; 1983 c 191 § 20; 1979 c 155 § 10.]

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

Severability—1990 c 246: See note following RCW 13.34.060.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Title 14 AERONAUTICS

Chapters

14.20 Aircraft dealers.

Chapter 14.20 RCW AIRCRAFT DEALERS

Sections

14.20.020 Aircraft dealer licensure—Penalty. (*Effective July 1, 2004.*)

14.20.020 Aircraft dealer licensure—Penalty. (*Effective July 1, 2004.*) (1) It is unlawful for a person to act as an aircraft dealer without a currently valid aircraft dealer's license issued under this chapter.

(2)(a) Except as provided in (b) of this subsection, a person acting as an aircraft dealer without a currently issued aircraft dealer's license is guilty of a misdemeanor and shall be punished by either a fine of not more than one thousand dollars or by imprisonment for not more than ninety days, or both.

(b) A person convicted on a second or subsequent conviction within a five-year period is guilty of a gross misdemeanor and shall be punished by either a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both.

(3) In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence that may be imposed under this section, the court in its discretion may prohibit the violator from acting as an aircraft dealer within the state for such a period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as contempt of court.

(4) Any person applying for an aircraft dealer's license shall do so at the office of the secretary on a form provided for that purpose by the secretary. [2003 c 53 § 102; 1993 c 208 § 2; 1984 c 7 § 10; 1983 c 135 § 1; 1955 c 150 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

Title 15 AGRICULTURE AND MARKETING

Chapters

15.17 Standards of grades and packs.

15.21 Washington fresh fruit sales limitation act.

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15.24 Washington apple commission.

15.26 Tree fruit research act.

15.28 Soft tree fruits.

15.30 Controlled atmosphere storage of fruits and vegetables.

15.44 Dairy products commission.

15.54 Fertilizers, minerals, and limes.

15.58 Washington pesticide control act.

15.60 Apiaries.

15.61 Ladybugs and other beneficial insects.

15.65 Washington state agricultural commodity boards.

15.66 Washington state agricultural commodity commissions.

15.80 Weighmasters.

15.85 Aquaculture marketing.

15.88 Wine commission.

Chapter 15.17 RCW

STANDARDS OF GRADES AND PACKS

Sections

15.17.243 District two—Transfer of funds—Control of *Rhagoletis pomonella*.

15.17.243 District two—Transfer of funds—Control of *Rhagoletis pomonella*. The district manager for district two as defined in WAC 16-458-075 is authorized to transfer two hundred thousand dollars from the fruit and vegetable district fund to the plant pest account within the agricultural local fund. The amount transferred is to be derived from fees collected for state inspections of tree fruits and is to be used solely for activities related to the control of *Rhagoletis pomonella* in district two. The transfer of funds shall occur by June 1, 1997. On June 30, 2005, any unexpended portion of the two hundred thousand dollars shall be transferred to the fruit and vegetable inspection account and deposited in the district account for the district that includes Yakima county. [2003 c 14 § 1; 2002 c 322 § 4; 2001 c 92 § 1; 1999 c 47 § 1; 1997 c 227 § 1.]

Effective date—2003 c 14: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2003." [2003 c 14 § 2.]

Effective date—2002 c 322: See note following RCW 15.17.240.

Effective date—2001 c 92: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2001." [2001 c 92 § 2.]

Effective date—1999 c 47: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 1999." [1999 c 47 § 2.]

Effective date—1997 c 227: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 26, 1997]." [1997 c 227 § 3.]

Chapter 15.21 RCW

WASHINGTON FRESH FRUIT SALES LIMITATION ACT

Sections

15.21.060 Penalties. (*Effective July 1, 2004.*)

15.21.060 Penalties. (*Effective July 1, 2004.*) (1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 103; 1965 c 61 § 6.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 15.24 RCW

WASHINGTON APPLE COMMISSION

(Formerly: Apple advertising commission)

Sections

15.24.200 Penalties. (*Effective July 1, 2004.*)

15.24.200 Penalties. (*Effective July 1, 2004.*) (1) Any person who violates or aids in the violation of any provision of this chapter is guilty of a gross misdemeanor.

(2) Any person who violates or aids in the violation of any rule or regulation of the commission is guilty of a misdemeanor. [2003 c 53 § 104; 1961 c 11 § 15.24.200. Prior: 1937 c 195 § 14; RRS § 2874-14.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 15.26 RCW

TREE FRUIT RESEARCH ACT

Sections

15.26.300 Violations—Penalty. (*Effective July 1, 2004.*)

15.26.300 Violations—Penalty. (*Effective July 1, 2004.*) (1) Except as provided in subsection (2) of this section, any person violating any provision of this chapter or any rule or regulation adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 105; 1969 c 129 § 30.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 15.28 RCW

SOFT TREE FRUITS

Sections

15.28.020 Commission composition—Voting—Quorum.
 15.28.023 Director appoints members—Nominations—Advisory vote.
 15.28.024 Transition to director appointed commission.
 15.28.040 Appointment of voting members—Positions.
 15.28.050 Terms of office.
 15.28.060 Nominating meetings—Notice—Appointment—Ballots—Advisory vote—Eligible voters.
 15.28.070 Establishment of subdistricts—Rules and regulations.
 15.28.080 Vacancies on commission—How filled.
 15.28.103 Commission's plans, programs, and projects—Director's approval required.
 15.28.105 Commission speaks for state—Director's oversight.
 15.28.325 Costs of implementing RCW 15.28.103.

15.28.020 Commission composition—Voting—Quorum. The commission is composed of seventeen voting members, as follows: Ten producers, four dealers, and two processors, who are appointed as provided in this chapter. The director, or an authorized representative, shall be a voting member of the commission. Other sections of this chapter that relate to the selection of voting members shall not apply to the director or his or her authorized representative.

A majority of the voting members constitute a quorum for the transaction of any business. [2003 c 396 § 13; 2002 c 313 § 105; 1967 c 191 § 1; 1961 c 11 § 15.28.020. Prior: (i) 1947 c 73 § 2; Rem. Supp. 1947 § 2901-11. (ii) 1947 c 73 § 9; Rem. Supp. 1947 § 2909-18. (iii) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

Effective date—1967 c 191: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That section 5 of this 1967 amendatory act shall not take effect until July 1, 1968." [1967 c 191 § 9.]

15.28.023 Director appoints members—Nominations—Advisory vote. (1) The director shall appoint the members of the commission.

(2) Candidates for positions on the commission shall be nominated under RCW 15.28.060.

(3) Not less than sixty days nor more than seventy-five days prior to the commencement of a commission member's term, the director shall cause an advisory vote to be held for the director-appointed positions. Advisory ballots shall be mailed to all affected producers and shall be returned to the director not less than thirty days prior to the commencement of the term. The advisory ballot shall be conducted in a manner so that it is a secret ballot. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the commission. In the event there are only two candidates nominated for a position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment. If only one candidate is nominated for a position, the commission shall select a second candidate whose name will be forwarded to the director.

(4) Any candidate whose name is forwarded to the director for potential appointment shall submit to the director a letter stating why he or she wishes to be appointed to the commission. The director may select either person for the position. [2003 c 396 § 16.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.024 Transition to director appointed commission. To accomplish the transition to a commission structure where the director appoints a majority of commission members, the names of the currently elected commission members shall be forwarded to the director for appointment to the commission within thirty days of May 20, 2003. Thereafter, the director shall appoint commission members pursuant to RCW 15.28.023 as the current commission member terms expire. [2003 c 396 § 17.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.040 Appointment of voting members—Positions. Of the producer members, four shall be appointed from the first district and occupy positions one, two, three and four; four shall be appointed from the second district and occupy positions five, six, seven and eight, and two shall be appointed from the third district and occupy positions nine and ten.

Of the dealer members, two shall be appointed from each of the first and second districts and respectively occupy positions eleven and twelve from the first district and positions thirteen and fourteen from the second district.

The processor members shall be appointed from the state at large and occupy positions fifteen and sixteen. The dealer member position previously referred to as position twelve shall henceforth be position thirteen. The processor member position heretofore referred to as position fourteen shall cease to exist on March 21, 1967. The processor member position heretofore referred to as thirteen shall be known as position sixteen. [2003 c 396 § 14; 1967 c 191 § 3; 1961 c 11 § 15.28.040. Prior: 1947 c 73 § 4; Rem. Supp. 1947 § 2909-13.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.050 Terms of office. The regular term of office of the members of the commission shall be three years commencing on May 1, following the date of appointment and until their successors are appointed and qualified, except, however, that the first term of dealer position twelve in the first district shall be for two years and expire May 1, 1969. [2003 c 396 § 15; 1967 c 191 § 4; 1961 c 11 § 15.28.050. Prior: 1947 c 73 § 5; Rem. Supp. 1947 § 2909-14.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.060 Nominating meetings—Notice—Appointment—Ballots—Advisory vote—Eligible voters. The director shall call meetings at times and places concurred upon by the director and the commission for the purpose of nominating producer, dealer or processor members for potential appointment to the commission when such members' terms are about to expire. Notice of such meetings shall be given at least sixty days prior to the time the respective members' term is about to expire. The nominating meetings shall be held at least sixty days prior to the expiration of the respective members' term of office.

Notice shall be given by the commission by mail to all known persons having a right to vote for such respective nominee's potential appointment to the commission.

Further, the commission shall publish notice at least once in a newspaper of general circulation in the district where the nomination is to be held. Such a newspaper may be published daily or weekly. The failure of any person entitled to receive notice of such nominating meeting shall not invalidate such nominating meeting or the appointment of a member nominated at such meeting.

Any person qualified to serve on the commission may be nominated orally at the nomination meetings. Written nominations, signed by five persons qualified to vote for the said nominee, may be made for five days subsequent to the nomination meeting. Such written nominations shall be filed with the commission at its Yakima office.

[2003 RCW Supp—page 142]

The director shall cause an advisory vote to be held for commission positions. The advisory vote shall be by secret mail ballot. Persons qualified to vote for members of the commission shall, except as otherwise provided by law or rule or regulation of the commission, vote only in the district in which their activities make them eligible to vote for a potential member of the commission.

A producer to be eligible to vote in the advisory vote for a nominee as a producer member of the commission must be a commercial producer of soft tree fruits paying assessments to the commission.

When a legal entity acting as a producer, dealer, or processor is qualified to vote for a candidate in any district or area to serve in a specified position on the commission, such legal entity may cast only one vote for such candidate, regardless of the number of persons comprising such legal entity or stockholders owning stock therein. [2003 c 396 § 18; 1967 c 191 § 6; 1963 c 51 § 2; 1961 c 11 § 15.28.060. Prior: 1947 c 73 § 6; Rem. Supp. 1947 § 2909-15.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.070 Establishment of subdistricts—Rules and regulations. The commission shall have the authority, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act), for adopting rules and regulations, after public hearing, establishing one or more subdistricts in any one of the three districts. Such subdistricts shall include a substantial portion of the soft tree fruit producing area in the district in which they are formed.

The commission shall, when a subdistrict has been formed within one of the districts as in this section provided for, assign one of the districts' producer positions on the commission to said subdistrict. Such producer position may only be filled by a producer residing in such subdistrict, whether by apportionment or appointment. [2003 c 396 § 19; 1967 c 191 § 7; 1961 c 11 § 15.28.070. Prior: 1947 c 73 § 7; Rem. Supp. 1947 § 2909-16.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.080 Vacancies on commission—How filled. In the event a position becomes vacant due to resignation, disqualification, death, or for any other reason, such position, until the next annual nominating meeting, shall be filled by vote of the remaining members of the commission. Following the next annual nomination meeting, the director shall appoint one of the two nominees selected by advisory ballot to fill the balance of the unexpired term. [2003 c 396 § 20; 1961 c 11 § 15.28.080. Prior: 1947 c 73 § 8; Rem. Supp. 1947 § 2909-17.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.103 Commission's plans, programs, and projects—Director's approval required. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of the affected commodities; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the

end that the marketing and utilization of the affected commodities may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodities.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 21.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.105 Commission speaks for state—Director's oversight. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of Washington state government with regard to its particular commodities. [2003 c 396 § 22.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.28.325 Costs of implementing RCW 15.28.103. The costs incurred by the department of agriculture associated with the implementation of RCW 15.28.103 shall be paid for by the commission. [2003 c 396 § 23.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Chapter 15.30 RCW

CONTROLLED ATMOSPHERE STORAGE OF FRUITS AND VEGETABLES

Sections

15.30.250 Penalties for violating chapter. (*Effective July 1, 2004.*)

15.30.250 Penalties for violating chapter. (*Effective July 1, 2004.*) (1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 106; 1961 c 29 § 25.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 15.44 RCW

DAIRY PRODUCTS COMMISSION

Sections

15.44.020 Commission composition.
 15.44.021 Director appoints members—Nominations—Advisory vote.
 15.44.022 Transition to director appointed commission.
 15.44.033 Nomination and appointment procedure.
 15.44.035 Producer lists—Each producer responsible for accuracy—Use of lists.
 15.44.061 Commission's plans, programs, and projects—Director's approval required.
 15.44.062 Commission speaks for state—Director's oversight.
 15.44.150 Action against commission enforced as if a corporation—Liability—Limitations.
 15.44.195 Costs of implementing RCW 15.44.061.

15.44.020 Commission composition. The dairy products commission shall be composed of not more than ten members. There shall be one member from each district who shall be a practical producer of dairy products, one member shall be a dealer, and one member shall be a producer who also acts as a dealer. The director of agriculture shall be a voting member of the commission.

As used in this chapter, "director" means the director of agriculture or his or her authorized representative. [2003 c 396 § 24; 2002 c 313 § 89; 1979 ex.s. c 238 § 2; 1975 1st ex.s. c 136 § 1; 1965 ex.s. c 44 § 2; 1961 c 11 § 15.44.020. Prior: 1959 c 163 § 2; prior: (i) 1939 c 219 § 3, part; RRS § 6266-3, part. (ii) 1939 c 219 § 4, part; RRS § 6266-4, part.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

15.44.021 Director appoints members—Nominations—Advisory vote. (1) The director shall appoint the members of the commission.

(2) Candidates for producer member positions on the commission shall be nominated under RCW 15.44.033.

(3) The director shall cause an advisory vote to be held for the producer member positions. Advisory ballots shall be mailed to all affected producers in the district where a vacancy is about to occur and shall be returned to the director not less than thirty days prior to the commencement of the term. The advisory ballot shall be conducted in a manner so that it is a secret ballot. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the commission. In the event there are only two candidates nominated for a position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment. If only one candidate is nominated for a position, the commission shall select a second candidate whose name will be forwarded to the director.

(4) Any candidate whose name is forwarded to the director for potential appointment shall submit to the director a letter stating why he or she wishes to be appointed to the commission. The director may select either person for the position. [2003 c 396 § 25.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.44.022 Transition to director appointed commission. To accomplish the transition to a commission structure where the director appoints the commission members, the names of the currently elected commission members shall be forwarded to the director for appointment to the commission within thirty days of May 20, 2003. Thereafter, the director shall appoint commission members pursuant to RCW 15.44.021 as the current commission member terms expire. [2003 c 396 § 28.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.44.033 Nomination and appointment procedure. Producer members of the commission shall be nominated by producers within the district that such producer members represent in the year in which a commission member's term shall expire.

Nomination for candidates to be appointed to the commission shall be conducted by mail by the director. Such nomination forms shall be mailed by the director to each producer in a district where a vacancy is about to occur. Such mailing shall be made on or after April 1st, but not later than April 10th of the year the commission vacancy will occur. The nomination form shall provide for the name of the producer being nominated and the names of five producers nominating such nominee. The producers nominating such nominee shall affix their signatures to such form and shall further attest that the said nominee meets the qualifications for a producer member to serve on the commission and that he or she will be willing to serve on the commission if appointed.

All nominations as provided for herein shall be returned to the director by April 30th, and the director shall not accept any nomination postmarked later than midnight April 30th, nor place the candidate thereon on the advisory election ballot.

Advisory vote ballots for electing nominees to the commission will be mailed by the director to all eligible producers no later than May 15th, in districts where advisory elections are to be held and such ballots to be valid shall be returned postmarked no later than May 31st of the year mailed, to the director in Olympia.

The director shall determine whether the persons nominated possess the qualifications required by statute for the position. [2003 c 396 § 26; 1995 c 374 § 59; 1967 c 240 § 30; 1965 ex.s. c 44 § 6.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Severability—1967 c 240: See note following RCW 43.23.010.

15.44.035 Producer lists—Each producer responsible for accuracy—Use of lists. (1) The commission shall prior to each advisory election, in sufficient time to satisfy the requirements of RCW 15.44.033, furnish the director with a list of all producers within the district for which the advisory election is being held. The commission shall require each dealer and shipper in addition to the information required under RCW 15.44.110 to furnish the commission with a list of names of producers whose milk they handle.

(2) Any producer may on his or her own motion file his or her name with the commission for the purpose of receiving notice of the advisory election.

(3) It is the responsibility of each producer to ensure that his or her correct address is filed with the commission.

(4) For all purposes of giving notice, holding referenda, and conducting advisory votes for nominees to the commission, the applicable list of producers corrected up to the day preceding the date the list is certified and mailed to the director is deemed to be the list of all producers or handlers, as applicable, entitled to notice or to vote. The list shall be corrected and brought up-to-date in accordance with evidence and information provided to the commission. [2003 c 396 § 27; 2002 c 313 § 90; 1965 ex.s. c 44 § 7.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.44.061 Commission's plans, programs, and projects—Director's approval required. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising, promotion, and education of the affected commodities; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of the affected commodities may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodities.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education, training and leadership plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 29.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.44.062 Commission speaks for state—Director's oversight. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of Washington state government with regard to its particular commodities. [2003 c 396 § 30.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.44.150 Action against commission enforced as if a corporation—Liability—Limitations. Any action by the commission administrator, member, employee, or agent thereof pertaining to the performance or nonperformance or misperformance of any matters or things authorized, required, or permitted by this chapter, and any other liabilities, debts, or claims against the commission shall be enforced in the same manner as if the commission were a corporation. No liability for the debts or actions of the commission shall exist against the state of Washington or any subdivision or instrumentality thereof. Liability for the debts or actions of the commission's administrator, member, employee, or agent incurred in their official capacity under this chapter does not exist either against the administrator, members, employees, and agents in their individual capacity or the state of Washington. The administrator, its members, and its agents and employees are not responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime.

All persons employed or contracting under this chapter shall be limited to, and all salaries, expenses, and liabilities incurred by the commission shall be payable only from the funds collected under this chapter. [2003 c 396 § 32; 2002 c 313 § 102; 1961 c 11 § 15.44.150. Prior: 1939 c 219 § 7; RRS § 6266-7.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.44.195 Costs of implementing RCW 15.44.061.

The costs incurred by the department of agriculture associated with the implementation of RCW 15.44.061 shall be paid for by the commission. [2003 c 396 § 31.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Chapter 15.54 RCW

FERTILIZERS, MINERALS, AND LIMES

Sections

15.54.340 Labeling requirements. (*Effective January 1, 2004.*)

15.54.340 Labeling requirements. (*Effective January 1, 2004.*) (1) Any commercial fertilizer distributed in this state shall have placed on or affixed to the package a label setting forth in clearly legible and conspicuous form the following information:

- (a) The net weight;
- (b) The product name, brand, and grade. The grade is not required if no primary nutrients are claimed;
- (c) The guaranteed analysis;
- (d) The name and address of the registrant or licensee. The name and address of the manufacturer, if different from the registrant or licensee, may also be stated;
- (e) Any information required under WAC 296-62-054;
- (f) A statement, established by rule, referring persons to the department's Uniform Resource Locator (URL) internet address where data regarding the metals content of the product is located; and
- (g) Other information as required by the department by rule.

(2) If a commercial fertilizer is distributed in bulk, a written or printed statement of the information required by subsection (1) of this section shall accompany delivery and be supplied to the purchaser at the time of delivery.

(3) Each delivery of a customer-formula fertilizer shall be subject to containing those ingredients specified by the purchaser, which ingredients shall be shown on the statement or invoice with the amount contained therein, and a record of all invoices of customer-formula grade mixes shall be kept by the registrant or licensee for a period of twelve months and shall be available to the department upon request: **PROVIDED**, That each such delivery shall be accompanied by either a statement, invoice, a delivery slip, or a label if bagged, containing the following information: The net weight; the brand; the guaranteed analysis which may be stated to the nearest tenth of a percent or to the next lower whole number; the name and address of the registrant or licensee, or manufacturer, or both; and the name and address of the purchaser. [2003 c 15 § 1; 1999 c 381 § 1; 1998 c 36 § 6; 1993 c 183 § 5; 1987 c 45 § 12; 1967 ex.s. c 22 § 22.]

Effective date—2003 c 15 § 1: "Section 1 of this act takes effect January 1, 2004." [2003 c 15 § 2.]

Effective date—1999 c 381: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 c 381 § 2.]

Short title—1998 c 36: See note following RCW 15.54.265.

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

Chapter 15.58 RCW

WASHINGTON PESTICIDE CONTROL ACT

Sections

15.58.030 Definitions.
 15.58.040 Director's authority—Rules.
 15.58.150 Unlawful practices.
 15.58.205 Structural pest inspector licenses—Required—Exemptions.
 15.58.207 Structural pest inspector licenses—Examination.
 15.58.210 Pest control consultant licenses—Required—Exemptions.
 15.58.233 Renewal of licenses—Recertification standards.
 15.58.445 Wood destroying organism inspections—License required.
 15.58.460 Structural pest inspector—Evidence of financial responsibility required—Exemptions.
 15.58.465 Structural pest inspector—Forms of evidence of financial responsibility—Amount—Terms.
 15.58.470 Structural pest inspector—Failure to meet financial responsibility requirements.
 15.58.943 Effective date—2003 c 212.

15.58.030 Definitions. As used in this chapter the words and phrases defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.

(2) "Antidote" means the most practical immediate treatment of poisoning and includes first aid treatment.

(3) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(4) "Complete wood destroying organism inspection" means inspection for the purpose of determining evidence of infestation, damage, or conducive conditions as part of the transfer, exchange, or refinancing of any structure in Washington state. Complete wood destroying organism inspections include any wood destroying organism inspection that is conducted as the result of telephone solicitation by an inspection, pest control, or other business, even if the inspection would fall within the definition of a specific wood destroying organism inspection.

(5) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(6) "Department" means the Washington state department of agriculture.

(7) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(8) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, or to destroy, control, repel or mitigate fungi, nematodes, or such other pests, as may be designated by the director, but not including equipment used for the application of pesticides when sold separately from the pesticides.

(9) "Director" means the director of the department or a duly authorized representative.

(10) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(11) "EPA" means the United States environmental protection agency.

(12) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(13) "FIFRA" means the federal insecticide, fungicide, and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(14) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living persons or other animals.

(15) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(16) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed.

(17) "Inert ingredient" means an ingredient which is not an active ingredient.

(18) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic. In the case of a spray adjuvant the ingredient statement need contain only the names of the principal functioning agents and the total percentage of the constituents ineffective as spray adjuvants. If more than three functioning agents are present, only the three principal ones need be named.

(19) "Insect" means any of the numerous small invertebrate animals whose bodies are more or less obviously segmented, and which for the most part belong to the class insecta, comprising six-legged, usually winged forms, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(20) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insects which may be present in any environment whatsoever.

(21) "Inspection control number" means a number obtained from the department that is recorded on wood destroying organism inspection reports issued by a structural pest inspector in conjunction with the transfer, exchange, or refinancing of any structure.

(22) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide, device, or immediate container, and the outside container or wrapper of the retail package.

(23) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon the pesticide, device, or any of its containers or wrappers;

(b) Accompanying the pesticide, or referring to it in any other media used to disseminate information to the public; and

(c) To which reference is made on the label or in literature accompanying or referring to the pesticide or device except when accurate nonmisleading reference is made to current official publications of the department, United States departments of agriculture; interior; education; health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(24) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(25) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed using a master application and a master license expiration date common to each renewable license endorsement.

(26) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(27) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts, may also be called nemas or eelworms.

(28) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(29) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in a living person or other animal, which is normally considered to be a pest or which the director may declare to be a pest.

(30) "Pest control consultant" means any individual who sells or offers for sale at other than a licensed pesticide dealer outlet or location where they are employed, or who offers or supplies technical advice or makes recommendations to the user of:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(31) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant.

(32) "Pesticide advisory board" means the pesticide advisory board as provided for in the Washington pesticide application act.

(33) "Pesticide dealer" means any person who distributes any of the following pesticides:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(34) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

(35) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or their produce, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(36) "Registrant" means the person registering any pesticide under the provisions of this chapter.

(37) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(38) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents, or any other vertebrate animal which the director may declare by rule to be a pest.

(39) "Specific wood destroying organism inspection" means an inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms prior to pest management activities.

(40) "Spray adjuvant" means any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own, intended to be used with any other pesticide as an aid to the application or to the effect of the pesticide, and which is in a package or container separate from that of the pesticide with which it is to be used.

(41) "Special local needs registration" means a registration issued by the director pursuant to provisions of section 24(c) of FIFRA.

(42) "Structural pest inspector" means any individual who performs the service of conducting a complete wood destroying organism inspection or a specific wood destroying organism inspection.

(43) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

(44) "Weed" means any plant which grows where not wanted.

(45) "Wood destroying organism" means insects or fungi that consume, excavate, develop in, or otherwise modify the integrity of wood or wood products. Wood destroying organism includes, but is not limited to, carpenter ants, moisture

ants, subterranean termites, dampwood termites, beetles in the family Anobiidae, and wood decay fungi (wood rot).

(46) "Wood destroying organism inspection report" means any written document that reports or comments on the presence or absence of wood destroying organisms, their damage, and/or conducive conditions leading to the establishment of such organisms. [2003 c 212 § 1; 2000 c 96 § 1; 1992 c 170 § 1; 1991 c 264 § 1; 1989 c 380 § 1; 1982 c 182 § 26; 1979 c 146 § 1; 1971 ex.s. c 190 § 3.]

Severability—1982 c 182: See RCW 19.02.901.

15.58.040 Director's authority—Rules. (1) The director shall administer and enforce the provisions of this chapter and rules adopted under this chapter. All the authority and requirements provided for in chapter 34.05 RCW (Administrative Procedure Act) and chapter 42.30 RCW shall apply to this chapter in the adoption of rules including those requiring due notice and a hearing for the adoption of permanent rules.

(2) The director is authorized to adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

(a) Declaring as a pest any form of plant or animal life or virus which is injurious to plants, people, animals (domestic or otherwise), land, articles, or substances;

(b) Determining that certain pesticides are highly toxic to people. For the purpose of this chapter, highly toxic pesticide means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 156.10 for toxicity category I due to oral inhalation or dermal toxicity. The director shall publish a list of all pesticides, determined to be highly toxic, by their common or generic name and their trade or brand name if practical. Such list shall be kept current and shall, upon request, be made available to any interested party;

(c) Determining standards for denaturing pesticides by color, taste, odor, or form;

(d) The collection and examination of samples of pesticides or devices;

(e) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(f) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/or size to alleviate danger of spillage, breakage, misuse, or any other hazard to the public. The director shall be guided by federal regulations concerning pesticide containers;

(g) Procedures in making of pesticide recommendations;

(h) Adopting a list of restricted use pesticides for the state or for designated areas within the state if the director determines that such pesticides may require rules restricting or prohibiting their distribution or use. The director may include in the rule the time and conditions of distribution or use of such restricted use pesticides and may, if it is found necessary to carry out the purpose and provisions of this chapter, require that any or all restricted use pesticides shall be purchased, possessed, or used only under permit of the director and under the director's direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations. The director may require all persons issued such permits to maintain records as to the use of all the restricted use pesticides;

(i) Label requirements of all pesticides required to be registered under provisions of this chapter;

(j) Regulating the labeling of devices;

(k) The establishment of criteria governing the conduct of a structural pest inspection;

(l) Declaring crops, when grown to produce seed specifically for crop reproduction purposes, to be nonfood and/or nonfeed sites of pesticide application. The director may include in the rule any restrictions or conditions regarding:

(i) The application of pesticides to the designated crops; and
(ii) the disposition of any portion of the treated crop;

(m) Fixing and collecting examination fees; and

(n) Requiring individuals to earn recertification credits in the classifications in which they are licensed.

(3) For the purpose of uniformity and to avoid confusion endangering the public health and welfare the director may adopt rules in conformity with the primary pesticide standards, particularly as to labeling, established by the United States environmental protection agency or any other federal agency. [2003 c 212 § 2; 2000 c 96 § 8; 1997 c 242 § 1; 1996 c 188 § 4; 1991 c 264 § 2; 1989 c 380 § 2; 1971 ex.s. c 190 § 4.]

15.58.150 Unlawful practices. (1) It is unlawful for any person to distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of this chapter;

(b) Any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration: PROVIDED, That at the discretion of the director, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product;

(c) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this chapter and the rules adopted under this chapter;

(d) Any pesticide including arsenicals, fluorides, fluosilicates, and/or any other white powdered pesticides unless they have been distinctly denatured as to color, taste, odor, or form if so required by rule;

(e) Any pesticide which is adulterated or misbranded, or any device which is misbranded;

(f) Any pesticide in containers, violating rules adopted pursuant to RCW 15.58.040(2)(f) or pesticides found in containers which are unsafe due to damage.

(2) It shall be unlawful:

(a) To sell or deliver any pesticide to any person who is required by law or rules promulgated under such law to be certified, licensed, or have a permit to use or purchase the pesticide unless such person or the person's agent, to whom sale or delivery is made, has a valid certification, license, or permit to use or purchase the kind and quantity of such pesti-

cide sold or delivered: PROVIDED, That, subject to conditions established by the director, such permit may be obtained immediately prior to sale or delivery from any person designated by the director;

(b) For any person to detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this chapter or rules adopted under this chapter, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter or the rules adopted thereunder;

(c) For any person to use or cause to be used any pesticide contrary to label directions or to regulations of the director if those regulations differ from or further restrict the label directions: PROVIDED, The compliance to the term "contrary to label directions" is enforced by the director consistent with the intent of this chapter;

(d) For any person to use for his or her own advantage or to reveal, other than to the director or proper officials or employees of the state, or to the courts of the state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of RCW 15.58.060;

(e) For any person to make false, misleading, or erroneous statements or reports concerning any pest during or after a pest inspection or to fail to comply with criteria established by rule for structural pest inspections;

(f) For any person to make false, misleading, or erroneous statements or reports in connection with any pesticide complaint or investigation;

(g) For any person to act as, or advertise that they perform the services of, a structural pest inspector without having a license to act as a structural pest inspector;

(h) For a business to conduct one or more complete wood destroying organism inspections without first having obtained a structural pest inspection company license from the department. [2003 c 212 § 3; 2000 c 96 § 6; 1991 c 264 § 3; 1989 c 380 § 11; 1987 c 45 § 25; 1979 c 146 § 3; 1971 ex.s. c 190 § 15.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.58.205 Structural pest inspector licenses—

Required—Exemptions. (1) Except as provided in subsection (2) of this section, no individual may perform services as a structural pest inspector or advertise that they perform services of a structural pest inspector without obtaining a structural pest inspector license from the director. The license expires annually on a date set by rule by the director. Application for a license must be on a form prescribed by the director and must be accompanied by a fee of forty-five dollars.

(2) The following are exempt from the application fee requirement of subsection (1) of this section when acting within the authorities of their existing licenses issued under chapter 15.58 or 17.21 RCW: Licensed pest control consultants; licensed commercial pesticide applicators and operators; licensed private-commercial applicators; and licensed demonstration and research applicators.

(3) The following are exempt from the structural pest inspector licensing requirement: Individuals inspecting for damage caused by wood destroying organisms if the inspec-

tions are solely for the purpose of: (a) Repairing or making specific recommendations for the repair of the damage, or (b) assessing a monetary value for the structure inspected. Individuals performing wood destroying organism inspections that incorporate but are not limited to the activities described in (a) or (b) of this subsection are not exempt from the structural pest inspector licensing requirement.

(4) Persons holding a valid license to act as a structural pest inspector on July 1, 2003, are exempt from this requirement until expiration of that license.

(5) A structural pest inspector license is not valid for conducting a complete wood destroying organism inspection unless the inspector owns or is employed by a business with a structural pest inspection company license. [2003 c 212 § 5.]

15.58.207 Structural pest inspector licenses—Examination. The director shall require each applicant for a structural pest inspector license to demonstrate to the director the applicant's knowledge of applicable laws and regulations; structural pest identification and damage; and conditions conducive to the development of wood destroying organisms by satisfactorily passing a written examination for the classifications for which the applicant has applied prior to issuing the license. [2003 c 212 § 6.]

15.58.210 Pest control consultant licenses—Required—Exemptions. (1) Except as provided in subsection (2) of this section, no individual may perform services as a pest control consultant without obtaining a license from the director. The license shall expire annually on a date set by rule by the director. Application for a license shall be on a form prescribed by the director and shall be accompanied by a fee of forty-five dollars.

(2) The following are exempt from the licensing requirements of subsection (1) of this section when acting within the authorities of their existing licenses issued under chapter 17.21 RCW: Licensed commercial pesticide applicators and operators; licensed private-commercial applicators; and licensed demonstration and research applicators. The following are also exempt from the licensing requirements of subsection (1) of this section: Employees of federal, state, county, or municipal agencies when acting in their official governmental capacities; and pesticide dealer managers and employees working under the direct supervision of the pesticide dealer manager and only at a licensed pesticide dealer's outlet. [2003 c 212 § 4; 2000 c 96 § 9; 1997 c 242 § 6; 1992 c 170 § 3. Prior: 1991 c 264 § 4; 1991 c 109 § 39; 1989 c 380 § 16; 1983 c 95 § 5; 1971 ex.s. c 190 § 21.]

Effective date—1997 c 242: See note following RCW 15.58.070.

15.58.233 Renewal of licenses—Recertification standards. (1) The director may renew any license issued under this chapter subject to the recertification standards identified in subsection (2) of this section or an examination requiring new knowledge that may be required to perform in those areas licensed.

(2) Except as provided in subsection (3) of this section, all individuals licensed under this chapter shall meet the recertification standards identified in (a) or (b) of this subsection,

every five years, in order to qualify for continuing licensure.

(a) Individuals licensed under this chapter may qualify for continued licensure through accumulation of recertification credits. Individuals licensed under this chapter shall accumulate a minimum of forty department-approved credits every five years with no more than fifteen credits allowed per year.

(b) Individuals licensed under this chapter may qualify for continued licensure through meeting the examination requirements necessary to become licensed in those areas in which the licensee operates.

(3) At the termination of a licensee's five-year recertification period, the director may waive the recertification requirements if the licensee can demonstrate that he or she is meeting comparable recertification standards through another state or jurisdiction or through a federal environmental protection agency-approved government agency plan. [2003 c 212 § 7; 2000 c 96 § 7; 1997 c 242 § 10.]

15.58.445 Wood destroying organism inspections—License required. It is unlawful for any business to conduct complete wood destroying organism inspections without having obtained a company license from the director. Application for a structural pest inspection company license must be on a form prescribed by the director. The application must include the following information:

(1) The full name of the individual applying for such license;

(2) The full name of the company that employs structural pest inspectors;

(3) The physical and mailing addresses of the company, and the telephone and facsimile numbers, if available;

(4) A list of the names of the structural pest inspectors who are employed by the company;

(5) The unique business identifier for the company; and

(6) Any other necessary information prescribed by the director.

Any changes to the information on the prescribed structural pest inspection company license form shall be reported by the company to the department within thirty days of the change. [2003 c 212 § 8.]

15.58.460 Structural pest inspector—Evidence of financial responsibility required—Exemptions. (1) The director shall not issue a license to any individual who intends to act as a structural pest inspector until evidence of financial responsibility, required and described in subsection (2) of this section, is furnished by the applicant or the business employing the applicant. Licensed commercial applicators that have met the requirements of RCW 17.21.160 and their licensed commercial operator employees are exempt from this financial responsibility requirement when performing specific wood destroying organism inspections. Public employees licensed to perform structural pest inspections are exempt from this licensing requirement when acting within their official capacities.

(2) Evidence of financial responsibility, consisting of one of the following, must be provided and maintained as a condition of licensure:

(a) An errors and omissions insurance policy, the amount and terms of which are consistent with the requirements of RCW 15.58.465(1)(a);

(b) A surety bond, the amounts and terms of which are consistent with the requirements of RCW 15.58.465(1)(b);

(c) A surety bond and an errors and omissions insurance policy, the amount and terms of which are consistent with the requirements of RCW 15.58.465(1)(c);

(d) An assigned account, the amount and terms of which are consistent with the requirements of RCW 15.58.465(1)(d);

(e) Any other type of evidence of financial responsibility identified by the director by rule that provides coverage equivalent to that provided by any of (a) through (d) of this subsection.

(3) Evidence of financial responsibility must be supplied to the department on a financial responsibility insurance certificate, surety bond form, assigned account form, or other form prescribed by the director with regard to evidence provided under subsection (2)(e) of this section. [2003 c 212 § 9; 2000 c 96 § 3.]

15.58.465 Structural pest inspector—Forms of evidence of financial responsibility—Amount—Terms. (1) The following requirements apply to the forms of evidence of financial responsibility required under RCW 15.58.460.

(a) **Errors and Omissions Insurance.** The amount of the errors and omissions insurance policy required by RCW 15.58.460(2)(a) shall not be less than twenty-five thousand dollars. The insurance policy shall be maintained at not less than the required sum at all times during the licensed period. The insurance policy shall provide coverage for errors and omissions in an inspection conducted during the term of the policy. However, the policy may limit the insurer's liability on the policy in effect at the time of the inspection to two years from the date of the inspection.

(b) **Surety Bond.** The amount of the surety bond required by RCW 15.58.460(2)(b) shall not be less than twenty-five thousand dollars. The surety bond shall be maintained at not less than the required sum at all times during the licensed period. Any person having a claim against the structural pest inspector for legal damages as a result of the actions of the structural pest inspector may bring suit upon the bond in the court of the county in which the inspection took place or of the county in which jurisdiction of the structural pest inspector may be had. The surety issuing the bond shall be named as a party to any suit upon the bond. The suit upon the bond must be commenced within two years of the date of the inspection.

(c) **Surety Bond and Errors and Omissions Insurance.** The amount of the surety bond required by RCW 15.58.460(2)(c) shall not be less than twelve thousand five hundred dollars. Except as to the amount of the bond, the terms of the bond shall be identical to those set forth in (b) of this subsection. The amount of the errors and omissions insurance policy required by RCW 15.58.460(2)(c) shall not be less than twenty-five thousand dollars. The insurance policy shall be maintained at not less than the required sum at all times during the licensed period. The insurance policy shall provide coverage for errors and omissions in an inspection conducted during the term of the policy.

(d) **Assigned Account.** The amount of the assigned account required by RCW 15.58.460(2)(d) shall not be less than twenty-five thousand dollars. The assigned account shall be held by the department to satisfy any execution on a judgment issued against the inspector for legal damages resulting from errors and omissions in the conduct of an inspection, according to the provisions of the assigned account agreement. The department has no liability for payment in excess of the amount of the assigned account.

(i) The assigned account agreement filed with the director as evidence of financial responsibility shall be canceled at the expiration of two years after the inspector's license has expired or been revoked, or at the expiration of two years after the inspector has furnished another form of evidence of financial responsibility required by RCW 15.58.460, unless legal action has been instituted against the inspector prior to the expiration of the two-year period and the director has been provided written notice of the same by the claimant. In such a case the director shall not cancel the assigned account agreement until the director either receives a copy of the order dismissing the action by registered or certified mail, or has received a copy of the unsatisfied judgment and has complied with the requirements of (d)(ii) of this subsection.

(ii) Any person having an unsatisfied final judgment against the inspector for legal damages awarded based on errors and omissions in the conduct of an inspection may execute upon the funds in the assigned account by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the department within one year of the date of entry of such judgment. Upon the receipt of service of such certified copy the department shall direct the financial institution to pay from the assigned account, through the registry of the court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment from the assigned account shall be the order of receipt of the final judgment by the department.

(2) Nothing in subsection (1) of this section that limits the time period in which a suit must be commenced on a surety bond or in which a claim must be made on a policy effects the statute of limitations applicable to any claim any person may have against the structural pest inspector or company.

(3) The director may only accept a surety bond or insurance policy as evidence of financial responsibility if the bond or policy is issued by an insurer authorized to do business in this state. The director shall be notified ten days before any reduction of insurance coverage at the request of the applicant or cancellation of the surety bond or insurance by the surety or insurer and by the insured.

(4) The total and aggregate of the surety and insurer for all claims is limited to the face of the surety bond or insurance policy. The director may accept a surety bond or insurance policy in the proper sum that has a deductible clause in an amount not exceeding five thousand dollars for the total amount of surety bond or insurance required by this section. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim the deductible clause may not be accepted by the director unless the applicant furnishes the director with a surety bond or insurance policy which satisfies the amount of the deductible as to all claims that may arise. [2003 c 212 § 10; 2000 c 96 § 4.]

15.58.470 Structural pest inspector—Failure to meet financial responsibility requirements. Whenever the form of evidence of financial responsibility for a structural pest inspector license is reduced below the requirements of RCW 15.58.465 or no longer applies to the structural pest inspector, or whenever the licensee or the business that employs the licensee has failed to provide evidence of financial responsibility as required by RCW 15.58.460 by the expiration date of any previous form of evidence of financial responsibility, the director shall immediately suspend the structural pest inspector license until the requirements of RCW 15.58.465 are met again. [2003 c 212 § 11; 2000 c 96 § 5.]

15.58.943 Effective date—2003 c 212. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003. [2003 c 212 § 12.]

**Chapter 15.60 RCW
APIARIES**

Sections

15.60.055 Violations—Penalty. (*Effective July 1, 2004.*)

15.60.055 Violations—Penalty. (*Effective July 1, 2004.*) (1) Except as provided in subsection (2) of this section, a person who violates or fails to comply with any of the provisions of this chapter or any rule adopted under this chapter is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor.

(3) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter or any rule adopted under this chapter and that violation has not been punished as a misdemeanor or gross misdemeanor, the director may impose and collect a civil penalty not exceeding one thousand dollars for each violation. Each violation shall be a separate and distinct offense. A person who knowingly, through an act of omission or commission, procures or aids or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty. [2003 c 53 § 107; 1993 c 89 § 17; 1991 c 363 § 15; 1989 c 354 § 64. Formerly RCW 15.60.170.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

Severability—1989 c 354: See note following RCW 15.36.012.

**Chapter 15.61 RCW
LADYBUGS AND OTHER BENEFICIAL INSECTS**

Sections

15.61.050 Violations—Penalty. (*Effective July 1, 2004.*)

15.61.050 Violations—Penalty. (*Effective July 1, 2004.*) (1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 108; 1963 c 232 § 14.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

**Chapter 15.65 RCW
WASHINGTON STATE AGRICULTURAL
COMMODITY BOARDS**

(Formerly: Washington state agricultural enabling act of 1961—Commodity boards)

Sections

- 15.65.220 Commodity boards—Membership—Marketing agreement or order to establish and control—Director votes.
- 15.65.245 Repealed.
- 15.65.287 Commission's plans, programs, and projects—Director's approval required.
- 15.65.289 Commission speaks for state—Director's oversight.
- 15.65.670 Costs of implementing RCW 15.65.287.

15.65.220 Commodity boards—Membership—Marketing agreement or order to establish and control—Director votes. (1) Every marketing agreement and order shall provide for the establishment of a commodity board of not less than five nor more than thirteen members and shall specify the exact number thereof and all details as to (a) qualification, (b) nomination, (c) election or appointment by the director, (d) term of office, and (e) powers, duties, and all other matters pertaining to such board.

(2) The members of the board shall be producers or handlers or both in such proportion as the director shall specify in the marketing agreement or order, but in any marketing order or agreement the number of handlers on the board shall not exceed the number of producers thereon. The marketing order or agreement may provide that a majority of the board be appointed by the director, but in any event, no less than one-third of the board members shall be elected by the affected producers.

(3) In the event that the marketing order or agreement provides that a majority of the commodity board be appointed by the director, the marketing order or agreement shall incorporate the provisions of RCW 15.65.243 for board member selection.

(4) The director shall appoint to every board one member who represents the director. The director shall be a voting member of each commodity board. [2003 c 396 § 9; 2002 c 313 § 20; 1961 c 256 § 22.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

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

15.65.287 Commission's plans, programs, and projects—Director's approval required. (1) Each commodity commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of the affected commodity; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of the affected commodity may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review each commodity commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodity.

(3) Each commodity commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 10.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.65.289 Commission speaks for state—Director's oversight. Each commission organized under a marketing order adopted under this chapter exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges each commission, with oversight by the director, to speak on behalf of Washington state government with regard to its particular commodity. [2003 c 396 § 11.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.65.670 Costs of implementing RCW 15.65.287. The costs incurred by the department associated with the implementation of RCW 15.65.287 shall be paid for by the affected commodity commissions. [2003 c 396 § 12.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Chapter 15.66 RCW

WASHINGTON STATE AGRICULTURAL COMMODITY COMMISSIONS

(Formerly: Washington agricultural enabling act of 1955—Commodity commissions)

Sections

15.66.030	Marketing orders authorized—Purposes.
15.66.110	Commodity commission—Composition—Terms.
15.66.115	Repealed.
15.66.140	Commodity commission—Powers and duties.
15.66.141	Commission's plans, programs, and projects—Director's approval required.
15.66.142	Commission speaks for state—Director's oversight.
15.66.185	Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies, and mutual savings banks.
15.66.263	Costs of implementing RCW 15.66.141.

15.66.030 Marketing orders authorized—Purposes. Marketing orders may be made for any one or more of the following purposes:

(1) To establish plans and conduct programs for advertising and sales promotion, to maintain present markets, or to create new or larger markets for any agricultural commodity grown in the state of Washington;

(2) To provide for carrying on research studies to find more efficient methods of production, irrigation, processing, transportation, handling, and marketing of any agricultural commodity;

(3) To provide for improving standards and grades by defining, establishing, and providing labeling requirements with respect to the same;

(4) To investigate and take necessary action to prevent unfair trade practices;

(5) To provide information or communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of an agricultural commodity produced in Washington state to any elected official or officer or employee of any agency;

(6) To provide marketing information and services for producers of an agricultural commodity;

(7) To provide information and services for meeting resource conservation objectives of producers of an agricultural commodity;

(8) To engage in cooperative efforts in the domestic or foreign marketing of food products of an agricultural commodity;

(9) To provide for commodity-related education and training; and

(10) To assist and cooperate with the department or any other local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect trade of the affected commodity. [2003 c 396 § 1; 2002 c 313 § 40; 2001 c 315 § 1; 1961 c 11 § 15.66.030. Prior: 1955 c 191 § 3.]

Effective date—2003 c 396: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 2003]." [2003 c 396 § 45.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.110 Commodity commission—Composition—Terms. (1) Every marketing order shall establish a commodity commission composed of not less than five nor more than fifteen members. Commission members shall be citizens and residents of this state if required by the marketing order, and over the age of eighteen. Not more than one commission member may be part of the same "person" as defined by this chapter. The term of office of commission members shall be three years with the terms rotating so that one-third of the terms will commence as nearly as practicable each year. However, the first commission shall be selected, one-third for a term of one year, one-third for a term of two years, and one-third for a term of three years, as nearly as practicable. Except as provided in subsection (2) of this section, no less than sixty percent of the commission members shall be elected by the affected producers and such elected members shall all be affected producers. Except as provided in subsection (4) of this section, the remaining members shall be appointed by the commission and shall be either affected producers, others active in matters relating to the affected commodity, or persons not so related.

(2) A marketing order may provide that a majority of the commission be appointed by the director.

(3) In the event that the marketing order provides that a majority of the commission be appointed by the director, the

marketing order shall incorporate the provisions of RCW 15.66.113 for member selection.

(4) The director shall appoint to every commission one member who represents the director. The director is a voting member of each commodity commission. [2003 c 396 § 4; 2002 c 313 § 51; 2001 c 315 § 2; 1961 c 11 § 15.66.110. Prior: 1955 c 191 § 11.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

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

15.66.140 Commodity commission—Powers and duties. Every commodity commission shall have such powers and duties in accordance with provisions of this chapter as may be provided in the marketing order and shall have the following powers and duties:

(1) To elect a chair and such other officers as determined advisable;

(2) To adopt, rescind and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under the marketing order;

(3) To administer, enforce, direct and control the provisions of the marketing order and of this chapter relating thereto;

(4) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(5) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey the same;

(6) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter and of the marketing order;

(7) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years;

(8) Borrow money and incur indebtedness;

(9) Make necessary disbursements for routine operating expenses;

(10) To expend funds for commodity-related education, training, and leadership programs as each commission deems expedient;

(11) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in the commission's marketing order;

(12) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes provided in the commission's marketing order. Personal service contracts must comply with chapter 39.29 RCW;

(13) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and

public agencies to carry out the purposes provided in the commission's marketing order;

(14) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of an affected commodity;

(15) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of a commission. The retention of a private attorney is subject to review by the office of the attorney general;

(16) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by the marketing order;

(17) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of affected commodities including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(18) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of the marketing order and data on the value of each producer's production for a minimum three-year period;

(19) To maintain a list of the names and addresses of persons who handle the affected commodity within the affected area and data on the amount and value of the commodity handled for a minimum three-year period by each person;

(20) To request records and audit the records of producers or handlers of the affected commodity during normal business hours to determine whether the appropriate assessment has been paid;

(21) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to the affected commodity; and

(22) Such other powers and duties that are necessary to carry out the purposes of this chapter. [2003 c 396 § 2; 2002 c 313 § 57; 2001 c 315 § 3; 1985 c 261 § 20; 1982 c 81 § 2; 1961 c 11 § 15.66.140. Prior: 1955 c 191 § 14.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.141 Commission's plans, programs, and projects—Director's approval required. (1) Each commodity commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of the affected commodity; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of the affected commodity may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review each commodity commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodity.

(3) Each commodity commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 5.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.66.142 Commission speaks for state—Director's oversight. Each commission organized under a marketing order adopted under this chapter exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges each commission, with oversight by the director, to speak on behalf of Washington state government with regard to its particular commodity. [2003 c 396 § 6.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.66.185 Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies, and mutual savings banks. (1) Any funds of any agricultural commodity commission may be invested in savings or time deposits in banks, trust companies, and mutual savings banks that are doing business in the United States, up to the amount of insurance afforded such accounts by the Federal Deposit Insurance Corporation.

(2) This section shall apply to all funds which may be lawfully so invested, which in the judgment of any agricultural commodity commission are not required for immediate expenditure. The authority granted by this section is not exclusive and shall be construed to be cumulative and in addition to other authority provided by law for the investment of such funds, including, but not limited to, authority granted under chapters 39.58, 39.59, and 43.84 RCW. [2003 c 396 § 3; 2002 c 313 § 62; 1967 ex.s. c 54 § 2. Formerly RCW 30.04.370.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.263 Costs of implementing RCW 15.66.141. The costs incurred by the department of agriculture that are associated with the implementation of RCW 15.66.141 shall be paid for by the affected commodity commissions. [2003 c 396 § 8.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Chapter 15.80 RCW WEIGHMASTERS

Sections

15.80.650 Violations—Penalty. (*Effective July 1, 2004.*)

15.80.650 Violations—Penalty. (*Effective July 1, 2004.*) (1) Except as provided in RCW 15.80.640 or subsection (2) of this section, any person violating any provision of this chapter or rules adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a

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previous conviction shall be considered a first offense. [2003 c 53 § 109; 1969 ex.s. c 100 § 36.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 15.85 RCW AQUACULTURE MARKETING

Sections

15.85.020 Definitions.

15.85.060 Private sector cultured aquatic products—Identification—Rules.

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

(1) "Aquaculture" means the process of growing, farming, or cultivating private sector cultured aquatic products in marine or freshwaters and includes management by an aquatic farmer.

(2) "Aquatic farmer" is a private sector person who commercially farms and manages the cultivating of private sector cultured aquatic products on the person's own land or on land in which the person has a present right of possession.

(3) "Private sector cultured aquatic products" are native, nonnative, or hybrids of marine or freshwater plants and animals that are propagated, farmed, or cultivated on aquatic farms under the supervision and management of a private sector aquatic farmer or that are naturally set on aquatic farms which at the time of setting are under the active supervision and management of a private sector aquatic farmer. When produced under such supervision and management, private sector cultured aquatic products include, but are not limited to, the following plants and animals:

Scientific Name	Common Name
Enteromorpha	green nori
Monostroma	awo-nori
Ulva	sea lettuce
Laminaria	konbu
Nereocystis	bull kelp
Porphyra	nori
Iridaea	
Haliotis	abalone
Zhlamys	pink scallop
Hinnites	rock scallop
Tatinopecten	Japanese or weathervane scallop
Protothaca	native littleneck clam
Tapes	manila clam
Saxidomus	butter clam
Mytilus	mussels
Crassostrea	Pacific oysters
Ostrea	Olympia and European oysters
Pacifasticus	crayfish
Macrobrachium	freshwater prawn
Salmo and Salvelinus	trout, char, and Atlantic salmon
Oncorhynchus	salmon
Ictalurus	catfish
Cyprinus	carp
Acipenseridae	Sturgeon

Private sector cultured aquatic products do not include herring spawn on kelp and other products harvested under a herring spawn on kelp permit issued in accordance with RCW 77.70.210.

(4) "Department" means the department of agriculture.

(5) "Director" means the director of agriculture. [2003 c 39 § 7; 1989 c 176 § 3; 1985 c 457 § 2.]

15.85.060 Private sector cultured aquatic products—Identification—Rules. The director shall establish identification requirements for private sector cultured aquatic products to the extent that identifying the source and quantity of the products is necessary to permit the department of fish and wildlife to administer and enforce Title 77 RCW effectively. The rules shall apply only to those private sector cultured aquatic products the transportation, sale, processing, or other possession of which would otherwise be required to be licensed under Title 77 RCW if they were not cultivated by aquatic farmers. The rules shall apply to the transportation or possession of such products on land other than aquatic lands and may require that they be: (1) Placed in labeled containers or accompanied by bills of lading or sale or similar documents identifying the name and address of the producer of the products and the quantity of the products governed by the documents; or (2) both labeled and accompanied by such documents.

The director shall consult with the director of fish and wildlife to ensure that such rules enable the department of fish and wildlife to enforce the programs administered under those titles. If rules adopted under chapter 69.30 RCW satisfy the identification required under this section for shellfish, the director shall not establish different shellfish identification requirements under this section. [2003 c 39 § 8; 1994 c 264 § 5; 1988 c 36 § 6; 1985 c 457 § 5.]

Chapter 15.88 RCW WINE COMMISSION

Sections

15.88.030	Wine commission created—Composition.
15.88.040	Designation of commission members—Terms.
15.88.050	Appointment of members—Travel expenses.
15.88.073	Commission's plans, programs, and projects—Director's approval required.
15.88.075	Commission speaks for state—Director's oversight.
15.88.100	Commission members' votes weighted—Exception.
15.88.180	Funding staff support—Rules—Costs of implementing RCW 15.88.073.

15.88.030 Wine commission created—Composition.

(1) There is created an agricultural commodity commission to be known and designated as the Washington wine commission. The commission shall be composed of twelve voting members and one nonvoting member; five voting members shall be growers, five voting members shall be wine producers, one voting member shall be the director, and one voting member shall be a wine distributor licensed under RCW 66.24.200. Of the grower members, at least one shall be a person who does not have over fifty acres of vinifera grapes in production, at least one shall be a person who has over one hundred acres of vinifera grapes in production, and two may be persons who produce and sell their own wine. Of the wine producer members, at least one shall be a person producing

not more than twenty-five thousand gallons of wine annually, at least one shall be a person producing over one million gallons of wine annually, and at least two shall be persons who produce wine from their own grapes. In addition, at least one member shall be a wine producer located in western Washington and at least two members shall be wine producers located in eastern Washington.

(2) The commission shall have one nonvoting member who is a wine producer in this state whose principal wine or wines are produced from fruit other than vinifera grapes.

(3) Seven voting members of the commission constitute a quorum for the transaction of any business of the commission.

(4) Each voting member of the commission shall be a citizen and resident of this state and over the age of twenty-one years. Each voting member, except the member holding position eleven, must be or must have been engaged in that phase of the grower or wine producer industry that he or she is appointed to represent, and must during his or her term of office derive a substantial portion of income therefrom, or have a substantial investment in the growing of vinifera grapes or the production of wine from vinifera grapes as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the growing of vinifera grapes or wine production from vinifera grapes; or the manager or executive officer of such a corporation. These qualifications apply throughout each member's term of office. This subsection does not apply to the director. [2003 c 396 § 38; 1997 c 321 § 40; 1988 c 254 § 12; 1987 c 452 § 3.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective date—1997 c 321: See note following RCW 66.24.010.

15.88.040 Designation of commission members—

Terms. The appointed voting positions on the commission shall be designated as follows: The wine producers shall be designated positions one, two, three, four, and five; the growers shall be designated positions six, seven, eight, nine, and ten; the wine wholesaler shall be position eleven; and the director shall be position number thirteen. The nonvoting industry member shall be designated position number twelve. The member designated as filling position one shall be a person producing over one million gallons of wine annually. The member designated as position one shall be the sole representative, directly or indirectly, of the producer eligible to hold position one and in no event shall that producer directly or indirectly control more than fifty percent of the votes of the commission.

Except for position thirteen, the regular terms of office shall be three years from the date of appointment and until their successors are appointed. However, the first terms of the members appointed upon July 1, 1987, shall be as follows: Positions one, six, and eleven shall terminate July 1, 1990; positions two, four, seven, and nine shall terminate July 1, 1989; and positions three, five, eight, and ten shall terminate July 1, 1988. The term of the initial nonvoting industry member shall terminate July 1, 1990. [2003 c 396 § 39; 1988 c 254 § 13; 1987 c 452 § 4.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.88.050 Appointment of members—Travel expenses. (1) The director shall appoint the members of the commission. In making such appointments, the director shall take into consideration recommendations made by the growers' association and the wine institute as the persons recommended for appointment as members of the commission. In appointing persons to the commission, the director shall seek to ensure as nearly as possible a balanced representation on the commission which would reflect the composition of the growers and wine producers throughout the state as to number of acres cultivated and amount of wine produced.

(2) The appointment shall be carried out immediately subsequent to July 1, 1987, and members so appointed as set forth in this chapter shall serve for the periods set forth for the original members of the commission under RCW 15.88.040.

(3) In the event a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the unexpired term of the position shall immediately be filled by appointment by the director.

(4) Each member or employee of the commission shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter as defined by the commission in rule. Otherwise if not defined in rule, reimbursement for travel expenses shall be at the rates allowed by RCW 43.03.050 and 43.03.060. [2003 c 396 § 40; 2002 c 313 § 111; 1987 c 452 § 5.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.88.073 Commission's plans, programs, and projects—Director's approval required. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising, promotion, and education of the affected commodities; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of the affected commodities may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning the affected commodities.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 42.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.88.075 Commission speaks for state—Director's oversight. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of the Washington

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state government with regard to wine grapes and wine. [2003 c 396 § 43.]

Effective date—2003 c 396: See note following RCW 15.66.030.

15.88.100 Commission members' votes weighted—Exception. (1) Except as provided in subsection (2) of this section, the vote of each of the voting members of the commission shall be weighted as provided by this subsection for the transaction of any of the business of the commission. The total voting strength of the entire voting membership of the commission shall be twelve votes. The vote of position one shall be equal to the lesser of the following: Six and one-half votes; or eleven votes times the percentage of the wine produced in the state that is produced by the person filling position one. The percentage shall be based upon the amount of wine produced in the previous calendar year and shall be rounded to the nearest ten percent. The remaining votes of the membership of the commission shall be divided equally among the remaining members of the commission.

(2) In the event that the percentage of wine produced by the producer represented by position one falls below twenty-five percent of the wine produced in this state, the weighted voting mechanism provided for in subsection (1) of this section shall cease to be effective. In that case, the voting shall be based on one vote per position. [2003 c 396 § 41; 1988 c 254 § 14; 1987 c 452 § 10.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective date—1988 c 254 § 14: "Section 14 of this act shall take effect July 1, 1989." [1988 c 254 § 15.]

15.88.180 Funding staff support—Rules—Costs of implementing RCW 15.88.073. (1) The director may provide by rule for a method to fund staff support for all commodity boards or commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director.

(2) The costs incurred by the department associated with the implementation of RCW 15.88.073 shall be paid for by the commission. [2003 c 396 § 44; 2002 c 313 § 76.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

Title 16

ANIMALS AND LIVESTOCK

(Formerly: Animals, estrays, brands, and fences)

Chapters

16.36 Animal health.

16.49 Custom slaughtering.

16.52 Prevention of cruelty to animals.

16.57 Identification of livestock.

16.58 Identification of cattle through licensing of certified feed lots.

16.65 Public livestock markets.

16.67 Washington state beef commission.

Chapter 16.36 RCW**ANIMAL HEALTH**

(Formerly: Diseases—Quarantine—Garbage feeding)

Sections

16.36.005 Definitions.

16.36.005 Definitions. As used in this chapter:

"Animal" means all members of the animal kingdom except humans, fish, and insects. However, "animal" does not mean noncaptive wildlife as defined in RCW 77.08.010(16), except as used in RCW 16.36.050(1) and 16.36.080 (1), (2), (3), and (5).

"Animal reproductive product" means sperm, ova, fertilized ova, and embryos from animals.

"Farm-raised fish" means fish raised by aquaculture as defined in RCW 15.85.020. Farm-raised fish are considered to be a part of animal agriculture; however, disease inspection, prevention, and control programs and related activities for farm-raised fish are administered by the department of fish and wildlife under chapter 77.115 RCW.

"Communicable disease" means a disease due to a specific infectious agent or its toxic products transmitted from an infected person, animal, or inanimate reservoir to a susceptible host, either directly or indirectly through an intermediate plant or animal host, vector, or the environment.

"Contagious disease" means a communicable disease that is capable of being easily transmitted from one animal to another animal or a human.

"Director" means the director of agriculture of the state of Washington or his or her authorized representative.

"Department" means the department of agriculture of the state of Washington.

"Deputized state veterinarian" means a Washington state licensed and accredited veterinarian appointed and compensated by the director according to state law and department policies.

"Garbage" means the solid animal and vegetable waste and offal together with the natural moisture content resulting from the handling, preparation, or consumption of foods in houses, restaurants, hotels, kitchens, markets, meat shops, packing houses and similar establishments or any other food waste containing meat or meat products.

"Herd or flock plan" means a written management agreement between the owner of a herd or flock and the state veterinarian, with possible input from a private accredited veterinarian designated by the owner and the area veterinarian-in-charge of the United States department of agriculture, animal and plant health inspection service, veterinary services in which each participant agrees to undertake actions specified in the herd or flock plan to control the spread of infectious, contagious, or communicable disease within and from an infected herd or flock and to work toward eradicating the disease in the infected herd or flock.

"Hold order" means an order by the director to the owner or agent of the owner of animals or animal reproductive products which restricts the animals or products to a designated holding location pending an investigation by the director of the disease, disease exposure, well-being, movement, or import status of the animals or animal reproductive products.

"Infectious agent" means an organism including viruses, rickettsia, bacteria, fungi, protozoa, helminthes, or prions that is capable of producing infection or infectious disease.

"Infectious disease" means a clinical disease of humans or animals resulting from an infection with an infectious agent that may or may not be communicable or contagious.

"Livestock" means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, game birds, and other species so designated by statute. "Livestock" does not mean free ranging wildlife as defined in Title 77 RCW.

"Person" means a person, persons, firm, or corporation.

"Quarantine" means the placing and restraining of any animal or its reproductive products by the owner or agent of the owner within a certain described and designated enclosure or area within this state, or the restraining of any animal or its reproductive products from entering this state, as may be directed in an order by the director.

"Reportable disease" means a disease designated by rule by the director as reportable to the department by veterinarians and others made responsible to report by statute.

"Veterinary biologic" means any virus, serum, toxin, and analogous product of natural or synthetic origin, or product prepared from any type of genetic engineering, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components intended for use in the diagnosis, treatment, or prevention of diseases in animals. [2003 c 39 § 9; 1998 c 8 § 1; 1987 c 163 § 1; 1953 c 17 § 1.]

Chapter 16.49 RCW**CUSTOM SLAUGHTERING**

Sections

16.49.008 Application.

16.49.008 Application. (1) This chapter does not apply to the slaughter and preparation of one thousand or fewer pastured chickens in a calendar year by the agricultural producer of the chickens for the sale of whole raw chickens by the producer directly to the ultimate consumer at the producer's farm.

(2) For the purposes of this section, "chicken" means the species *Gallus domesticus*. [2003 c 397 § 1.]

Chapter 16.52 RCW**PREVENTION OF CRUELTY TO ANIMALS**

Sections

16.52.015 Enforcement—Law enforcement agencies and animal care and control agencies. (*Effective July 1, 2004.*)

16.52.190 Poisoning animals—Penalty. (*Effective July 1, 2004.*)

16.52.193 Poisoning animals—Strychnine sales—Records—Report on suspected purchases. (*Effective July 1, 2004.*)

16.52.195 Repealed. (*Effective July 1, 2004.*)

16.52.200 Sentences—Forfeiture of animals—Liability for costs—Civil penalty—Education, counseling. (*Effective July 1, 2004.*)

16.52.230 Remedies not impaired. (*Effective July 1, 2004.*)

16.52.015 Enforcement—Law enforcement agencies and animal care and control agencies. (*Effective July 1, 2004.*) (1) Law enforcement agencies and animal care and control agencies may enforce the provisions of this chapter.

Animal care and control agencies may enforce the provisions of this chapter in a county or city only if the county or city legislative authority has entered into a contract with the agency to enforce the provisions of this chapter.

(2) Animal control officers enforcing this chapter shall comply with the same constitutional and statutory restrictions concerning the execution of police powers imposed on law enforcement officers who enforce this chapter and other criminal laws of the state of Washington.

(3) Animal control officers have the following enforcement powers when enforcing this chapter:

(a) The power to issue citations based on probable cause to offenders for misdemeanor and gross misdemeanor violations of this chapter or RCW 9.08.070 through 9.08.078 or 81.56.120;

(b) The power to cause a law enforcement officer to arrest and take into custody any person the animal control officer has probable cause to believe has committed or is committing a violation of this chapter or RCW 9.08.070 or 81.56.120. Animal control officers may make an oral complaint to a prosecuting attorney or a law enforcement officer to initiate arrest. The animal control officer causing the arrest shall file with the arresting agency a written complaint within twenty-four hours of the arrest, excluding Sundays and legal holidays, stating the alleged act or acts constituting a violation;

(c) The power to carry nonfirearm protective devices for personal protection;

(d) The power to prepare affidavits in support of search warrants and to execute search warrants when accompanied by law enforcement officers to investigate violations of this chapter or RCW 9.08.070 or 81.56.120, and to seize evidence of those violations.

(4) Upon request of an animal control officer who has probable cause to believe that a person has violated this chapter or RCW 9.08.070 or 81.56.120, a law enforcement agency officer may arrest the alleged offender. [2003 c 53 § 110; 1994 c 261 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.190 Poisoning animals—Penalty. (Effective July 1, 2004.) (1) Except as provided in subsections (2) and (3) of this section, a person is guilty of the crime of poisoning animals if the person intentionally or knowingly poisons an animal under circumstances which do not constitute animal cruelty in the first degree.

(2) Subsection (1) of this section shall not apply to euthanizing by poison an animal in a lawful and humane manner by the animal's owner, or by a duly authorized servant or agent of the owner, or by a person acting pursuant to instructions from a duly constituted public authority.

(3) Subsection (1) of this section shall not apply to the reasonable use of rodent or pest poison, insecticides, fungicides, or slug bait for their intended purposes. As used in this section, the term "rodent" includes but is not limited to Columbia ground squirrels, other ground squirrels, rats, mice, gophers, rabbits, and any other rodent designated as injurious to the agricultural interests of the state as provided in *chap-

ter 17.16 RCW. The term "pest" as used in this section includes any pest as defined in RCW 17.21.020.

(4) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 111; 1994 c 261 § 13; 1941 c 105 § 1; RRS § 3207-1. Formerly RCW 16.52.150, part.]

***Reviser's note:** Chapter 17.16 RCW was repealed by 1994 c 11 § 1.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.193 Poisoning animals—Strychnine sales—Records—Report on suspected purchases. (Effective July 1, 2004.)

(1) It is unlawful for any person other than a registered pharmacist to sell at retail or furnish to any person any strychnine: PROVIDED, That nothing herein prohibits county, state, or federal agents, in the course of their duties, from furnishing strychnine to any person. Every such registered pharmacist selling or furnishing such strychnine shall, before delivering the same, record the transaction as provided in RCW 69.38.030. If any such registered pharmacist suspects that any person desiring to purchase strychnine intends to use the same for the purpose of poisoning unlawfully any domestic animal or domestic bird, he or she may refuse to sell to such person, but whether or not he or she makes such sale, he or she shall if he or she so suspects an intention to use the strychnine unlawfully, immediately notify the nearest peace officer, giving such officer a complete description of the person purchasing, or attempting to purchase, such strychnine.

(2) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 112; 1987 c 34 § 7; 1941 c 105 § 2; Rem. Supp. 1941 § 3207-2. Formerly RCW 18.67.110.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

16.52.195 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

16.52.200 Sentences—Forfeiture of animals—Liability for costs—Civil penalty—Education, counseling. (Effective July 1, 2004.)

(1) The sentence imposed for a misdemeanor or gross misdemeanor violation of this chapter may be deferred or suspended in accordance with RCW 3.66.067 and 3.66.068, however the probationary period shall be two years.

(2) In case of multiple misdemeanor or gross misdemeanor convictions, the sentences shall be consecutive, however the probationary period shall remain two years.

(3) In addition to the penalties imposed by the court, the court shall order the forfeiture of all animals held by law enforcement or animal care and control authorities under the provisions of this chapter if any one of the animals involved dies as a result of a violation of this chapter or if the defendant has a prior conviction under this chapter. In other cases the court may enter an order requiring the owner to forfeit the animal if the court deems the animal's treatment to have been severe and likely to reoccur. If forfeiture is ordered, the owner shall be prohibited from owning or caring for any similar animals for a period of two years. The court may delay its decision on forfeiture under this subsection until the end of the probationary period.

(4) In addition to fines and court costs, the defendant, only if convicted or in agreement, shall be liable for reasonable costs incurred pursuant to this chapter by law enforcement agencies, animal care and control agencies, or authorized private or public entities involved with the care of the animals. Reasonable costs include expenses of the investigation, and the animal's care, euthanization, or adoption.

(5) If convicted, the defendant shall also pay a civil penalty of one thousand dollars to the county to prevent cruelty to animals. These funds shall be used to prosecute offenses under this chapter and to care for forfeited animals pending trial.

(6) As a condition of the sentence imposed under this chapter or RCW 9.08.070 through 9.08.078, the court may also order the defendant to participate in an available animal cruelty prevention or education program or obtain available psychological counseling to treat mental health problems contributing to the violation's commission. The defendant shall bear the costs of the program or treatment. [2003 c 53 § 113; 1994 c 261 § 14; 1987 c 335 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Construction—Severability—1987 c 335: See notes following RCW 16.52.085.

16.52.230 Remedies not impaired. (*Effective July 1, 2004.*) No provision of RCW 9.08.070 through 9.08.078 or 16.52.220 shall in any way interfere with or impair the operation of any other provision of this chapter or Title 28B RCW, relating to higher education or biomedical research. The provisions of RCW 9.08.070 through 9.08.078 and 16.52.220 are cumulative and nonexclusive and shall not affect any other remedy. [2003 c 53 § 114; 1989 c 359 § 5.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 16.57 RCW

IDENTIFICATION OF LIVESTOCK

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16.57.010 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his or her duly authorized representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(4) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, and goats.

(5) "Brand" means a permanent fire brand or any artificial mark, other than an individual identification symbol, approved by the director to be used in conjunction with a brand or by itself.

(6) "Production record brand" means a number brand which shall be used for production identification purposes only.

(7) "Livestock inspection" or "inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides including the examination of documents providing evidence of ownership.

(8) "Individual identification symbol" means a permanent mark placed on a horse for the purpose of individually identifying and registering the horse and which has been approved for use as such by the director.

(9) "Registering agency" means any person issuing an individual identification symbol for the purpose of individually identifying and registering a horse.

(10) "Ratite" means, but is not limited to, ostrich, emu, rhea, or other flightless bird used for human consumption, whether live or slaughtered.

(11) "Microchipping" means the implantation of an identification microchip or similar electronic identification device to establish the identity of an individual animal:

(a) In the pipping muscle of a chick ratite or the implantation of a microchip in the tail muscle of an otherwise unidentified adult ratite;

(b) In the nuchal ligament of a horse unless otherwise specified by rule of the director; and

(c) In locations of other livestock species as specified by rule of the director when requested by an association of producers of that species of livestock.

(12) "Certificate of permit" means a form prescribed by and obtained from the director that is completed by the owner or a person authorized to act on behalf of the owner to show the ownership of livestock. It is used to document ownership of livestock while in transit within the state or on consignment to any public livestock market, special sale, slaughter plant or certified feed lot. It does not evidence inspection of livestock.

(13) "Inspection certificate" means a certificate issued by the director or a veterinarian certified by the director documenting the ownership of an animal based on an inspection of the animal. It includes an individual identification certificate.

(14) "Individual identification certificate" means an inspection certificate that authorizes the livestock owner to transport the animal out of state multiple times within a set period of time.

(15) "Self-inspection certificate" means a form prescribed by and obtained from the director that is completed and signed by the buyer and seller of livestock to document a change in ownership.

(16) "Horses" means horses, burros, and mules. [2003 c 326 § 2; 1996 c 105 § 1; 1993 c 105 § 2; 1989 c 286 § 22; 1981 c 296 § 15; 1979 c 154 § 17; 1967 c 240 § 34; 1959 c 54 § 1.]

Legislative finding and purpose—1993 c 105: "The legislature finds that ratites have been raised for commercial purposes on farms in the United States for over sixty years and have been raised elsewhere for over one hundred twenty years.

In recognition that ratite farming is an agricultural pursuit, the purpose of this act is to assure that the regulatory mechanisms regarding animal health and ownership identification are in place." [1993 c 105 § 1.]

Severability—1989 c 286: See note following RCW 16.04.010.

Severability—1981 c 296: See note following RCW 15.08.010.

Severability—1979 c 154: See note following RCW 15.49.330.

16.57.015 Livestock identification advisory board—

Rule review—Fee setting. (1) The director shall establish a livestock identification advisory board. The board shall be composed of six members appointed by the director. One member shall represent each of the following groups: Beef producers, public livestock market operators, horse owners, dairy farmers, cattle feeders, and meat processors. As used in this subsection, "meat processor" means a person licensed to operate a slaughtering establishment under chapter 16.49 RCW or the federal meat inspection act (21 U.S.C. Sec. 601 et seq.). In making appointments, the director shall solicit nominations from organizations representing these groups statewide. The board shall elect a member to serve as chair of the board.

(2) The purpose of the board is to provide advice to the director regarding livestock identification programs adminis-

tered under this chapter and regarding inspection fees and related licensing fees. The director shall consult the board before adopting, amending, or repealing a rule under this chapter or altering a fee under RCW 16.58.050, 16.65.030, 16.65.037, or 16.65.090. If the director publishes in the state register a proposed rule to be adopted under the authority of this chapter and the rule has not received the approval of the advisory board, the director shall file with the board a written statement setting forth the director's reasons for proposing the rule without the board's approval.

(3) The members of the advisory board serve three-year terms. However, the director shall by rule provide shorter initial terms for some of the members of the board to stagger the expiration of the initial terms. The members serve without compensation. The director may authorize the expenses of a member to be reimbursed if the member is selected to attend a regional or national conference or meeting regarding livestock identification. Any such reimbursement shall be in accordance with RCW 43.03.050 and 43.03.060. [2003 c 326 § 3; 1993 c 354 § 10.]

16.57.020 Livestock brands—Director is the recorder—Recording fee. (Effective January 1, 2004.)

The director shall be the recorder of livestock brands and such brands shall not be recorded elsewhere in this state. Any person desiring to record a livestock brand shall apply on a form prescribed by the director. The application shall be accompanied by a facsimile of the brand applied for and a one hundred twenty dollar recording fee. The director shall, upon his or her satisfaction that the application and brand facsimile meet the requirements of this chapter and its rules, record the brand. [2003 c 326 § 4; 1994 c 46 § 7; 1971 ex.s. c 135 § 1; 1965 c 66 § 1; 1959 c 54 § 2.]

Effective date—1994 c 46: See note following RCW 15.58.070.

16.57.023 Permanent renewal of brands—Heritage brands—Fees.

The director may adopt rules establishing criteria and fees for the permanent renewal of brands registered with the department but renewed as livestock heritage brands. Such heritage brands are not intended for use on livestock. [2003 c 326 § 5; 1998 c 263 § 5.]

16.57.025 Livestock inspection—Licensed and accredited veterinarians—Fees.

The director may enter into agreements with Washington state licensed and accredited veterinarians, who have been certified by the director, to perform livestock inspection. Fees for livestock inspection performed by a certified veterinarian shall be collected by the veterinarian and remitted to the director. Veterinarians providing livestock inspection may charge a fee for livestock inspection that is in addition to and separate from fees collected under RCW 16.57.220. The director may adopt rules necessary to implement livestock inspection performed by veterinarians and may adopt fees to cover the cost associated with certification of veterinarians. [2003 c 326 § 6; 1998 c 263 § 6.]

16.57.030 Tattoo brands and marks not recordable.

The director shall not record tattoo brands or marks for any purpose. [2003 c 326 § 7; 1959 c 54 § 3.]

16.57.040 Production record brands. The director may provide for the use of production record brands. Numbers for such brands shall be issued at the discretion of the director and shall be placed on livestock immediately below the recorded ownership brand or any other location prescribed by the director. [2003 c 326 § 8; 1974 ex.s. c 64 § 1; 1959 c 54 § 4.]

16.57.050 Use of unrecorded brand prohibited—Exception. No person shall place a brand on livestock for any purpose unless the brand is recorded with the director in the person's name. [2003 c 326 § 9; 1959 c 54 § 5.]

16.57.080 Renewal of recorded brands—Schedule—Fee—Failure to pay. (*Effective January 1, 2004.*) The director shall establish by rule a schedule for the renewal of recorded brands. The fee for renewal of a recorded brand shall be one hundred twenty dollars for each four-year period of brand ownership, except that the director may, in adopting a renewal schedule, provide for the collection of renewal fees on a prorated basis. At least sixty days before the expiration of a recorded brand, the director shall notify by letter the owner of record of the brand that on the payment of the renewal fee the director shall issue proof of payment allowing the brand owner exclusive ownership and use of the brand for the subsequent ownership period. The failure of the owner to pay the renewal fee by the date required by rule shall cause ownership of the brand to expire. For one year following the expiration, the director shall record the brand only to the prior owner upon payment of the renewal fee and a late fee of twenty-five dollars. If the brand is not recorded within one year to the prior owner, the director may issue the brand to any other applicant. [2003 c 326 § 10; 1994 c 46 § 16; 1993 c 354 § 5; 1991 c 110 § 1; 1974 ex.s. c 64 § 2; 1971 ex.s. c 135 § 2; 1965 c 66 § 3; 1961 c 148 § 1; 1959 c 54 § 8.]

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

16.57.090 Brand is personal property—Instruments affecting title, recording, effect—Fee—Nonliability of director for agents. A brand is the personal property of the owner of record. Any instrument affecting the title of the brand shall be executed by the recorded owner and acknowledged by a notary public. The director shall record the instrument upon presentation and payment of a recording fee of twenty-five dollars. The recording shall be constructive notice to all the world of the existence and conditions affecting the title to the brand. A copy of all records concerning the brand, certified by the director, shall be received in evidence to all intent and purposes as the original instrument. The director shall not be personally liable for failure of the director's agents to properly record the instrument. [2003 c 326 § 11; 1994 c 46 § 17; 1993 c 354 § 6; 1974 ex.s. c 64 § 3; 1965 c 66 § 2; 1959 c 54 § 9.]

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

16.57.100 Right to use brand—Brand as evidence of title. The right to use a brand shall be evidenced by the orig-

inal certificate issued by the director showing that the brand is of present record or a certified copy of the record of the brand showing that it is of present record. A healed brand of record on livestock shall be prima facie evidence that the recorded owner of the brand has legal title to the livestock and is entitled to its possession. The director may require additional proof of ownership for any animal showing more than one healed brand. [2003 c 326 § 12; 1971 ex.s. c 135 § 3; 1959 c 54 § 10.]

16.57.120 Removal or alteration of brand—Penalty. No person shall remove or alter a brand of record on livestock without first having secured the written permission of the director. Violation of this section is a gross misdemeanor. [2003 c 326 § 13; 1991 c 110 § 2; 1959 c 54 § 12.]

16.57.130 Similar brands not to be recorded. The director shall not record a brand that is identical to a brand of present record; nor a brand so similar to a brand of present record that it will be difficult to distinguish between the brands when applied to livestock. [2003 c 326 § 14; 1959 c 54 § 13.]

16.57.140 Certified copy of record of brand—Fee. The owner of a brand of record may obtain from the director a certified copy of the record of the owner's brand upon payment of a fee of fifteen dollars. [2003 c 326 § 15; 1994 c 46 § 18; 1993 c 354 § 7; 1974 ex.s. c 64 § 4; 1959 c 54 § 14.]

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

16.57.150 Brand book—Contents—Costs. The director shall publish a book to be known as the "Washington State Brand Book", showing all the brands of record. The book shall contain the name and address of the owners of brands of record and a copy of the livestock identification laws and rules. Supplements to the brand book showing newly recorded brands, amendments, or newly adopted rules shall be published at the discretion of the director. Whenever the director deems it necessary, the director may publish a new brand book. The director may collect moneys to recover the reasonable costs of publishing and distributing copies of the brand book. [2003 c 326 § 16; 1974 ex.s. c 64 § 5; 1959 c 54 § 15.]

16.57.153 Administration of brands—Rules. The director may adopt rules necessary to administer the recording and changing of ownership of brands. [2003 c 326 § 17.]

16.57.160 Cattle or horses—Rules—Mandatory inspection points. The director may adopt rules:

(1) Designating any point for mandatory inspection of cattle or horses or the furnishing of proof that cattle or horses passing or being transported through the point have been inspected or identified and are lawfully being transported;

(2) Providing for self-inspection of fifteen head or less of cattle;

(3) Providing for issuance of individual horse and cattle identification certificates or other means of horse and cattle identification; and

(4) Designating the documents that constitute other satisfactory proof of ownership for cattle and horses. A bill of sale may not be designated as documenting satisfactory proof of ownership for cattle. [2003 c 326 § 18; 1991 c 110 § 3; 1981 c 296 § 16; 1971 ex.s. c 135 § 4; 1959 c 54 § 16.]

Effective date—1981 c 296 § 16: "Section 16 of this amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [May 19, 1981]." [1981 c 296 § 34.]

Severability—1981 c 296: See note following RCW 15.08.010.

16.57.165 Agreements with others to perform livestock inspection. The director may, in order to reduce the cost of inspection to livestock owners, enter into agreements with any qualified county, municipal, or other local law enforcement agency, or qualified individuals for the purpose of performing livestock inspection in areas where inspection by the director may not readily be available. [2003 c 326 § 19; 1971 ex.s. c 135 § 6.]

16.57.170 Inspection of livestock, hides, records. The director may enter at any reasonable time any slaughterhouse or public livestock market to inspect livestock or hides, and may enter at any reasonable time an establishment where hides are held to inspect them for brands or other means of identification. The director may enter any of these premises at any reasonable time to examine all books and records required by law in matters relating to livestock identification. For purposes of this section, "any reasonable time" means during regular business hours or during any working shift. [2003 c 326 § 20; 1959 c 54 § 17.]

16.57.180 Search warrants. Should the director be denied access to any premises or establishment where access was sought for the purposes set forth in RCW 16.57.170, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to the premises or establishment for those purposes. The court may upon application, issue the search warrant for the purposes requested. [2003 c 326 § 21; 1959 c 54 § 18.]

16.57.200 Duty of owner or agent—Livestock inspection. Any owner or his or her agent shall make livestock being inspected readily accessible and shall cooperate with the director to carry out the inspection in a safe and expeditious manner. [2003 c 326 § 22; 1959 c 54 § 20.]

16.57.210 Arrest without warrant. The director shall have authority to arrest without warrant anywhere in the state any person found in the act of, or whom the director has reason to believe is guilty of, transporting, holding, selling, or slaughtering stolen livestock. Any person arrested by the director shall be turned over to the county sheriff or other local law enforcement officer where the arrest was made, as quickly as possible. [2003 c 326 § 23; 1959 c 54 § 21.]

16.57.220 Livestock inspection—Fee schedule—Certificates. (1) Except as provided for in RCW 16.65.090 and [2003 RCW Supp—page 162]

subsection (2), (3), or (4) of this section, the fee for livestock inspection is eighty-five cents per head for cattle and three dollars and fifty cents for horses or fifteen dollars per hour and the current mileage rate set by the office of financial management, whichever is greater.

(2) When a single inspection certificate issued for thirty or more horses belonging to one person, the fee for livestock inspection is two dollars per head or fifteen dollars per hour and the current mileage rate set by the office of financial management, whichever is greater.

(3) The fee for individual identification certificates is twenty dollars for an annual certificate and sixty dollars for a lifetime certificate or fifteen dollars per hour and the current mileage rate set by the office of financial management, whichever is greater. However, the fee for an annual certificate listing thirty or more animals belonging to one person is five dollars per head or fifteen dollars per hour and the current mileage rate set by the office of financial management, whichever is greater. A lifetime certificate shall not be issued until the fee has been paid to the director.

(4) The minimum fee for the issuance of an inspection certificate by the director is five dollars. The minimum fee does not apply to livestock consigned to a public livestock market or special sale. [2003 c 326 § 24; 1997 c 356 § 3; 1997 c 356 § 2; 1995 c 374 § 49; (1995 c 374 § 48 expired July 1, 1997). Prior: 1994 c 46 § 25; 1994 c 46 § 19; 1993 c 354 § 8; 1981 c 296 § 17; 1971 ex.s. c 135 § 5; 1967 c 240 § 35; 1959 c 54 § 22.]

Effective dates—1997 c 356: "(1) Sections 2, 4, 6, 8, and 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1997.

(2) Sections 3, 5, 7, 9, and 11 of this act take effect July 1, 1998." [1997 c 356 § 12.]

Effective date—Expiration date—1995 c 374 §§ 48, 49, 56, and 57: "(1) Sections 49 and 57 of this act shall take effect July 1, 1997.

(2) Sections 48 and 56 of this act shall expire July 1, 1997." [1995 c 374 § 58.]

Effective date—1994 c 46 §§ 21-25: See note following RCW 16.65.090.

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

Severability—1981 c 296: See note following RCW 15.08.010.

16.57.223 Payment of inspection fee—Due at inspection—Lien—Late fee. (1) Any inspection fee shall be paid to the department by the owner or person in possession of the livestock unless the inspection is requested by the purchaser and then the fee shall be paid by the purchaser.

(2) Except as provided by rule, the inspection fee is due and payable at the time inspection is performed and shall be paid upon billing by the department and, if not, constitutes a prior lien on the cattle or cattle hides or horses or horse hides inspected until the fee is paid.

(3) A late fee of one and one-half percent per month shall be assessed on the unpaid balance against persons more than thirty days in arrears. [2003 c 326 § 25.]

16.57.230 Charges for livestock inspection—Actual inspection required. No person shall collect or make a charge for inspection of livestock unless there has been an

actual inspection of the livestock. [2003 c 326 § 26; 1995 c 374 § 50; 1959 c 54 § 23.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

16.57.240 Certificates of permit, inspection, self-inspection. (1) Certificates of permit, inspection certificates, and self-inspection certificates shall show the owner, number, breed, sex, brand, or other method of identification of the cattle or horses and any other necessary information required by the director.

(2) The director may issue certificate of permit forms to any person on payment of a fee established by rule.

(3) Certificates of permit, inspection certificates, self-inspection certificates, or other satisfactory proof of ownership shall be kept by the owner and/or person in possession of any cattle and shall be furnished to the director or any peace officer upon demand.

(4) A self-inspection certificate is not valid if proof of ownership is not provided to the buyer for cattle bearing brands not recorded to the seller. [2003 c 326 § 27; 1995 c 374 § 51; 1991 c 110 § 4; 1985 c 415 § 8; 1981 c 296 § 18; 1959 c 54 § 24.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Severability—1981 c 296: See note following RCW 15.08.010.

16.57.243 Moving or transporting cattle—Certificate of proof of ownership must accompany—Exceptions. Cattle may not be moved or transported within this state without being accompanied by a certificate of permit, inspection certificate, self-inspection certificate, or other satisfactory proof of ownership, except:

(1) When the cattle are moved or transported upon lands under the exclusive control of the person moving or transporting the cattle; or

(2) When the cattle are being moved or transported for temporary grazing or feeding purposes and have the recorded brand of the person having or transporting the cattle.

Certificates of permit, inspection certificates, self-inspection certificates, or other satisfactory proof of ownership accompanying cattle being moved or transported within this state shall be subject to inspection at any time by the director or any peace officer. [2003 c 326 § 28.]

16.57.245 Authority to stop vehicles carrying cattle or horses. The director or any peace officer may stop vehicles carrying cattle or horses to determine if the livestock being transported are accompanied by a certificate of permit, inspection certificate, self-inspection certificate, or other satisfactory proof of ownership, as determined by the director. [2003 c 326 § 29.]

16.57.260 Removal of cattle or horses from state—Inspection certificate required. It is unlawful for any person to remove or cause to be removed or accept for removal from this state, any cattle or horses which are not accompanied at all times by an inspection certificate on such cattle or horses, except as provided by rule adopted under this chapter. [2003 c 326 § 30; 1981 c 296 § 19; 1959 c 54 § 26.]

Severability—1981 c 296: See note following RCW 15.08.010.

16.57.267 Failure to present animal for inspection. It is unlawful for any person to fail to present an animal for inspection at any mandatory inspection point designated by the director by rule under this chapter. [2003 c 326 § 31.]

16.57.270 Unlawful to refuse assistance in establishing identity and ownership of livestock. It is unlawful for any person moving or transporting livestock in this state to refuse to assist the director or any peace officer in establishing the identity and ownership of the livestock being moved or transported. [2003 c 326 § 32; 1959 c 54 § 27.]

16.57.275 Transporting cattle carcass or primal part—Certificate of permit required. Any cattle carcass, or primal part thereof, of any breed or age being transported in this state from other than a state or federal licensed and inspected slaughterhouse or common carrier hauling for the slaughterhouse, shall be accompanied by a certificate of permit signed by the owner of the carcass or primal part thereof and, if the carcass or primal part is delivered to a facility custom handling the carcasses or primal parts thereof, the certificate of permit shall be deposited with the owner or manager of the custom handling facility and the certificate of permit shall be retained for a period of one year and be made available to the department for inspection during regular business hours or any working shift. [2003 c 326 § 33; 1967 c 240 § 37.]

16.57.280 Possession of cattle or horse marked with another's brand—Penalty. No person shall knowingly have possession of any cattle or horse marked with a recorded brand of another person unless the:

(1) Cattle or horse lawfully bears the person's own healed recorded brand; or

(2) Cattle or horse is accompanied by a certificate of permit from the owner of the recorded brand; or

(3) Cattle or horse is accompanied by an inspection certificate; or

(4) Cattle is accompanied by a self-inspection certificate; or

(5) Horse is accompanied by a bill of sale from the previous owner; or

(6) Cattle or horse is accompanied by other satisfactory proof of ownership as designated in rule.

A violation of this section constitutes a gross misdemeanor. [2003 c 326 § 34; 1995 c 374 § 52; 1991 c 110 § 5; 1959 c 54 § 28.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

16.57.290 Impounding cattle and horses—No certificate or proof of ownership when offered for sale—Disposition. All cattle and horses that are not accompanied by a certificate of permit, inspection certificate, self-inspection certificate, or other satisfactory proof of ownership when offered for sale and presented for inspection by the director, shall be impounded. If theft is suspected, the director shall immediately initiate an investigation. If theft is not suspected, the animal shall be sold and the proceeds retained by

the director. Upon the sale of the cattle or horses, the director shall give the purchasers an inspection certificate for the cattle or horses documenting their ownership. [2003 c 326 § 35; 1995 c 374 § 53; 1989 c 286 § 23; 1981 c 296 § 20; 1979 c 154 § 18; 1967 ex.s. c 120 § 6; 1959 c 54 § 29.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Severability—1989 c 286: See note following RCW 16.04.010.

Severability—1981 c 296: See note following RCW 15.08.010.

Severability—1979 c 154: See note following RCW 15.49.330.

16.57.300 Proceeds from sale of impounded cattle and horses—Paid to director—Exception. Except under RCW 16.57.303, the proceeds from the sale of cattle and horses when impounded under RCW 16.57.290, after paying the cost thereof, shall be paid to the director, who shall make a record showing the brand or marks or other method of identification of the animals and the amount realized from the sale thereof. However, the proceeds from a sale of the cattle or horses at a licensed public livestock market shall be held by the licensee for a reasonable period not to exceed thirty days to permit the consignor to establish ownership or the right to sell the cattle or horses. If the consignor fails to establish legal ownership or the right to sell the cattle or horses, the proceeds shall be paid to the director to be disposed of as any other estray proceeds. [2003 c 326 § 36; 1989 c 286 § 24; 1981 c 296 § 21; 1959 c 54 § 30.]

Severability—1989 c 286: See note following RCW 16.04.010.

Severability—1981 c 296: See note following RCW 15.08.010.

16.57.303 Proceeds from sale of impounded dairy breed cattle—Paid to seller. The proceeds from the sale of dairy breed cattle when impounded under RCW 16.57.290, and after paying the cost thereof, shall be paid to the seller if:

- (1) The cattle bears a brand that is not recorded in this state or any state where a reciprocal agreement is in place as provided under RCW 16.57.340;
- (2) There is no evidence of theft;
- (3) The director has posted the brand for at least ninety days at each licensed public livestock market in this state and any other state where the director provides for livestock inspection; and
- (4) No other person has established legal ownership of the cattle with the director.

The proceeds from the sale shall be held by the director until paid to the seller or other person as specified by the director. However, the proceeds from a sale of the cattle at a licensed public livestock market shall be held by the licensee. [2003 c 326 § 37.]

16.57.310 Notice of sale—Claim on proceeds. When a person has been notified by registered mail that animals bearing the person's recorded brand have been sold by the director, the person shall present to the director a claim on the proceeds within thirty days from the receipt of the notice or the director may decide that no claim exists. [2003 c 326 § 38; 1959 c 54 § 31.]

16.57.320 Disposition of proceeds of sale when no proof of ownership—Penalty for accepting proceeds after

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sale, barter, trade. If, after the expiration of one year from the date of sale, the person presenting the animals for inspection has not provided the director with satisfactory proof of ownership, the proceeds from the sale shall be paid on the claim of the owner of the recorded brand. However, it shall be a gross misdemeanor for the owner of the recorded brand to knowingly accept such funds after he or she has sold, bartered or traded such animals to the claimant or any other person. [2003 c 326 § 39; 1991 c 110 § 6; 1959 c 54 § 32.]

16.57.330 Disposition of proceeds of sale—No claim made—No proof of ownership provided. If, after the expiration of one year from the date of sale, no claim under RCW 16.57.310 is made or no satisfactory proof of ownership is provided under RCW 16.57.320, the money shall be credited to the department to be expended in carrying out the provisions of this chapter. [2003 c 326 § 40; 1959 c 54 § 33.]

16.57.340 Reciprocal agreements—When livestock from another state an estray, sale. The director has the authority to enter into reciprocal agreements with any or all states to prevent the theft, misappropriation, or loss of identification of livestock. The director may declare any livestock which is shipped or moved into this state from those states estrays if the livestock is not accompanied by the proper inspection certificate or other certificates required by the law of the state of origin of the livestock. The director may hold the livestock subject to all costs of holding or sell the livestock and send the funds, after the deduction of the cost of the sale, to the proper authority in the state of origin of the livestock. [2003 c 326 § 41; 1959 c 54 § 34.]

16.57.360 Civil infractions. The department is authorized to issue notices of and enforce civil infractions in the manner prescribed under chapter 7.80 RCW.

The violation of any provision of this chapter and/or rules adopted under this chapter shall constitute a class I civil infraction as provided under chapter 7.80 RCW unless otherwise specified herein. [2003 c 326 § 42; 1991 c 110 § 7; 1959 c 54 § 36.]

16.57.370 Disposition of fees. All fees collected under the provisions of this chapter shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter. [2003 c 326 § 43; 1959 c 54 § 37.]

Fees provided in chapter 16.58 RCW to be used to carry out provisions of chapters 16.57 and 16.58 RCW: RCW 16.58.130.

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

16.57.400 Horse and cattle identification—Inspection when consigned for sale. Horses and cattle may be identified by individual identification certificates or other means of identification authorized by the director. The certificates or other means of identification are valid only for the use of the owner in whose name it is issued.

Horses and cattle identified pursuant to this section are only subject to inspection when the animal is consigned for

sale. [2003 c 326 § 44; 1994 c 46 § 20; 1993 c 354 § 9; 1981 c 296 § 23; 1974 ex.s. c 38 § 3.]

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

Severability—1981 c 296: See note following RCW 15.08.010.

16.57.410 Horses—Registering agencies—Permit required—Fee—Records—Identification symbol inspections—Rules. (1) No person may act as a registering agency without a permit issued by the director. The director may issue a permit to any person to act as a registering agency for the purpose of issuing permanent identification symbols for horses in a manner prescribed by the director. Application for a permit, or the renewal thereof by January 1 of each year, shall be on a form prescribed by the director, and accompanied by the proof of registration to be issued, any other documents required by the director, and a fee of two hundred and fifty dollars.

(2) Each registering agency shall maintain a permanent record for each individual identification symbol. The record shall include, but need not be limited to, the name, address, and phone number of the horse owner and a general description of the horse. A copy of each permanent record shall be forwarded to the director, if requested by the director.

(3) Horses shall be examined for individual identification symbols when presented for inspection.

(4) The director shall adopt rules necessary to administer this section. [2003 c 326 § 45; 1993 c 354 § 11; 1989 c 286 § 25; 1981 c 296 § 35.]

Severability—1989 c 286: See note following RCW 16.04.010.

Severability—1981 c 296: See note following RCW 15.08.010.

16.57.902 Effective dates—2003 c 326. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003, except for sections 4 and 10 of this act which take effect January 1, 2004. [2003 c 326 § 93.]

Chapter 16.58 RCW

IDENTIFICATION OF CATTLE THROUGH LICENSING OF CERTIFIED FEED LOTS

Sections

16.58.020	Definitions.
16.58.030	Rules—Interference with director proscribed.
16.58.040	Certified feed lot license—Required—Application, contents.
16.58.050	Certified feed lot license—Fee—Issuance or renewal—Inspection prior to issuance of original license.
16.58.060	Certified feed lot license—Expiration—Late renewal.
16.58.070	Certified feed lot license—Denial, suspension, or revocation—Hearings.
16.58.080	Livestock inspection—Facilities required—Help to be furnished.
16.58.095	Inspection required for cattle not having inspection certificate.
16.58.100	Audits—Purpose.
16.58.110	Records—Contents—Examination.
16.58.130	Feed lots—Fee for each head of cattle handled—Failure to pay.
16.58.140	Disposition of fees.
16.58.150	Situations when no inspection required—Fee—Suspension of license—Hearing.
16.58.160	Suspension of license awaiting investigation—Hearing.
16.58.170	General penalties—Subsequent offenses. (<i>Effective until July 1, 2004.</i>)

16.58.170 General penalties—Subsequent offenses. (*Effective July 1, 2004.*)

16.58.020 Definitions. For the purpose of this chapter:

(1) "Certified feed lot" means any place, establishment, or facility commonly known as a commercial feed lot, cattle feed lot, or the like, which complies with all of the requirements of this chapter, and any rules adopted under this chapter and which holds a valid license from the director.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Director" means the director of the department or his or her duly authorized representative.

(4) "Licensee" means any persons licensed under the provisions of this chapter.

(5) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(6) "Livestock inspection" or "inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides including the examination of documents providing evidence of ownership.

(7) "Change of ownership" means the transfer of ownership from one person to another by the sale of livestock. It does not mean: A change in partners within a partnership; a change in members within an association or a society; or the sale of stock within a corporation, company, or association.

(8) "Direct to slaughter" means the delivery of livestock to a slaughter plant within ten days of the sale of the cattle to the slaughter plant. [2003 c 326 § 46; 1971 ex.s. c 181 § 2.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.030 Rules—Interference with director proscribed. The director may adopt those rules as are necessary to carry out the purpose of this chapter. No person shall interfere with the director when he or she is performing or carrying out any duties imposed upon the director by this chapter or rules adopted under this chapter. [2003 c 326 § 47; 1971 ex.s. c 181 § 3.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.040 Certified feed lot license—Required—Application, contents. Any person desiring to engage in the business of operating one or more certified feed lots shall obtain an annual license from the director for that purpose. The application for a license shall be on a form prescribed by the director and shall include the following:

(1) The number of certified feed lots the applicant intends to operate and their exact location and mailing address;

(2) The legal description of the land on which the certified feed lot will be situated;

(3) A complete description of the facilities used for feeding and handling of cattle at each certified feed lot;

(4) The estimated number of cattle which can be handled for feeding purposes at each certified feed lot; and

(5) Any other information necessary to carry out the purpose and provisions of this chapter and rules adopted under this chapter. [2003 c 326 § 48; 1971 ex.s. c 181 § 4.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.050 Certified feed lot license—Fee—Issuance or renewal—Inspection prior to issuance of original license. (1) The application for an annual license to engage in the business of operating one or more certified feed lots shall be accompanied by a license fee of eight hundred fifty dollars.

(2) Upon approval of the application by the director and compliance with the provisions of this chapter and rules adopted under this chapter, the applicant shall be issued a license or license renewal. The director shall conduct an inspection of all cattle and their corresponding ownership documents prior to issuing an original license. The inspection fee is the higher of the current inspection fee per head of cattle or time and mileage as set forth in RCW 16.57.220. [2003 c 326 § 49; 1997 c 356 § 5; 1997 c 356 § 4; 1994 c 46 § 23; 1994 c 46 § 14; 1993 c 354 § 3; 1979 c 81 § 2; 1971 ex.s. c 181 § 5.]

Effective dates—2003 c 326: See RCW 16.57.902.

Effective dates—1997 c 356: See note following RCW 16.57.220.

Effective date—1994 c 46 §§ 21-25: See note following RCW 16.65.090.

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

16.58.060 Certified feed lot license—Expiration—Late renewal. Certified feed lot licenses expire on June 30th following the date of issuance. If a person fails, refuses, or neglects to apply for renewal of a license by June 30th, the person's license shall expire. To reinstate a license, the person shall be assessed a late fee of twenty-five dollars which shall be added to the regular license fee and shall be paid before the director may issue a license to the applicant. [2003 c 326 § 50; 1991 c 109 § 10; 1971 ex.s. c 181 § 6.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.070 Certified feed lot license—Denial, suspension, or revocation—Hearings. The director is authorized to deny, suspend, or revoke a license in accordance with the provisions of chapter 34.05 RCW if he or she finds that there has been a failure to comply with any requirement of this chapter or rules adopted under this chapter. Hearings for the revocation, suspension, or denial of a license shall be subject to the provisions of chapter 34.05 RCW. [2003 c 326 § 51; 1989 c 175 § 54; 1971 ex.s. c 181 § 7.]

Effective dates—2003 c 326: See RCW 16.57.902.

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

16.58.080 Livestock inspection—Facilities required—Help to be furnished. Every certified feed lot shall be equipped with a facility or a livestock pen, approved by the director as to location and construction within the feed lot so that necessary livestock inspection can be carried on in a proper, expeditious and safe manner. Each licensee shall furnish the director with sufficient help necessary to carry out inspections in the manner set forth above. [2003 c 326 § 52; 1971 ex.s. c 181 § 8.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.095 Inspection required for cattle not having inspection certificate. All cattle entering or reentering a certified feed lot must be inspected upon entry, unless they are accompanied by an inspection certificate issued by the director, or any other agency authorized in any state or Canadian province by law to issue a certificate. Licensees shall report a discrepancy between cattle entering or reentering a certified feed lot and the inspection certificate accompanying the cattle to the nearest inspector immediately. A discrepancy may require an inspection of all the cattle entering or reentering the lot, except as may otherwise be provided by rule. [2003 c 326 § 53; 1991 c 109 § 11; 1979 c 81 § 6.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.100 Audits—Purpose. The director shall conduct audits of the cattle received, fed, handled, and shipped by the licensee at each certified feed lot. These audits shall be for the purpose of determining if the cattle correlate with the inspection certificates issued in their behalf and that the certificate of assurance furnished the director by the licensee correlates with his or her assurance that inspected cattle were not commingled with uninspected cattle. [2003 c 326 § 54; 1979 c 81 § 3; 1971 ex.s. c 181 § 10.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.110 Records—Contents—Examination. All certified feed lots shall furnish the director with records as requested by the director on a monthly basis on all cattle entering or on feed in the certified feed lots and dispersed therefrom. These records must include a copy of each inspection certificate received and an itemized listing of all cattle entering and leaving the feed lot. All requested records shall be subject to examination by the director for the purpose of maintaining the integrity of the identity of all the cattle. The director may make the examinations only during regular business hours or any working shift except in an emergency to protect the interest of the owners of the cattle. [2003 c 326 § 55; 1991 c 109 § 12; 1971 ex.s. c 181 § 11.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.130 Feed lots—Fee for each head of cattle handled—Failure to pay. Each licensee shall pay to the director a fee of seventeen cents for each head of cattle handled through the licensee's feed lot. Payment of the fee shall be made by the licensee on a monthly basis. Failure to pay as required shall be grounds for suspension or revocation of a certified feed lot license. The director shall not renew a certified feed lot license if a licensee has failed to make prompt and timely payments. [2003 c 326 § 56; 1997 c 356 § 7; 1997 c 356 § 6; 1994 c 46 § 24; 1994 c 46 § 15; 1993 c 354 § 4; 1991 c 109 § 14; 1979 c 81 § 4; 1971 ex.s. c 181 § 13.]

Effective dates—2003 c 326: See RCW 16.57.902.

Effective dates—1997 c 356: See note following RCW 16.57.220.

Effective date—1994 c 46 §§ 21-25: See note following RCW 16.65.090.

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

16.58.140 Disposition of fees. All fees provided for in this chapter shall be deposited in an account in the agricultural local fund and used for enforcing and carrying out the purpose and provisions of this chapter or chapter 16.57 RCW. [2003 c 326 § 57; 1979 c 81 § 5; 1971 ex.s. c 181 § 14.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.150 Situations when no inspection required—Fee—Suspension of license—Hearing. No inspection shall be required when cattle are moved or transferred from one certified feed lot to another when they are accompanied by satisfactory proof of ownership and there is no change of ownership or from a certified feed lot to a point within this state, or out of state where this state maintains inspection, for the purpose of immediate slaughter. Any change of ownership within a certified feed lot requires a livestock inspection unless the cattle are sent direct to slaughter. An inspection fee as provided for in RCW 16.57.220 is payable to the director by the seller of the cattle or through the licensee as an agent. Upon notice by the director to suspend a license under this section, a person may request a hearing under chapter 34.05 RCW. [2003 c 326 § 58; 1971 ex.s. c 181 § 15.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.160 Suspension of license awaiting investigation—Hearing. The director may, when a certified feed lot's conditions become such that the integrity of reports or records of the cattle in that feed lot becomes doubtful, immediately suspend the certified feed lot's license until such time as the director can conduct an investigation to verify the condition of reports or records.

Upon notice by the director to suspend a license under this section, a person may request a hearing under chapter 34.05 RCW. [2003 c 326 § 59; 1991 c 109 § 15; 1971 ex.s. c 181 § 16.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.170 General penalties—Subsequent offenses. (*Effective until July 1, 2004.*) Any person who violates the provisions of this chapter or any rule adopted under this chapter shall be guilty of a misdemeanor and shall be guilty of a gross misdemeanor for any second or subsequent violation: PROVIDED, That any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 326 § 60; 1971 ex.s. c 181 § 17.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.58.170 General penalties—Subsequent offenses. (*Effective July 1, 2004.*) (1) Except as provided in subsection (2) of this section, any person who violates the provisions of this chapter or any rule adopted under this chapter is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 326 § 60; 2003 c 53 § 115; 1971 ex.s. c 181 § 17.]

Reviser's note: This section was amended by 2003 c 53 § 115 and by 2003 c 326 § 60, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2003 c 326: See RCW 16.57.902.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 16.65 RCW

PUBLIC LIVESTOCK MARKETS

Sections

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16.65.030	Public livestock market license—Application—Contents—Fee—Public hearing.
16.65.037	License—Restrictions—Fees.
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16.65.042	Special open consignment horse sale license required—Application—Fee—Where and when valid.
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16.65.090	Livestock inspection—Consignor's fee—Inspection fee.
16.65.100	Livestock inspection—Purchaser's fee.
16.65.110	Repealed.
16.65.140	Custodial account for consignor's proceeds—Authorized withdrawals—Accounts and records.
16.65.170	Records of licensee—Contents.
16.65.190	Schedule of rates and charges.
16.65.200	Licensee's bond to operate market or special open consignment horse sale.
16.65.235	Cash or other security in lieu of surety bond—Rules.
16.65.260	Licensee's failure to pay vendor, consignor—Complaint—Director's powers and duties.
16.65.270	Licensee's failure to pay vendor, consignor—Failure of vendor, consignor to file claim.
16.65.280	Licensee's failure to pay vendor, consignor—Duties of director when names of creditors not available.
16.65.300	Licensee's failure to pay vendor, consignor—Refusal by surety company to pay demand—Action on bond—New bond, suspension or revocation of license on failure to file.
16.65.340	Testing, examination, etc., of livestock for disease—Veterinarian employed by the market.
16.65.350	Examinations—Sanitary and health practices and standards—Rules.
16.65.380	Adequate facilities and space required for veterinarians to function.
16.65.390	Adequate space and facilities required for livestock inspectors and veterinarians to function.
16.65.400	Weighing of livestock at public livestock market.
16.65.420	Application for change of or additional sales days, special sales—Considerations for allocation.
16.65.422	Repealed.
16.65.423	Repealed.
16.65.424	Additional sales days limited to sales of horses and/or mules.
16.65.440	Penalty (<i>as amended by 2003 c 326</i>).
16.65.440	Penalty (<i>as amended by 2003 c 53</i>). (<i>Effective July 1, 2004.</i>)
16.65.445	Public hearings.

16.65.005 Purpose. The purpose of this chapter is to ensure the orderly marketing of livestock, to ensure the financial stability of public livestock markets, and to protect persons who consign livestock to markets and sales. [2003 c 326 § 61.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.010 Definitions. For the purposes of this chapter: (1) The term "public livestock market" means any place, establishment or facility commonly known as a "public livestock market", "livestock auction market", "livestock sales ring", yards selling on commission, or the like, conducted or operated for compensation or profit as a public livestock market, consisting of pens or other enclosures, and their appurtenances in which livestock is received, held, sold, kept for sale

or shipment. The term does not include the operation of a person licensed under this chapter to operate a special open consignment horse sale.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Director" means the director of the department or his or her duly authorized representative.

(4) "Licensee" means any person licensed under the provisions of this chapter.

(5) "Livestock" includes horses, mules, burros, cattle, sheep, swine, and goats.

(6) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(7) "Stockyard" means any place, establishment, or facility commonly known as a stockyard consisting of pens or other enclosures and their appurtenances in which livestock services such as feeding, watering, weighing, sorting, receiving and shipping are offered to the public: PROVIDED, That stockyard shall not include any facilities where livestock is offered for sale at public auction, feed lots, or quarantined registered feed lots.

(8) "Packer" means any person engaged in the business of slaughtering, manufacturing, preparing meat or meat products for sale, marketing meat, meat food products or livestock products.

(9) "Special open consignment horse sale" means a sale conducted by a person other than the operator of a public livestock market which is limited to the consignment of horses and donkeys only for sale on an occasional and seasonal basis.

(10) "Livestock inspection" or "inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides including the examination of documents providing evidence of ownership. [2003 c 326 § 62; 1983 c 298 § 1; 1961 c 182 § 1; 1959 c 107 § 1.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.015 Application of chapter—Exceptions. (1) Except under subsection (2) of this section, this chapter does not apply to:

(a) A farmer selling his or her own livestock.

(b) A farmers' cooperative association or an association of livestock breeders when any class of their own livestock is assembled and offered for sale at a special sale under the association's management and responsibility.

(c) A youth livestock organization such as 4-H, FFA, or other junior livestock group, when any class of livestock owned by the youth members is assembled and offered for sale at a special sale under the organization's management and responsibility.

(2) Any farmer, farmers' cooperative association, livestock breeders' association, or youth livestock organization under subsection (1) of this section, may, upon obtaining a permit from the director, conduct a public sale of his or her or its members livestock on an occasional or seasonal basis. Application for the permit shall be in writing to the director for his or her approval at least fifteen days before the proposed public sale is scheduled to be held. The application

must be complete and accompanied by a nonrefundable fee of fifty dollars for each sale, except that the fee is waived for youth livestock organizations. The sale is subject to the livestock and health inspection requirements as provided in this chapter for sales at public livestock markets, unless otherwise prescribed by rule. [2003 c 326 § 63; 1983 c 298 § 2.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.020 Supervision of markets and special open consignment horse sales—Rules—Interference with director's duties. Public livestock markets and special open consignment horse sales shall be under the direction and supervision of the director, and the director may adopt those rules as are necessary to carry out the purpose of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter and rules adopted under this chapter. No person shall interfere with the director when he or she is performing or carrying out any duties imposed by this chapter or rules adopted under this chapter. [2003 c 326 § 64; 1983 c 298 § 5; 1959 c 107 § 2.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.030 Public livestock market license—Application—Contents—Fee—Public hearing. (1) No person shall operate a public livestock market without first having obtained a license from the director. Application for a license shall be in writing on forms prescribed by the director, and shall include the following:

(a) A nonrefundable original license application fee of two thousand dollars.

(b) A legal description of the property upon which the public livestock market shall be located.

(c) A complete description and blueprints or plans of the public livestock market physical plant, yards, pens, and all facilities the applicant proposes to use in the operation of such public livestock market.

(d) A financial statement, audited by a certified or licensed public accountant, to determine whether or not the applicant meets the minimum net worth requirements, established by the director by rule, to construct and/or operate a public livestock market. If the applicant is a subsidiary of a larger company, corporation, society, or cooperative association, both the parent company and the subsidiary company must submit a financial statement to determine whether or not the applicant meets the minimum net worth requirements. All financial statement information required by this subsection is confidential information and not subject to public disclosure.

(e) The schedule of rates and charges the applicant proposes to impose on the owners of livestock for services rendered in the operation of such livestock market.

(f) The weekly or monthly sales day or days on which the applicant proposes to operate his or her public livestock market sales and the class of livestock that may be sold on these days.

(g) Projected source and quantity of livestock anticipated to be handled.

(h) Projected gross dollar volume of business to be carried on, at, or through the public livestock market during the first year's operation.

(i) Facts upon which is based the conclusion that the trade area and the livestock industry will benefit because of the proposed market.

(j) Other information as the director may require by rule.

(2) If the director determines that the applicant meets all the requirements of subsection (1) of this section, the director shall conduct a public hearing as provided by chapter 34.05 RCW, and shall grant or deny an application for original license for a public livestock market after considering evidence and testimony relating to the requirements of this section and giving reasonable consideration to:

(a) Benefits to the livestock industry to be derived from the establishment and operation of the public livestock market proposed in the application;

(b) The geographical area that will be affected;

(c) The conflict, if any, with sales days already allocated in the area;

(d) The amount and class of livestock available for marketing in the area;

(e) Buyers available to the proposed market; and

(f) Any other conditions affecting the orderly marketing of livestock.

(3) Before a license is issued to operate a public livestock market, the applicant must:

(a) Execute and deliver to the director a surety bond as required under RCW 16.65.200;

(b) Provide evidence of a custodial account, as required under RCW 16.65.140, for the consignor's proceeds;

(c) Pay the appropriate license fee; and

(d) Provide other information required under this chapter and rules adopted under this chapter. [2003 c 326 § 65; 1995 c 374 § 54; (1994 c 46 § 21 repealed by 1995 c 374 § 55); 1994 c 46 § 12; 1993 c 354 § 1; 1991 c 17 § 1; 1979 ex.s. c 91 § 1; 1971 ex.s. c 192 § 1; 1967 ex.s. c 120 § 5; 1961 c 182 § 2; 1959 c 107 § 3.]

Effective dates—2003 c 326: See RCW 16.57.902.

Prior legislative approval—1994 c 46: "The reenactment of sections 12 through 20 of this act constitutes approval of fee increases for which prior legislative approval is required by RCW 43.135.055 (section 8, chapter 2, Laws of 1994, Initiative Measure No. 601)." [1994 c 46 § 26.]

Effective date—1994 c 46: See note following RCW 15.58.070.

16.65.037 License—Restrictions—Fees. (1) Any license issued under the provisions of this chapter shall only be valid at the location and for the sales day or days for which the license was issued.

(2) The license fee shall be based on the average gross sales volume per official sales day of a market in the previous twelve months or, for a new market, the projected average gross sales per official sales day of the market during its first year's operation.

(a) The license fee for markets with an average gross sales volume up to and including ten thousand dollars is one hundred fifty dollars.

(b) The license fee for markets with an average gross sales volume over ten thousand dollars and up to and including fifty thousand dollars is three hundred dollars.

(c) The license fee for markets with an average gross sales volume over fifty thousand dollars is four hundred fifty dollars.

(3) Any applicant operating more than one public livestock market shall make a separate application for a license to operate each public livestock market, and each application shall be accompanied by the appropriate license fee. [2003 c 326 § 66; 1997 c 356 § 9; 1997 c 356 § 8; 1995 c 374 § 57.]

Effective dates—2003 c 326: See RCW 16.57.902.

Effective dates—1997 c 356: See note following RCW 16.57.220.

Effective date—Expiration date—1995 c 374 §§ 48, 49, 56, and 57: See note following RCW 16.57.220.

16.65.040 Public livestock market license—Expiration—Renewal—Penalty. (1) All public livestock market licenses provided for in this chapter expire on March 1st subsequent to the date of issue.

(2) Application for renewal of a public livestock market license shall be in writing on forms prescribed by the director, and shall include:

(a) All information under RCW 16.65.030(1) (d), (e), and (f);

(b) The gross dollar volume of business carried on, at, or through the applicant's public livestock market in the twelve-month period prior to the application for renewal of the license;

(c) Other information as the director may require by rule; and

(d) The appropriate license fee.

(3) If any person fails, refuses, or neglects to apply for a renewal of a preexisting license by March 1st, the person's license shall expire. To reinstate a license, the person shall pay a penalty of twenty-five dollars, which shall be added to the regular license fee, before the license may be reinstated by the director. [2003 c 326 § 67; 1983 c 298 § 6; 1979 ex.s. c 91 § 2; 1959 c 107 § 4.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.042 Special open consignment horse sale license required—Application—Fee—Where and when valid. (1) A person shall not operate a special open consignment horse sale without first obtaining a license from the director. The application for the license shall include:

(a) The schedule of rates and charges the applicant proposes to impose on the owners of horses for services rendered in the operation of the horse sale;

(b) The specific date and exact location of the proposed sale;

(c) Projected quantity and approximate value of horses to be handled; and

(d) Such other information as the director may reasonably require.

(2) The application shall be accompanied by a license fee of one hundred dollars. Upon the approval of the application by the director and compliance with this chapter, the applicant shall be issued a license. A special open consignment horse sale license is valid only for the specific date or dates and exact location for which the license was issued. [2003 c 326 § 68; 1983 c 298 § 3.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.050 Disposition of fees. All fees provided for under this chapter shall be deposited in an account in the agri-

cultural local fund and used for enforcing and carrying out the purpose and provisions of this chapter and chapter 16.57 RCW. [2003 c 326 § 69; 1959 c 107 § 5.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.080 Denial, suspension, revocation of license—Reasons—Hearing. (1) The director may deny, suspend, or revoke a license when the director finds that a licensee (a) has misrepresented titles, charges, numbers, brands, weights, proceeds of sale, or ownership of livestock; (b) has attempted payment to a consignor or the department by a check the licensee knows not to be backed by sufficient funds to cover such check; (c) has violated any of the provisions of this chapter or rules adopted under this chapter; (d) has violated any laws of the state that require inspection of livestock for health or ownership purposes; (e) has violated any condition of the bond, as provided in this chapter.

(2) Upon notice by the director to deny, revoke, or suspend a license, a person may request a hearing under chapter 34.05 RCW.

(3) The director may issue subpoenas to compel the attendance of witnesses, and/or the production of books or documents anywhere in the state. The applicant or licensee shall have opportunity to be heard, and may have such subpoenas issued as he or she desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the director. Testimony shall be recorded, and may be taken by deposition under such rules as the director may prescribe. [2003 c 326 § 70; 1985 c 415 § 9; 1971 ex.s. c 192 § 2; 1961 c 182 § 3; 1959 c 107 § 8.]

Effective dates—2003 c 326: See RCW 16.57.902.

Orders—Appeal: RCW 16.65.450.

16.65.090 Livestock inspection—Consignor's fee—Inspection fee. The director shall provide for livestock inspection. When livestock inspection is required the licensee shall collect from the consignor and pay to the department an inspection fee, as provided by law, for each animal inspected. However, if in any one sale day the total fees collected for inspection do not exceed one hundred dollars, then the licensee shall pay one hundred dollars for the inspection services. [2003 c 326 § 71; 1997 c 356 § 11; 1997 c 356 § 10; 1994 c 46 § 22; 1994 c 46 § 13; 1993 c 354 § 2; 1983 c 298 § 8; 1971 ex.s. c 192 § 3; 1959 c 107 § 9.]

Effective dates—2003 c 326: See RCW 16.57.902.

Effective dates—1997 c 356: See note following RCW 16.57.220.

Effective date—1994 c 46 §§ 21-25: "Sections 21 through 25 of this act shall take effect July 1, 1997." [1994 c 46 § 29.]

Effective date—1994 c 46: See note following RCW 15.58.070.

Prior legislative approval—1994 c 46: See note following RCW 16.65.030.

16.65.100 Livestock inspection—Purchaser's fee. The licensee of each public livestock market or special open consignment horse sale shall collect from any purchaser of livestock requesting inspection a fee as provided by law for each animal inspected. This fee shall be in addition to the fee charged to the consignor for inspection and shall not apply to

the minimum fee chargeable to the licensee. [2003 c 326 § 72; 1983 c 298 § 9; 1959 c 107 § 10.]

Effective dates—2003 c 326: See RCW 16.57.902.

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

16.65.140 Custodial account for consignor's proceeds—Authorized withdrawals—Accounts and records. Each licensee shall establish a custodial account for consignor's proceeds. All funds derived from the sale of livestock handled on a commission or agency basis shall be deposited in that account. The account shall be drawn on only for the payment of net proceeds to the consignor, or other person or persons of whom the licensee has knowledge is entitled to the proceeds, and to obtain from those proceeds only the sums due the licensee as compensation for the services as are set out in the posted tariffs, and for the sums as are necessary to pay all legal charges against the consignment of livestock which the licensee in the capacity as agent is required to pay for on behalf of the consignor or shipper. The licensee in each case shall keep those accounts and records that will at all times disclose the names of the consignors and the amount due and payable to each from the funds in the custodial account for consignor's proceeds. The licensee shall maintain the custodial account for consignor's proceeds in a manner that will expedite examination by the director and reflect compliance with the requirements of this section. [2003 c 326 § 73; 1971 ex.s. c 192 § 4; 1959 c 107 § 14.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.170 Records of licensee—Contents. The licensee shall keep accurate records which shall be available for inspection to all parties directly interested therein, and the records shall contain the following information:

(1) The date on which each consignment of livestock was received and sold.

(2) The name and address of the buyer and seller of the livestock.

(3) The number and species of livestock received and sold.

(4) The marks and brands on the livestock.

(5) All statements of warranty or representations of title material to, or upon which, any sale is consummated.

(6) The gross selling price of the livestock with a detailed list of all charges deducted therefrom.

These records shall be kept by the licensee for one year subsequent to the receipt of such livestock. [2003 c 326 § 74; 1967 c 192 § 1; 1959 c 107 § 17.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.190 Schedule of rates and charges. No person shall operate a public livestock market or special open consignment horse sale unless that person has filed a schedule with the application for license to operate a public livestock market or special open consignment horse sale. The schedule shall show all rates and charges for stockyard services to be furnished at the public livestock market or special open consignment horse sale.

(1) Schedules shall be posted conspicuously at the public livestock market or special open consignment horse sale, and shall plainly state all rates and charges in such detail as the director may require, and shall state any rules which in any manner change, affect, or determine any part of the aggregate of the rates or charges, or the value of the stockyard services furnished. The director may determine and prescribe the form and manner in which the schedule shall be prepared, arranged, and posted.

(2) No changes shall be made in rates or charges so filed and published except after thirty days' notice to the director and to the public filed and posted as set forth under this section, which shall plainly state the changes proposed to be made and the time the changes will go into effect.

(3) No licensee shall charge, demand, or collect a greater or a lesser or a different compensation for a service than the rates and charges specified in the schedule filed with the director and in effect at the time; nor shall a licensee refund or remit in any manner any portion of the rates or charges so specified (but this shall not prohibit a cooperative association of producers from properly returning to its members, on a patronage basis, its excess earnings on their livestock); nor shall a licensee extend to any person at a public livestock market or special open consignment horse sale any stockyard services except as are specified in the schedule. [2003 c 326 § 75; 1983 c 298 § 12; 1959 c 107 § 19.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.200 Licensee's bond to operate market or special open consignment horse sale. Before the license is issued to operate a public livestock market or special open consignment horse sale, the applicant shall execute and deliver to the director a surety bond in a sum as herein provided for, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The bond shall be a standard form and approved by the director as to terms and conditions. The bond shall be conditioned that the principal will not commit any fraudulent act and will comply with the provisions of this chapter and the rules adopted under this chapter. The bond shall be to the state in favor of every consignor and/or vendor creditor whose livestock was handled or sold through or at the licensee's public livestock market or special open consignment horse sale: PROVIDED, That if the applicant is bonded as a market agency under the provisions of the packers and stockyards act, (7 U.S.C. 181) as amended, on March 20, 1961, in a sum equal to or greater than the sum required under the provisions of this chapter, and the applicant furnishes the director with a bond approved by the United States secretary of agriculture, the director may accept the bond and its method of termination in lieu of the bond provided for herein and issue a license if the applicant meets all the other requirements of this chapter.

The total and aggregate liability of the surety for all claims upon the bond shall be limited to the face of the bond. Every bond filed with and approved by the director shall, without the necessity of periodic renewal, remain in force and effect until the license of the licensee is revoked for cause or otherwise canceled. The surety on a bond, as provided herein, shall be released and discharged from all liability to the state accruing on the bond upon compliance with the pro-

visions of RCW 19.72.110 concerning notice and proof of service, but this shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue (due and to become due hereunder) before the expiration period provided for in RCW 19.72.110 concerning notice and proof of service, and unless the principal shall before the expiration of this period, file a new bond, the director shall immediately cancel the principal's license. [2003 c 326 § 76; 1983 c 298 § 13; 1971 ex.s. c 192 § 5; 1961 c 182 § 4. Prior: 1959 c 107 § 20.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.235 Cash or other security in lieu of surety bond—Rules. In lieu of the surety bond required under the provisions of this chapter, an applicant or licensee may file with the director a deposit consisting of cash or other security acceptable to the director. The director may adopt rules necessary for the administration of such security. [2003 c 326 § 77; 1973 c 142 § 3.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.260 Licensee's failure to pay vendor, consignor—Complaint—Director's powers and duties. In case of failure by a licensee to pay amounts due a vendor or consignor creditor whose livestock was handled or sold through or at the licensee's public livestock market or special open consignment horse sale, as evidenced by a verified complaint filed with the director, the director may proceed immediately to ascertain the names and addresses of all vendor or consignor creditors of the licensee, together with the amounts due and owing to them and each of them by the licensee, and shall request all vendor and consignor creditors to file a verified statement of their respective claims with the director. This request shall be addressed to each known vendor or consignor creditor at his or her last known address. [2003 c 326 § 78; 1983 c 298 § 14; 1959 c 107 § 26.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.270 Licensee's failure to pay vendor, consignor—Failure of vendor, consignor to file claim. If a vendor or consignor creditor so addressed fails, refuses or neglects to file in the office of the director his or her verified claim as requested by the director within sixty days from the date of such request, the director shall be relieved of further duty or action on behalf of the producer or consignor creditor. [2003 c 326 § 79; 1959 c 107 § 27.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.280 Licensee's failure to pay vendor, consignor—Duties of director when names of creditors not available. Where by reason of the absence of records, or other circumstances making it impossible or unreasonable for the director to ascertain the names and addresses of all vendor and consignor creditors, the director, after exerting due diligence and making reasonable inquiry to secure the information from all reasonable and available sources, may make demand on the bond on the basis of information then in his or her possession, and thereafter shall not be liable or responsible for claims or the handling of claims which may subse-

quently appear or be discovered. [2003 c 326 § 80; 1959 c 107 § 28.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.300 Licensee's failure to pay vendor, consignor—Refusal by surety company to pay demand—Action on bond—New bond, suspension or revocation of license on failure to file. Upon the refusal of the surety company to pay the demand, the director may bring an action on the bond in behalf of vendor and consignor creditors. Upon any action being commenced on the bond, the director may require the filing of a new bond. Immediately upon the recovery in any action on the bond the licensee shall file a new bond. Upon failure to file the new bond within ten days, such a failure shall constitute grounds for the suspension or revocation of the license. [2003 c 326 § 81; 1959 c 107 § 30.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.340 Testing, examination, etc., of livestock for disease—Veterinarian employed by the market. The director shall, when livestock is sold, traded, exchanged, or handled at or through a public livestock market, require such testing, treating, identifying, examining and record keeping of such livestock by a Washington state licensed and accredited veterinarian employed by the market as in the director's judgment may be necessary to prevent the spread of brucellosis, tuberculosis, paratuberculosis, pseudorabies, or any other infectious, contagious, or communicable disease among the livestock of this state. The state veterinarian or his or her authorized representative may conduct additional testing and examinations for the same purpose. [2003 c 326 § 82; 1967 c 192 § 2; 1959 c 107 § 34.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.350 Examinations—Sanitary and health practices and standards—Rules. The director shall adopt rules regarding sanitary practices, health practices and standards, and the examination of animals at public livestock markets. [2003 c 326 § 83; 1959 c 107 § 35.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.380 Adequate facilities and space required for veterinarians to function. Public livestock market facilities shall include adequate space and facilities necessary for market, federal, or state veterinarians to properly carry out their functions as prescribed by law and rules adopted under law or as prescribed by applicable federal law or regulation. [2003 c 326 § 84; 1959 c 107 § 38.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.390 Adequate space and facilities required for livestock inspectors and veterinarians to function. Public livestock market facilities shall include space and facilities necessary for livestock inspectors and veterinarians to properly carry out their duties, as provided by law and rules adopted under law, in a safe and expeditious manner. [2003 c 326 § 85; 1959 c 107 § 39.]

Effective dates—2003 c 326: See RCW 16.57.902.

[2003 RCW Supp—page 172]

16.65.400 Weighing of livestock at public livestock market. (1) Each public livestock market licensee shall maintain and operate approved weighing facilities for the weighing of livestock at such licensee's public livestock market.

(2) All dial scales used by the licensee shall be of adequate size to be readily visible to all interested parties and shall be equipped with a mechanical weight recorder.

(3) All beam scales used by the licensee shall be equipped with a balance indicator, a weigh beam and a mechanical weight recorder, all readily visible to all interested parties.

(4) All scales used by the licensee shall be checked for balance at short intervals during the process of selling and immediately prior to the beginning of each sale day.

(5) The scale ticket shall have the weights mechanically imprinted upon the tickets when the weigh beam is in balance during the process of weighing, and shall be issued in triplicate, for all livestock weighed at a public livestock market. A copy of the weight tickets shall be issued to the buyer and seller of the livestock weighed. [2003 c 326 § 86; 1983 c 298 § 15; 1961 c 182 § 5; 1959 c 107 § 40.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.420 Application for change of or additional sales days, special sales—Considerations for allocation.

(1) Any application for a change of sales day or days or additional sales day or days for an existing salesyard shall be subject to approval by the director, subsequent to a hearing and the director is hereby authorized to approve these days and class of livestock which may be sold on these days. In considering the approval or denial of these sales days, the director shall give appropriate consideration, among other relevant factors, to the following:

- (a) The geographical area which will be affected;
- (b) The conflict, if any, with sales days already allocated in the area;
- (c) The amount and class of livestock available for marketing in the area;
- (d) Buyers available to such market;
- (e) Any other conditions affecting the orderly marketing of livestock.

(2) No special sales shall be conducted by the licensee unless the licensee has applied to the director in writing fifteen days prior to such proposed sale. Each application must be accompanied by a nonrefundable fee of fifty dollars.

(3) In any case that a licensee fails to conduct sales on the sales days allocated to the licensee, the director shall, subsequent to a hearing, be authorized to revoke an allocation for nonuse. The rate of usage required to maintain an allocation shall be established by rule. [2003 c 326 § 87; 1991 c 17 § 3; 1963 c 232 § 16; 1961 c 182 § 6. Prior: 1959 c 107 § 42.]

Effective dates—2003 c 326: See RCW 16.57.902.

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

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

16.65.424 Additional sales days limited to sales of horses and/or mules. The director has the authority to grant a licensee an additional sales day, or days, limited to the sale of horses and/or mules and may if requested grant the licensee, by permit, the authority to have the sale at premises other than at his or her public livestock market if the facilities are approved by the director as being adequate for the protection of the health and safety of the horses and/or mules. For the purpose of such limited sale the facility requirements of RCW 16.65.360 shall not be applicable. [2003 c 326 § 88; 1963 c 232 § 19.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.440 Penalty (as amended by 2003 c 326). Any person who ~~((shall))~~ violates any provisions or requirements of this chapter or rules ~~((and regulations))~~ adopted by the director ~~((pursuant to))~~ under this chapter ~~((shall be deemed))~~ is guilty of a gross misdemeanor ~~((; and any subsequent violation thereafter shall be deemed a gross misdemeanor))~~. [2003 c 326 § 89; 1959 c 107 § 44.]

Effective dates—2003 c 326: See RCW 16.57.902.

16.65.440 Penalty (as amended by 2003 c 53). (Effective July 1, 2004.) (1) Except as provided in subsection (2) of this section, any person who ~~((shall))~~ violates any provisions or requirements of this chapter or rules and regulations adopted by the director pursuant to this chapter ~~((shall be deemed))~~ is guilty of a misdemeanor ~~((; and any))~~.

(2) A second or subsequent violation ~~((thereafter shall be deemed))~~ is a gross misdemeanor. [2003 c 53 § 116; 1959 c 107 § 44.]

Reviser's note: RCW 16.65.440 was amended twice during the 2003 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

16.65.445 Public hearings. The director shall hold public hearings upon any proposal to adopt any new or amended rules and all hearings for the denial, revocation, or suspension of a license issued under this chapter or in any other adjudicative proceeding, and shall comply in all respects with chapter 34.05 RCW, the Administrative Procedure Act. [2003 c 326 § 90; 1989 c 175 § 55; 1961 c 182 § 7.]

Effective dates—2003 c 326: See RCW 16.57.902.

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

Chapter 16.67 RCW

WASHINGTON STATE BEEF COMMISSION

Sections

16.67.040	Beef commission created—Generally.
16.67.091	Commission's plans, programs, and projects—Director's approval required.
16.67.095	Commission speaks for state—Director's oversight.
16.67.195	Costs of implementing RCW 16.67.091.

16.67.040 Beef commission created—Generally. There is hereby created a Washington state beef commission to be thus known and designated. The commission shall be composed of two beef producers, two dairy (beef) producers, two feeders, one livestock salesyard operator, one meat packer, and the director, who shall be a voting member. If an otherwise voting member is elected as the chair of the commission, the member may, during the member's term as chair of the commission, cast a vote as a member of the commis-

sion only to break a tie vote. If the commission so chooses, there may be one additional nonvoting member in an advisory capacity appointed by the members of the commission for such a term as the members may set.

A majority of voting members shall constitute a quorum for the transaction of any business.

All appointed members as stated in RCW 16.67.060 shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been actually engaged in that phase of the cattle industry he or she represents for a period of five years, and has during that period derived a substantial portion of his or her income therefrom, or have a substantial investment in cattle as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the production of cattle or dressed beef, or a manager or executive officer of such corporation. Producer members of the commission shall not be directly engaged in the business of being a meat packer, or as a feeder, feeding cattle other than their own. Said qualifications must continue throughout each member's term of office. [2003 c 396 § 33; 2000 c 146 § 1; 1997 c 363 § 1; 1993 c 40 § 1; 1991 c 9 § 1; 1969 c 133 § 3.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective date—1993 c 40: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1993." [1993 c 40 § 5.]

16.67.091 Commission's plans, programs, and projects—Director's approval required. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of its affected commodities; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of its affected commodities may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning its affected commodities.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner. [2003 c 396 § 34.]

Effective date—2003 c 396: See note following RCW 15.66.030.

16.67.095 Commission speaks for state—Director's oversight. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of Washington state government with regard to its particular commodities. [2003 c 396 § 35.]

Effective date—2003 c 396: See note following RCW 15.66.030.

16.67.195 Costs of implementing RCW 16.67.091.

The costs incurred by the department associated with the implementation of RCW 16.67.091 shall be paid for by the commission. [2003 c 396 § 36.]

Effective date—2003 c 396: See note following RCW 15.66.030.

Title 17**WEEDS, RODENTS, AND PESTS****Chapters**

- 17.10 Noxious weeds—Control boards.**
- 17.21 Washington pesticide application act.**
- 17.24 Insect pests and plant diseases.**
- 17.26 Control of spartina and purple loosestrife.**

Chapter 17.10 RCW**NOXIOUS WEEDS—CONTROL BOARDS**

Sections

17.10.350 Infraction—Penalty. (*Effective July 1, 2004.*)

17.10.350 Infraction—Penalty. (*Effective July 1, 2004.*) (1) Any person found to have committed a civil infraction under this chapter shall be assessed a monetary penalty not to exceed one thousand dollars. The state noxious weed control board shall adopt a schedule of monetary penalties for each violation of this chapter classified as a civil infraction and submit the schedule to the appropriate court. If a monetary penalty is imposed by the court, the penalty is immediately due and payable. The court may, at its discretion, grant an extension of time, not to exceed thirty days, in which the penalty must be paid.

(2) Failure to pay any monetary penalties imposed under this chapter is punishable as a misdemeanor. [2003 c 53 § 117; 1997 c 353 § 31; 1987 c 438 § 28.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 17.21 RCW**WASHINGTON PESTICIDE APPLICATION ACT**

Sections

17.21.310 General penalty. (*Effective July 1, 2004.*)

17.21.310 General penalty. (*Effective July 1, 2004.*)

(1) Except as provided in subsection (2) of this section, any person who violates any provisions or requirements of this chapter or rules adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent offense is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 118; 1967 c 177 § 16; 1961 c 249 § 34.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 17.24 RCW**INSECT PESTS AND PLANT DISEASES**

Sections

[2003 RCW Supp—page 174]

- 17.24.100 Penalties—Second and subsequent offenses. (*Effective July 1, 2004.*)
- 17.24.171 Determination of imminent danger of infestation of plant pests or plant diseases—Emergency measures—Conditions—Procedures.
- 17.24.220 Sudden oak death syndrome—Coordinated response effort.

17.24.100 Penalties—Second and subsequent offenses. (*Effective July 1, 2004.*) (1) Except as provided in subsection (2) of this section, every person who violates or fails to comply with any rule or regulation adopted and promulgated by the director of agriculture in accordance with and under the provision of this chapter is guilty of a misdemeanor.

(2) A second and each subsequent violation or failure to comply with the provisions of this chapter or rule or regulation adopted hereunder is a gross misdemeanor. [2003 c 53 § 119; 1981 c 296 § 26; 1927 c 292 § 7; RRS § 2786. Prior: 1921 c 105 § 7.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1981 c 296: See note following RCW 15.08.010.

17.24.171 Determination of imminent danger of infestation of plant pests or plant diseases—Emergency measures—Conditions—Procedures. (1) If the director determines that there exists an imminent danger of an infestation of plant pests or plant diseases that seriously endangers the agricultural or horticultural industries of the state, or that seriously threatens life, health, economic well-being, or the environment, the director shall request the governor to order emergency measures to control the pests or plant diseases under RCW 43.06.010(13). The director's findings shall contain an evaluation of the affect of the emergency measures on public health.

(2) If an emergency is declared pursuant to RCW 43.06.010(13), the director may appoint a committee to advise the governor through the director and to review emergency measures necessary under the authority of RCW 43.06.010(13) and this section and make subsequent recommendations to the governor. The committee shall include representatives of the agricultural industries, state and local government, public health interests, technical service providers, and environmental organizations.

(3) Upon the order of the governor of the use of emergency measures, the director is authorized to implement the emergency measures to prevent, control, or eradicate plant pests or plant diseases that are the subject of the emergency order. Such measures, after thorough evaluation of all other alternatives, may include the aerial application of pesticides.

(4) Upon the order of the governor of the use of emergency measures, the director is authorized to enter into agreements with individuals, companies, or agencies, to accomplish the prevention, control, or eradication of plant pests or plant diseases, notwithstanding the provisions of chapter 15.58 or 17.21 RCW, or any other statute.

(5) The director shall continually evaluate the emergency measures taken and report to the governor at intervals of not less than ten days. The director shall immediately advise the governor if he or she finds that the emergency no longer exists or if certain emergency measures should be discontinued. [2003 c 314 § 6; 1991 c 257 § 21.]

Findings—2003 c 314: See note following RCW 17.24.220.

17.24.220 Sudden oak death syndrome—Coordinated response effort. The department and the department of natural resources shall coordinate their sudden oak death syndrome response efforts with other plant pest agencies and private organizations to exchange information, monitor the confirmed incidences of the disease, and take action as appropriate under existing plant pest control authorities to prevent the introduction of the disease into Washington and to control or eradicate the disease if it is determined to be present in the state. [2003 c 314 § 8.]

Findings—2003 c 314: "The legislature finds that since 1995 large numbers of oak and tanoak trees have been dying in the coastal counties of California. The legislature also finds that the disease causing the tree loss, which is commonly referred to as sudden oak death syndrome, has, as of July 27, 2003, been confirmed in twelve California counties, and one Oregon county. The legislature also finds that in addition to affecting several species of oak, this disease has been confirmed to affect several plant species common in Washington's forests, including Douglas Fir, big leaf maple, huckleberry, rhododendron, madrone, and manzanita. The legislature recognizes that the state of California and the United States department of agriculture have adopted restrictions on the movement of articles that may host the disease, and the state of Oregon and the Canadian government have adopted restrictions on the importation of potential host articles. The legislature finds that an introduction of sudden oak death syndrome into Washington could cause potential damage to the state's forest health, leading to both economic and ecological losses." [2003 c 314 § 7.]

Chapter 17.26 RCW

CONTROL OF SPARTINA AND PURPLE LOOSESTRIFE

Sections

17.26.020 High priority for all state agencies—Definitions.

17.26.020 High priority for all state agencies—Definitions. (1) Facilitating the control of spartina and purple loosestrife is a high priority for all state agencies.

(2) The department of natural resources is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of natural resources.

(3) The department of fish and wildlife is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of fish and wildlife.

(4) The state parks and recreation commission is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the state parks and recreation commission.

(5) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this chapter, RCW 90.48.020, 90.58.030, and 77.55.150:

(a) "Spartina" means *Spartina alterniflora*, *Spartina anglica*, *Spartina x townsendii*, and *Spartina patens*.

(b) "Purple loosestrife" means *Lythrum salicaria* and *Lythrum virgatum*.

(c) "Aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080. [2003 c 39 § 10; 1995 c 255 § 12.]

Title 18

BUSINESSES AND PROFESSIONS

Chapters

- 18.04 Accountancy.
- 18.06 Acupuncture.
- 18.08 Architects.
- 18.16 Cosmetologists, barbers, manicurists, and estheticians.
- 18.20 Boarding homes.
- 18.27 Registration of contractors.
- 18.29 Dental hygienists.
- 18.32 Dentistry.
- 18.39 Embalmers—Funeral directors.
- 18.51 Nursing homes.
- 18.53 Optometry.
- 18.57 Osteopathy—Osteopathic medicine and surgery.
- 18.64 Pharmacists.
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Chapter 18.04 RCW

ACCOUNTANCY

Sections

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18.04.195 License required—Requirements—Application—Fees. (1) A sole proprietorship engaged in business in this state and offering to issue or issuing reports on financial statements or using the title CPA or certified public accountant shall license, as a firm, every three years with the board.

(a) The sole proprietor shall hold a license to practice under RCW 18.04.215;

(b) Each resident person in charge of an office located in this state shall hold a license to practice under RCW 18.04.215; and

(c) The licensed firm must meet competency requirements established by rule by the board.

(2) A partnership engaged in business in this state and offering to issue or issuing reports on financial statements or using the title CPA or certified public accountant shall license as a firm every three years with the board, and shall meet the following requirements:

(a) At least one general partner of the partnership shall hold a license to practice under RCW 18.04.215;

(b) Each resident person in charge of an office in this state shall hold a license to practice under RCW 18.04.215;

(c) A simple majority of the ownership of the licensed firm in terms of financial interests and voting rights of all partners or owners shall be held by natural persons who are licensees or holders of a valid license issued under this chapter or by another state that entitles the holder to practice public accounting in this state. The principal partner of the partnership and any partner having authority over issuing reports on financial statements shall hold a license under this chapter or issued by another state that entitles the holder to practice public accounting in this state; and

(d) The licensed firm must meet competency requirements established by rule by the board.

(3) A corporation engaged in business in this state and offering to issue or issuing reports on financial statements or using the title CPA or certified public accountant shall license as a firm every three years with the board and shall meet the following requirements:

(a) A simple majority of the ownership of the licensed firm in terms of financial interests and voting rights of all shareholders or owners shall be held by natural persons who are licensees or holders of a valid license issued under this chapter or by another state that entitles the holder to practice public accounting in this state and is principally employed by the corporation or actively engaged in its business. The principal officer of the corporation and any officer or director having authority over issuing reports on financial statements shall hold a license under this chapter or issued by another state that entitles the holder to practice public accounting in this state;

(b) At least one shareholder of the corporation shall hold a license under RCW 18.04.215;

(c) Each resident person in charge of an office located in this state shall hold a license under RCW 18.04.215;

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

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

(f) The licensed firm must meet competency requirements established by rule by the board.

(4) A limited liability company engaged in business in this state and offering to issue or issuing reports on financial statements or using the title CPA or certified public accountant shall license as a firm every three years with the board, and shall meet the following requirements:

(a) At least one member of the limited liability company shall hold a license under RCW 18.04.215;

(b) Each resident manager or member in charge of an office located in this state shall hold a license under RCW 18.04.215;

(c) A simple majority of the ownership of the licensed firm in terms of financial interests and voting rights of all owners shall be held by natural persons who are licensees or holders of a valid license issued under this chapter or by another state that entitles the holder to practice public accounting in this state. The principal member or manager of the limited liability company and any member having authority over issuing reports on financial statements shall hold a license under this chapter or issued by another state that entitles the holder to practice public accounting in this state; and

(d) The licensed firm must meet competency requirements established by rule by the board.

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

(6) Licensed firms which fall out of compliance with the provisions of this section due to changes in firm ownership or personnel, after receiving or renewing a license, shall notify the board in writing within ninety days of its falling out of compliance and propose a time period in which they will come back into compliance. The board may grant a reasonable period of time for a firm to be in compliance with the provisions of this section. Failure to bring the firm into compliance within a reasonable period of time, as determined by the board, may result in suspension, revocation, or imposition of conditions on the firm's license.

(7) Fees for the license as a firm and for notification of the board of the admission or withdrawal of a partner, shareholder, or member shall be determined by the board. Fees shall be paid by the firm at the time the license application form or notice of admission or withdrawal of a partner, shareholder, or member is filed with the board.

(8) Nonlicensee owners of licensed firms are:

(a) Required to fully comply with the provisions of this chapter and board rules;

(b) Required to be a natural person;

(c) Required to be an active individual participant in the licensed firm or affiliated entities as these terms are defined by board rule; and

(d) Subject to discipline by the board for violation of this chapter.

(9) Resident nonlicensee owners of licensed firms are required to meet:

(a) The ethics examination, registration, and fee requirements as established by the board rules; and

(b) The ethics CPE requirements established by the board rules.

(10)(a) Licensed firms must notify the board within thirty days after:

(i) Sanction, suspension, revocation, or modification of their professional license or practice rights by the securities exchange commission, internal revenue service, or another state board of accountancy;

(ii) Sanction or order against the licensee or nonlicensee firm owner by any federal or other state agency related to the licensee's practice of public accounting or violation of ethical or technical standards established by board rule; or

(iii) The licensed firm is notified that it has been charged with a violation of law that could result in the suspension or revocation of the firm's license by a federal or other state agency, as identified by board rule, related to the firm's professional license, practice rights, or violation of ethical or technical standards established by board rule.

(b) The board must adopt rules to implement this subsection and may also adopt rules specifying requirements for licensees to report to the board sanctions or orders relating to the licensee's practice of public accounting or violation of ethical or technical standards entered against the licensee by a nongovernmental professionally related standard-setting entity. [2003 c 290 § 1; 2001 c 294 § 11; 1999 c 378 § 5; 1994 c 211 § 1402; 1986 c 295 § 8; 1983 c 234 § 9.]

Effective date—2001 c 294: See note following RCW 18.04.015.

Effective date—Severability—1994 c 211: See RCW 25.15.900 and 25.15.902.

18.04.215 Licenses—Issuance—Renewal and reinstatement—Continuing professional education—Fees—Notification of sanction/suspension/revocation of license.

(1) Three-year licenses shall be issued by the board:

(a) To persons meeting the requirements of RCW 18.04.105(1), 18.04.180, or 18.04.183.

(b) To certificate holders meeting the requirements of RCW 18.04.105(4).

(c) To firms under RCW 18.04.195, meeting the requirements of RCW 18.04.205.

(2) The board shall, by rule, provide for a system of certificate and license renewal and reinstatement. Applicants for renewal or reinstatement shall, at the time of filing their applications, list with the board all states and foreign jurisdictions in which they hold or have applied for certificates, permits or licenses to practice.

(3) An inactive certificate is renewed every three years with renewal subject to the requirements of ethics CPE and the payment of fees, prescribed by the board. Failure to renew the inactive certificate shall cause the inactive certificate to lapse and be subject to reinstatement. The board shall adopt rules providing for fees and procedures for renewal and reinstatement of inactive certificates.

(4) A license is issued every three years with renewal subject to requirements of CPE and payment of fees, prescribed by the board. Failure to renew the license shall cause the license to lapse and become subject to reinstatement. Persons holding a lapsed license are prohibited from using the title "CPA" or "certified public accountant." Persons holding a lapsed license are prohibited from practicing public accountancy. The board shall adopt rules providing for fees and procedures for issuance, renewal, and reinstatement of licenses.

(5) The board shall adopt rules providing for CPE for licensees and certificate holders. The rules shall:

(a) Provide that a licensee shall verify to the board that he or she has completed at least an accumulation of one hundred twenty hours of CPE during the last three-year period to maintain the license;

(b) Establish CPE requirements; and

(c) Establish when new licensees shall verify that they have completed the required CPE.

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

(7) A licensee shall submit to the board satisfactory proof of having completed an accumulation of one hundred twenty hours of CPE recognized and approved by the board during the preceding three years. Failure to furnish this evidence as required shall make the license lapse and subject to reinstatement procedures, unless the board determines the failure to have been due to retirement or reasonable cause.

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

(8) Fees for renewal or reinstatement of certificates and licenses in this state shall be determined by the board under this chapter. Fees shall be paid by the applicant at the time the application form is filed with the board. The board, by rule, may provide for proration of fees for licenses or certificates issued between normal renewal dates.

(9)(a) Licensees, certificate holders, and nonlicensee owners must notify the board within thirty days after:

(i) Sanction, suspension, revocation, or modification of their professional license or practice rights by the securities exchange commission, internal revenue service, or another state board of accountancy;

(ii) Sanction or order against the licensee, certificate holder, or nonlicensee owner by any federal or other state agency related to the licensee's practice of public accounting or the licensee's, certificate holder's, or nonlicensee owner's violation of ethical or technical standards established by board rule; or

(iii) The licensee, certificate holder, or nonlicensee owner is notified that he or she has been charged with a violation of law that could result in the suspension or revocation of a license or certificate by a federal or other state agency, as identified by board rule, related to the licensee's, certificate holder's, or nonlicensee owner's professional license, practice rights, or violation of ethical or technical standards established by board rule.

(b) The board must adopt rules to implement this subsection and may also adopt rules specifying requirements for licensees, certificate holders, and nonlicensee owners to report to the board sanctions or orders relating to the licensee's practice of public accounting or the licensee's, certificate holder's, or nonlicensee owner's violation of ethical or technical standards entered against the licensee, certificate holder, or nonlicensee owner by a nongovernmental professionally related standard-setting entity. [2003 c 290 § 2; 2001 c 294 § 13; 1999 c 378 § 7; 1992 c 103 § 10; 1986 c 295 § 10; 1983 c 234 § 11.]

Effective date—2001 c 294: See note following RCW 18.04.015.

18.04.295 Actions against CPA license. The board shall have the power to: Revoke, suspend, refuse to renew, or reinstate a license or certificate; impose a fine in an amount not to exceed thirty thousand dollars plus the board's investigative and legal costs in bringing charges against a certified public accountant, a certificate holder, a licensee, a licensed firm, or a nonlicensee holding an ownership interest in a licensed firm; may impose full restitution to injured parties; may impose conditions precedent to renewal of a certificate or a license; or may prohibit a nonlicensee from holding an ownership interest in a licensed firm, for any of the following causes:

- (1) Fraud or deceit in obtaining a license, or in any filings with the board;
- (2) Dishonesty, fraud, or negligence while representing oneself as a nonlicensee owner holding an ownership interest in a licensed firm, a licensee, or a certificate holder;
- (3) A violation of any provision of this chapter;
- (4) A violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter;
- (5) Conviction of a crime or an act constituting a crime under:
 - (a) The laws of this state;
 - (b) The laws of another state, and which, if committed within this state, would have constituted a crime under the laws of this state; or
 - (c) Federal law;
- (6) Cancellation, revocation, suspension, or refusal to renew the authority to practice as a certified public accountant by any other state for any cause other than failure to pay a fee or to meet the requirements of CPE in the other state;
- (7) Suspension or revocation of the right to practice matters relating to public accounting before any state or federal agency;

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

- (8) Failure to maintain compliance with the requirements for issuance, renewal, or reinstatement of a certificate or license, or to report changes to the board;
- (9) Failure to cooperate with the board by:
 - (a) Failure to furnish any papers or documents requested or ordered by the board;
 - (b) Failure to furnish in writing a full and complete explanation covering the matter contained in the complaint filed with the board or the inquiry of the board;

(c) Failure to respond to subpoenas issued by the board, whether or not the recipient of the subpoena is the accused in the proceeding;

(10) Failure by a nonlicensee owner of a licensed firm to comply with the requirements of this chapter or board rule; and

(11) Failure to comply with an order of the board. [2003 c 290 § 3; 2001 c 294 § 14; 2000 c 171 § 1; 1992 c 103 § 11; 1986 c 295 § 11; 1983 c 234 § 12.]

Effective date—2001 c 294: See note following RCW 18.04.015.

18.04.370 Penalty. (Effective until July 1, 2004.) (1) Any person who violates any provision of this chapter, shall be guilty of a crime, as follows:

(a) Any person who violates any provision of this chapter is guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than thirty thousand dollars, or to imprisonment for not more than six months, or to both such fine and imprisonment.

(b) Notwithstanding (a) of this subsection, any person who uses a professional title intended to deceive the public, in violation of RCW 18.04.345, having previously entered into a stipulated agreement and order of assurance with the board, is guilty of a felony, and upon conviction thereof, is subject to a fine of not more than thirty thousand dollars, or to imprisonment for not more than two years, or to both such fine and imprisonment.

(2) With the exception of first time violations of RCW 18.04.345, subject to subsection (3) of this section whenever the board has reason to believe that any person is violating the provisions of this chapter it shall certify the facts to the prosecuting attorney of the county in which such person resides or may be apprehended and the prosecuting attorney shall cause appropriate proceedings to be brought against such person.

(3) The board may elect to enter into a stipulated agreement and orders of assurance with persons in violation of RCW 18.04.345 who have not previously been found to have violated the provisions of this chapter. The board may order full restitution to injured parties as a condition of a stipulated agreement and order of assurance.

(4) Nothing herein contained shall be held to in any way affect the power of the courts to grant injunctive or other relief as above provided. [2003 c 290 § 5; 2001 c 294 § 19; 1983 c 234 § 19; 1949 c 226 § 36; Rem. Supp. 1949 § 8269-43.]

Effective date—2001 c 294: See note following RCW 18.04.015.

18.04.370 Penalty. (Effective July 1, 2004.) (1) Any person who violates any provision of this chapter shall be guilty of a crime, as follows:

(a) Any person who violates any provision of this chapter is guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than thirty thousand dollars, or to imprisonment for not more than six months, or to both such fine and imprisonment.

(b) Notwithstanding (a) of this subsection, any person who uses a professional title intended to deceive the public, in violation of RCW 18.04.345, having previously entered into a stipulated agreement and order of assurance with the

board, is guilty of a class C felony, and upon conviction thereof, is subject to a fine of not more than thirty thousand dollars, or to imprisonment for not more than two years, or to both such fine and imprisonment.

(2) With the exception of first time violations of RCW 18.04.345, subject to subsection (3) of this section whenever the board has reason to believe that any person is violating the provisions of this chapter it shall certify the facts to the prosecuting attorney of the county in which such person resides or may be apprehended and the prosecuting attorney shall cause appropriate proceedings to be brought against such person.

(3) The board may elect to enter into a stipulated agreement and orders of assurance with persons in violation of RCW 18.04.345 who have not previously been found to have violated the provisions of this chapter. The board may order full restitution to injured parties as a condition of a stipulated agreement and order of assurance.

(4) Nothing herein contained shall be held to in any way affect the power of the courts to grant injunctive or other relief as above provided. [2003 c 290 § 5; 2003 c 53 § 120; 2001 c 294 § 19; 1983 c 234 § 19; 1949 c 226 § 36; Rem. Supp. 1949 § 8269-43.]

Reviser's note: This section was amended by 2003 c 53 § 120 and by 2003 c 290 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2001 c 294: See note following RCW 18.04.015.

18.04.390 Papers, records, schedules, etc., property of the licensee or licensed firm—Prohibited practices—Rights of client. (1) In the absence of an express agreement between the licensee or licensed firm and the client to the contrary, all statements, records, schedules, working papers, and memoranda made by a licensee or licensed firm incident to or in the course of professional service to clients, except reports submitted by a licensee or licensed firm, are the property of the licensee or licensed firm.

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

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

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

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

(4)(a) For a period of seven years after the end of the fiscal period in which a licensed firm concludes an audit or review of a client's financial statements, the licensed firm must retain records relevant to the audit or review, as determined by board rule.

(b) The board must adopt rules to implement this subsection, including rules relating to working papers and document retention.

(5) Nothing in this section should be construed as prohibiting any temporary transfer of workpapers or other material necessary in the course of carrying out peer reviews or as otherwise interfering with the disclosure of information pursuant to RCW 18.04.405. [2003 c 290 § 4; 2001 c 294 § 21; 1992 c 103 § 16; 1986 c 295 § 18; 1983 c 234 § 21; 1949 c 226 § 38; Rem. Supp. 1949 § 8269-45.]

Effective date—2001 c 294: See note following RCW 18.04.015.

Chapter 18.06 RCW ACUPUNCTURE

Sections

- 18.06.130 Patient information form—Penalty. (*Effective July 1, 2004.*)
18.06.140 Consultation and referral to other health care practitioners. (*Effective July 1, 2004.*)
18.06.150 Repealed. (*Effective July 1, 2004.*)

18.06.130 Patient information form—Penalty. (*Effective July 1, 2004.*) (1) The secretary shall develop a form to be used by an acupuncturist to inform the patient of the acupuncturist's scope of practice and qualifications. All license holders shall bring the form to the attention of the patients in whatever manner the secretary, by rule, provides.

(2) A person violating this section is guilty of a misdemeanor. [2003 c 53 § 121; 1995 c 323 § 11; 1991 c 3 § 13; 1985 c 326 § 13.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

18.06.140 Consultation and referral to other health care practitioners. (*Effective July 1, 2004.*) (1) Every licensed acupuncturist shall develop a written plan for consultation, emergency transfer, and referral to other health care practitioners operating within the scope of their authorized practices. The written plan shall be submitted with the initial application for licensure as well as annually thereafter with the license renewal fee to the department. The department may withhold licensure or renewal of licensure if the plan fails to meet the standards contained in rules adopted by the secretary.

(2) When the acupuncturist sees patients with potentially serious disorders such as cardiac conditions, acute abdominal symptoms, and such other conditions, the acupuncturist shall immediately request a consultation or recent written diagnosis from a physician licensed under chapter 18.71 or 18.57 RCW. In the event that the patient with the disorder refuses to authorize such consultation or provide a recent diagnosis from such physician, acupuncture treatment shall not be continued.

(3) A person violating this section is guilty of a misdemeanor. [2003 c 53 § 122; 1995 c 323 § 12; 1991 c 3 § 14; 1985 c 326 § 14.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

18.06.150 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 18.08 RCW

ARCHITECTS

Sections

18.08.460 Violation of chapter—Penalties—Enforcement—Injunctions—Persons who may initiate proceedings. (*Effective July 1, 2004.*)

18.08.460 Violation of chapter—Penalties—Enforcement—Injunctions—Persons who may initiate proceedings. (*Effective July 1, 2004.*) (1) Any person who violates any provision of this chapter or any rule promulgated under it is guilty of a misdemeanor and may also be subject to a civil penalty in an amount not to exceed one thousand dollars for each offense.

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

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

(4) No person practicing architecture is entitled to maintain a proceeding in any court of this state relating to services in the practice of architecture unless it is alleged and proved that the person was registered or authorized under this chapter to practice or offer to practice architecture at the time the architecture services were offered or provided. [2003 c 53 § 123; 1985 c 37 § 17.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 18.16 RCW

COSMETOLOGISTS, BARBERS, MANICURISTS, AND ESTHETICIANS

Sections

18.16.020 Definitions.
18.16.070 Licensing—Persons to whom chapter inapplicable.
18.16.090 Examinations.
18.16.100 Issuance of licenses—Requirements.
18.16.280 Cosmetology apprenticeship pilot program.

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

(1) "Apprenticeship program" means an apprenticeship pilot program approved under RCW 18.16.280 for the practice of cosmetology, barbering, esthetics, and manicuring, which expires July 1, 2006.

(2) "Apprentice" means a person engaged in a state-approved apprenticeship program and who may receive a wage or compensation while engaged in the program.

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

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

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

(6) "The practice of cosmetology" means arranging, dressing, cutting, trimming, styling, shampooing, permanent waving, chemical relaxing, straightening, curling, bleaching, lightening, coloring, waxing, tweezing, shaving, and mustache and beard design of the hair of the face, neck, and scalp; temporary removal of superfluous hair by use of depilatories, waxing, or tweezing; manicuring and pedicuring, limited to cleaning, shaping, polishing, decorating, and caring for and treatment of the cuticles and nails of the hands and feet, excluding the application and removal of sculptured or otherwise artificial nails; esthetics limited to toning the skin of the scalp, stimulating the skin of the body by the use of preparations, tonics, lotions, or creams; and tinting eyelashes and eyebrows.

(7) "Cosmetologist" means a person licensed under this chapter to engage in the practice of cosmetology.

(8) "The practice of barbering" means the cutting, trimming, arranging, dressing, curling, shampooing, shaving, and mustache and beard design of the hair of the face, neck, and scalp.

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

(10) "Practice of manicuring" means the cleaning, shaping, polishing, decorating, and caring for and treatment of the cuticles and the nails of the hands or feet, and the application and removal of sculptured or otherwise artificial nails by hand or with mechanical or electrical apparatus or appliances.

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

(12) "Practice of esthetics" means care of the skin by application and use of preparations, antiseptics, tonics, essential oils, or exfoliants, or by any device or equipment, electrical or otherwise, or by wraps, compresses, cleansing, conditioning, stimulation, pore extraction, or product application and removal; the temporary removal of superfluous hair by means of lotions, creams, mechanical or electrical apparatus, appliance, waxing, tweezing, or depilatories; tinting of eyelashes and eyebrows; and lightening the hair, except the scalp, on another person.

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

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

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

(16) "Student" means a person sixteen years of age or older who is enrolled in a school licensed under this chapter and receives instruction in any of the curricula of cosmetology, barbering, esthetics, manicuring, or instructor-training with or without tuition, fee, or cost, and who does not receive any wage or commission.

(17) "Instructor" means a person who gives instruction in a school in a curriculum in which he or she holds a license under this chapter, has completed at least five hundred hours of instruction in teaching techniques and lesson planning in a school, and has passed a licensing examination approved or administered by the director. An applicant who holds a degree in education from an accredited postsecondary institution shall upon application be licensed as an instructor to give instruction in a school in a curriculum in which he or she holds a license under this chapter. An applicant who holds an instructional credential from an accredited community or technical college and who has passed a licensing examination approved or administered by the director shall upon application be licensed as an instructor to give instruction in a school in a curriculum in which he or she holds a license under this chapter.

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

(19) "Salon/shop" means any building, structure, or any part thereof, other than a school, where the commercial practice of cosmetology, barbering, esthetics, or manicuring is conducted; provided that any person, except employees of a salon/shop, who operates from a salon/shop is required to meet all salon/shop licensing requirements and may participate in the apprenticeship program when certified by the advisory committee as established by the department of labor and industries apprenticeship council.

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

(21) "Approved security" means surety bond.

(22) "Personal services" means a location licensed under this chapter where the practice of cosmetology, barbering, manicuring, or esthetics is performed for clients in the client's home, office, or other location that is convenient for the client.

(23) "Individual license" means a cosmetology, barber, manicurist, esthetician, or instructor license issued under this chapter.

(24) "Location license" means a license issued under this chapter for a salon/shop, school, personal services, or mobile unit.

(25) "Mobile unit" is a location license under this chapter where the practice of cosmetology, barbering, esthetics, or manicuring is conducted in a mobile structure. Mobile units must conform to the health and safety standards set by rule under this chapter.

(26) "Curriculum" means the courses of study taught at a school, set by rule under this chapter, and approved by the department. After consulting with the board, the director may set by rule a percentage of hours in a curriculum, up to a maximum of ten percent, that could include hours a student receives while training in a salon/shop under a contract

approved by the department. Each curriculum must include at least the following required hours:

- (a) Cosmetologist, one thousand six hundred hours;
- (b) Barber, one thousand hours;
- (c) Manicurist, six hundred hours;
- (d) Esthetician, six hundred hours;
- (e) Instructor-trainee, five hundred hours.

(27) "Student monthly report" means the student record of daily activities and the number of hours completed in each course of a curriculum that is prepared monthly by the school and provided to the student, audited annually by the department, and kept on file by the school for three years. [2003 c 400 § 2; 2002 c 111 § 2; 1991 c 324 § 1; 1984 c 208 § 2.]

Effective date—2003 c 400: See note following RCW 18.16.280.

Effective date—2002 c 111: See note following RCW 18.16.010.

18.16.070 Licensing—Persons to whom chapter inapplicable. This chapter shall not apply to persons licensed under other laws of this state who are performing services within their authorized scope of practice and shall not be construed to require a license for students enrolled in a school or an apprentice engaged in a state-approved apprenticeship program as defined in RCW 18.16.020. [2003 c 400 § 3; 1984 c 208 § 4.]

Effective date—2003 c 400: See note following RCW 18.16.280.

18.16.090 Examinations. Examinations for licensure under this chapter shall be conducted at such times and places as the director determines appropriate. Examinations shall consist of tests designed to reasonably measure the applicant's knowledge of safe and sanitary practices and may also include the applicant's knowledge of this chapter and rules adopted pursuant to this chapter. The director may establish by rule a performance examination in addition to any other examination. The director shall establish by rule the minimum passing score for all examinations and the requirements for reexamination of applicants who fail the examination or examinations. The director may allow an independent person to conduct the examinations at the expense of the applicants.

The director shall take steps to ensure that after completion of the required course or apprenticeship program, applicants may promptly take the examination and receive the results of the examination. [2003 c 400 § 4; 2002 c 111 § 6; 1991 c 324 § 5; 1984 c 208 § 10.]

Effective date—2003 c 400: See note following RCW 18.16.280.

Effective date—2002 c 111: See note following RCW 18.16.010.

18.16.100 Issuance of licenses—Requirements. (1) Upon completion of an application approved by the department and payment of the proper fee, the director shall issue the appropriate license to any person who:

- (a) Is at least seventeen years of age or older;
- (b)(i) Has completed and graduated from a school licensed under this chapter in a curriculum approved by the director of sixteen hundred hours of training in cosmetology, one thousand hours of training in barbering, six hundred hours of training in manicuring, six hundred hours of training in esthetics, and/or five hundred hours of training as an instructor-trainee, or has met the requirements in RCW 18.16.020 or 18.16.130; or

(ii) Has successfully completed a state-approved apprenticeship training program; and

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

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

(3) Upon completion of an application approved by the department, certification of insurance, and payment of the proper fee, the director shall issue a location license to the applicant.

(4) The director may consult with the state board of health and the department of labor and industries in establishing training, apprenticeship, and examination requirements. [2003 c 400 § 5; 2002 c 111 § 7; 1991 c 324 § 6; 1984 c 208 § 5.]

Effective date—2003 c 400: See note following RCW 18.16.280.

Effective date—2002 c 111: See note following RCW 18.16.010.

18.16.280 Cosmetology apprenticeship pilot program. A cosmetology apprenticeship pilot program is hereby created.

(1) An advisory committee is created that may consist of representatives from individuals and businesses licensed under chapter 18.16 RCW; cosmetology, barbering, esthetics, and manicuring advisory board members; department of labor and industries; department of licensing; United States department of labor apprenticeship; and other interested parties.

(a) The advisory committee shall meet to review progress of the cosmetology apprenticeship pilot program.

(b) The department of labor and industries apprenticeship council shall coordinate the activities of the advisory committee. The advisory committee shall issue annual reports on the progress of the apprenticeship program to interested parties and shall issue a final report regarding the outcome of the apprenticeship program to be presented to the appropriate committees of the house of representatives and senate by December 31, 2005.

(2) Up to twenty salons approved by the department of labor and industries apprenticeship council may participate in the apprenticeship program. The participating salons shall proportionately represent the geographic diversity of Washington state, including rural and urban areas, and salons located in both eastern and western Washington.

(3) The department of licensing shall adopt rules, including a mandatory requirement that apprentices complete in-classroom theory courses as a part of their training, to provide for the licensure of participants of the apprenticeship program.

(4) The cosmetology apprenticeship pilot program expires July 1, 2006. [2003 c 400 § 1.]

Effective date—2003 c 400: "This act takes effect September 15, 2003." [2003 c 400 § 6.]

Chapter 18.20 RCW BOARDING HOMES

Sections

[2003 RCW Supp—page 182]

18.20.020	Definitions.
18.20.030	License required.
18.20.050	Licenses—Issuance—Renewal—Provisional licenses—Fees—Display—Surrender, relinquishment.
18.20.110	Inspection of boarding homes—Approval of changes or new facilities.
18.20.125	Inspections—Enforcement remedies—Screening—Access to vulnerable adults/limitation.
18.20.190	Department response to noncompliance or violations.
18.20.280	General responsibility for each resident.
18.20.290	Holding a medicaid eligible resident's room or unit—Payment rates—Report to the legislature. (<i>Expires June 30, 2006.</i>)

18.20.020 Definitions.

As used in this chapter:

(1) "Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing board and domiciliary care to seven or more residents after July 1, 2000. However, a boarding home that is licensed to provide board and domiciliary care to three to six residents on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" shall not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the department of housing and urban development.

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

(3) "Secretary" means the secretary of social and health services.

(4) "Department" means the state department of social and health services.

(5) "Domiciliary care" means: Assistance with activities of daily living provided by the boarding home either directly or indirectly; or assuming general responsibility for the safety and well-being of the resident; or intermittent nursing services, if provided directly or indirectly by the boarding home. "Domiciliary care" does not include general observation or preadmission assessment for the purposes of transitioning to a licensed care setting.

(6) "General responsibility for the safety and well-being of the resident" does not include: (a) Emergency assistance provided on an intermittent or nonroutine basis to any non-resident individual; or (b) services customarily provided under landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW. Such services do not include care or supervision.

(7) "Resident" means an individual who: Lives in a boarding home, including those receiving respite care; is not related by blood or marriage to the operator of the boarding home; and by reason of age or disability, receives domiciliary care provided either directly or indirectly by the boarding home. [2003 c 231 § 2; 2000 c 47 § 1; 1998 c 272 § 14; 1991 c 3 § 34; 1989 c 329 § 1; 1985 c 213 § 4; 1979 c 141 § 25; 1957 c 253 § 2.]

Findings—2003 c 231: "The legislature finds and declares that, in keeping with the traditional concept of the dignity of the individual in our

democratic society, the older citizens of this state and persons with disabilities are entitled to live in comfort, honor, and dignity in a manner that maximizes freedom and independence.

The legislature further finds that licensed boarding homes are an essential component of home and community-based services, and that the noninstitutional nature of this care setting must be preserved and protected by ensuring a regulatory structure that focuses on the actual care and services provided to residents, consumer satisfaction, and continuous quality improvement.

The legislature also finds that residents and consumers of services in licensed boarding homes should be encouraged to exercise maximum independence, and the legislature declares that the state's rules for licensed boarding homes must also be designed to encourage individual dignity, autonomy, and choice.

The legislature further finds that consumers should be afforded access to affordable long-term care services in licensed boarding homes, and believes that care delivery must remain responsive to consumer preferences. Residents and consumers in licensed boarding homes should be afforded the right to self-direct care, and this right should be reflected in the rules governing licensed boarding homes." [2003 c 231 § 1.]

Effective date—2003 c 231: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 231 § 12.]

Effective date—2000 c 47: "This act takes effect July 1, 2000." [2000 c 47 § 11.]

Findings—Severability—Effective date—1998 c 272: See notes following RCW 18.20.230.

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

18.20.030 License required. (1) After January 1, 1958, no person shall operate or maintain a boarding home as defined in this chapter within this state without a license under this chapter.

(2) A boarding home license is not required for the housing, or services, that are customarily provided under landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW, or when housing nonresident individuals who, without ongoing assistance from the boarding home, initiate and arrange for services provided by persons other than the boarding home licensee or the licensee's contractor. This subsection does not prohibit the licensee from furnishing written information concerning available community resources to the nonresident individual or the individual's family members or legal representatives. The licensee may not require the use of any particular service provider.

(3) Residents receiving domiciliary care, directly or indirectly by the boarding home, are not considered nonresident individuals for the purposes of this section.

(4) A boarding home license is not required for emergency assistance when that emergency assistance is not provided on a frequent or routine basis to any one nonresident individual and the nonresident individual resides in independent senior housing, independent living units in continuing care retirement communities, independent living units having common ownership with a licensed boarding home, or other similar living situations including those subsidized by the department of housing and urban development. [2003 c 231 § 3; 1957 c 253 § 3.]

Findings—Effective date—2003 c 231: See notes following RCW 18.20.020.

18.20.050 Licenses—Issuance—Renewal—Provisional licenses—Fees—Display—Surrender, relinquish-

ment. Upon receipt of an application for license, if the applicant and the boarding home facilities meet the requirements established under this chapter, the department shall issue a license. If there is a failure to comply with the provisions of this chapter or the standards and rules adopted pursuant thereto, the department may in its discretion issue to an applicant for a license, or for the renewal of a license, a provisional license which will permit the operation of the boarding home for a period to be determined by the department, but not to exceed twelve months, which provisional license shall not be subject to renewal. The department may also place conditions on the license under RCW 18.20.190. At the time of the application for or renewal of a license or provisional license the licensee shall pay a license fee as established by the department under RCW 43.20B.110. All licenses issued under the provisions of this chapter shall expire on a date to be set by the department, but no license issued pursuant to this chapter shall exceed twelve months in duration. However, when the annual license renewal date of a previously licensed boarding home is set by the department on a date less than twelve months prior to the expiration date of a license in effect at the time of reissuance, the license fee shall be prorated on a monthly basis and a credit be allowed at the first renewal of a license for any period of one month or more covered by the previous license. All applications for renewal of a license shall be made not later than thirty days prior to the date of expiration of the license. Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises.

A licensee who receives notification of the department's initiation of a denial, suspension, nonrenewal, or revocation of a boarding home license may, in lieu of appealing the department's action, surrender or relinquish the license. The department shall not issue a new license to or contract with the licensee, for the purposes of providing care to vulnerable adults or children, for a period of twenty years following the surrendering or relinquishment of the former license. The licensing record shall indicate that the licensee relinquished or surrendered the license, without admitting the violations, after receiving notice of the department's initiation of a denial, suspension, nonrenewal, or revocation of a license. [2003 c 231 § 4; 2001 c 193 § 10; 2000 c 47 § 3; 1987 c 75 § 3; 1982 c 201 § 4; 1971 ex.s. c 247 § 1; 1957 c 253 § 5.]

Findings—Effective date—2003 c 231: See notes following RCW 18.20.020.

Effective date—2000 c 47: See note following RCW 18.20.020.

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

18.20.110 Inspection of boarding homes—Approval of changes or new facilities. The department shall make or cause to be made, at least every eighteen months with an annual average of fifteen months, an inspection and investigation of all boarding homes. However, the department may delay an inspection to twenty-four months if the boarding home has had three consecutive inspections with no written notice of violations and has received no written notice of violations resulting from complaint investigation during that same time period. The department may at anytime make an

unannounced inspection of a licensed home to assure that the licensee is in compliance with this chapter and the rules adopted under this chapter. Every inspection shall focus primarily on actual or potential resident outcomes, and may include an inspection of every part of the premises and an examination of all records (other than financial records), methods of administration, the general and special dietary, and the stores and methods of supply. Following such an inspection or inspections, written notice of any violation of this law or the rules adopted hereunder shall be given to the applicant or licensee and the department. The department may prescribe by rule that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition, or new construction, submit plans and specifications therefor to the agencies responsible for plan reviews for preliminary inspection and approval or recommendations with respect to compliance with the rules and standards herein authorized. [2003 c 280 § 1; 2000 c 47 § 4; 1985 c 213 § 7; 1957 c 253 § 11.]

Effective date—2000 c 47: See note following RCW 18.20.020.

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

18.20.125 Inspections—Enforcement remedies—Screening—Access to vulnerable adults/limitation. (1) Inspections must be outcome based and responsive to resident complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to facilities. This includes that when conducting licensing inspections, the department shall interview an appropriate percentage of residents, family members, and advocates in addition to interviewing appropriate staff.

(2) Prompt and specific enforcement remedies shall also be implemented without delay, consistent with RCW 18.20.190, for facilities found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(3) To the extent funding is available, the licensee, administrator, and their staff should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable adults. Employees may be provisionally hired pending the results of the background check if they have been given three positive references.

(4) No licensee, administrator, or staff, or prospective licensee, administrator, or staff, with a stipulated finding of fact, conclusion of law, and agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into the state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults. [2003 c 231 § 5; 2001 c 85 § 2.]

Findings—Effective date—2003 c 231: See notes following RCW 18.20.020.

Effective date—2001 c 85: See note following RCW 18.20.115.

18.20.190 Department response to noncompliance or violations. (1) The department of social and health services is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that a boarding home provider has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated a boarding home without a license or under a revoked license;

(c) Knowingly, or with reason to know, made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a license;

(b) Impose reasonable conditions on a license, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(c) Impose civil penalties of not more than one hundred dollars per day per violation;

(d) Suspend, revoke, or refuse to renew a license;

(e) Suspend admissions to the boarding home by imposing stop placement; or

(f) Suspend admission of a specific category or categories of residents as related to the violation by imposing a limited stop placement.

(3) When the department orders stop placement or a limited stop placement, the facility shall not admit any new resident until the stop placement or limited stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement or limited stop placement. The department shall terminate the stop placement or limited stop placement when: (a) The violations necessitating the stop placement or limited stop placement have been corrected; and (b) the provider exhibits the capacity to maintain correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement or new limited stop placement, the previous stop placement or limited stop placement shall remain in effect until the new stop placement or new limited stop placement is imposed.

(4) After a department finding of a violation for which a stop placement or limited stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a

department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(5) RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification. Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing license suspension, stop placement, limited stop placement, or conditions for continuation of a license are effective immediately upon notice and shall continue pending any hearing.

(6) For the purposes of this section, "limited stop placement" means the ability to suspend admission of a specific category or categories of residents. [2003 c 231 § 6; 2001 c 193 § 4; 2000 c 47 § 7; 1998 c 272 § 15; 1995 1st sp.s. c 18 § 18.]

Findings—Effective date—2003 c 231: See notes following RCW 18.20.020.

Effective date—2000 c 47: See note following RCW 18.20.020.

Findings—Severability—Effective date—1998 c 272: See notes following RCW 18.20.230.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

18.20.280 General responsibility for each resident.

(1) The boarding home must assume general responsibility for each resident and must promote each resident's health, safety, and well-being consistent with the resident negotiated care plan.

(2) The boarding home is not required to supervise the activities of a person providing care or services to a resident when the resident, or legal representative, has independently arranged for or contracted with the person and the person is not directly or indirectly controlled or paid by the boarding home. However, the boarding home is required to coordinate services with such person to the extent allowed by the resident, or legal representative, and consistent with the resident's negotiated care plan. Further, the boarding home is required to observe the resident and respond appropriately to any changes in the resident's overall functioning consistent with chapter 70.129 RCW, this chapter, and rules adopted under this chapter. [2003 c 231 § 7.]

Findings—Effective date—2003 c 231: See notes following RCW 18.20.020.

18.20.290 Holding a medicaid eligible resident's room or unit—Payment rates—Report to the legislature. (Expires June 30, 2006.) (1) When a boarding home contracts with the department to provide adult residential care services, enhanced adult residential care services, or assisted living services under chapter 74.39A RCW, the boarding home must hold a medicaid eligible resident's room or unit when short-term care is needed in a nursing home or hospital, the resident is likely to return to the boarding home, and payment is made under subsection (2) of this section.

(2) The medicaid resident's bed or unit shall be held for up to twenty days. The per day bed or unit hold compensation amount shall be seventy percent of the daily rate paid for the first seven days the bed or unit is held for the resident who needs short-term nursing home care or hospitalization. The rate for the eighth through the twentieth day a bed is held shall be established in rule, but shall be no lower than ten dollars per day the bed or unit is held.

(3) The boarding home may seek third-party payment to hold a bed or unit for twenty-one days or longer. The third-party payment shall not exceed eighty-five percent of the average daily rate paid to the facility. If third-party payment is not available, the medicaid resident may return to the first available and appropriate bed or unit, if the resident continues to meet the admission criteria under this chapter.

(4) The department shall monitor the use and impact of the policy established under this section and shall report its findings to the appropriate committees of the senate and house of representatives by December 31, 2005.

(5) This section expires June 30, 2006. [2003 c 231 § 11.]

Findings—Effective date—2003 c 231: See notes following RCW 18.20.020.

Chapter 18.27 RCW

REGISTRATION OF CONTRACTORS

Sections

18.27.090 Exemptions.

18.27.090 Exemptions. The registration provisions of this chapter do not apply to:

(1) An authorized representative of the United States government, the state of Washington, or any incorporated city, town, county, township, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) Officers of a court when they are acting within the scope of their office;

(3) Public utilities operating under the regulations of the utilities and transportation commission in construction, maintenance, or development work incidental to their own business;

(4) Any construction, repair, or operation incidental to the discovering or producing of petroleum or gas, or the drilling, testing, abandoning, or other operation of any petroleum or gas well or any surface or underground mine or mineral deposit when performed by an owner or lessee;

(5) The sale or installation of any finished products, materials, or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) Any construction, alteration, improvement, or repair of personal property performed by the registered or legal owner, or by a mobile/manufactured home retail dealer or manufacturer licensed under chapter 46.70 RCW who shall warranty service and repairs under chapter 46.70 RCW;

(7) Any construction, alteration, improvement, or repair carried on within the limits and boundaries of any site or reservation under the legal jurisdiction of the federal government;

(8) Any person who only furnished materials, supplies, or equipment without fabricating them into, or consuming them in the performance of, the work of the contractor;

(9) Any work or operation on one undertaking or project by one or more contracts, the aggregate contract price of which for labor and materials and all other items is less than five hundred dollars, such work or operations being considered as of a casual, minor, or inconsequential nature. The exemption prescribed in this subsection does not apply in any instance wherein the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made into contracts of amounts less than five hundred dollars for the purpose of evasion of this chapter or otherwise. The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he or she is a contractor, or that he or she is qualified to engage in the business of contractor;

(10) Any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts or reclamation districts; or to farming, dairying, agriculture, viticulture, horticulture, or stock or poultry raising; or to clearing or other work upon land in rural districts for fire prevention purposes; except when any of the above work is performed by a registered contractor;

(11) An owner who contracts for a project with a registered contractor, except that this exemption shall not deprive the owner of the protections of this chapter against registered and unregistered contractors;

(12) Any person working on his or her own property, whether occupied by him or her or not, and any person working on his or her personal residence, whether owned by him or her or not but this exemption shall not apply to any person otherwise covered by this chapter who constructs an improvement on his or her own property with the intention and for the purpose of selling the improved property;

(13) Owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

(14) A licensed architect or civil or professional engineer acting solely in his or her professional capacity, an electrician licensed under the laws of the state of Washington, or a plumber licensed under the laws of the state of Washington or licensed by a political subdivision of the state of Washington while operating within the boundaries of such political subdivision. The exemption provided in this subsection is applicable only when the licensee is operating within the scope of his or her license;

(15) Any person who engages in the activities herein regulated as an employee of a registered contractor with wages as his or her sole compensation or as an employee with wages as his or her sole compensation;

(16) Contractors on highway projects who have been prequalified as required by RCW 47.28.070, with the department of transportation to perform highway construction, reconstruction, or maintenance work;

(17) A mobile/manufactured home dealer or manufacturer who subcontracts the installation, set-up, or repair work to actively registered contractors. This exemption only

applies to the installation, set-up, or repair of the mobile/manufactured homes that were manufactured or sold by the mobile/manufactured home dealer or manufacturer;

(18) An entity who holds a valid electrical contractor's license under chapter 19.28 RCW that employs a certified journeyman electrician, a certified residential specialty electrician, or an electrical trainee meeting the requirements of chapter 19.28 RCW to perform plumbing work that is incidentally, directly, and immediately appropriate to the like-kind replacement of a household appliance or other small household utilization equipment that requires limited electric power and limited waste and/or water connections. An electrical trainee must be supervised by a certified electrician while performing plumbing work. [2003 c 399 § 401; 2001 c 159 § 7; 1997 c 314 § 8; 1987 c 313 § 1; 1983 c 4 § 1; 1980 c 68 § 2; 1974 ex.s. c 25 § 2. Prior: 1973 1st ex.s. c 161 § 1; 1973 1st ex.s. c 153 § 6; 1967 c 126 § 3; 1965 ex.s. c 170 § 50; 1963 c 77 § 9.]

Part headings not law—2003 c 399: See note following RCW 19.28.006.

Chapter 18.29 RCW DENTAL HYGIENISTS

Sections

18.29.050 Scope of licensee's functions—Employment—Supervision.

18.29.050 Scope of licensee's functions—Employment—Supervision. Any person licensed as a dental hygienist in this state may remove deposits and stains from the surfaces of the teeth, may apply topical preventive or prophylactic agents, may polish and smooth restorations, may perform root planing and soft-tissue curettage, and may perform other dental operations and services delegated to them by a licensed dentist: PROVIDED HOWEVER, That licensed dental hygienists shall in no event perform the following dental operations or services:

(1) Any surgical removal of tissue of the oral cavity;

(2) Any prescription of drugs or medications requiring the written order or prescription of a licensed dentist or physician, except that a hygienist may place antimicrobials pursuant to the order of a licensed dentist and under the dentist's required supervision;

(3) Any diagnosis for treatment or treatment planning; or

(4) The taking of any impression of the teeth or jaw, or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis.

Such licensed dental hygienists may perform dental operations and services only under the supervision of a licensed dentist, and under such supervision may be employed by hospitals, boards of education of public or private schools, county boards, boards of health, or public or charitable institutions, or in dental offices. [2003 c 257 § 1; 1997 c 37 § 1; 1971 ex.s. c 235 § 1; 1969 c 47 § 4; 1923 c 16 § 27; RRS § 10030-27.]

Chapter 18.32 RCW DENTISTRY

Sections

18.32.030 Exemptions from chapter.

- 18.32.215 Licensure without examination—Licensed in another state.
 18.32.675 Practice or solicitation by corporations prohibited—Penalty. (Effective July 1, 2004.)
 18.32.745 Unlawful practice—Employing unlicensed dentist—Penalty. (Effective July 1, 2004.)
 18.32.755 Advertising—Names used—Penalty. (Effective July 1, 2004.)

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

(1) The rendering of dental relief in emergency cases in the practice of his or her profession by a physician or surgeon, licensed as such and registered under the laws of this state, unless the physician or surgeon undertakes to or does reproduce lost parts of the human teeth in the mouth or to restore or to replace in the human mouth lost or missing teeth;

(2) The practice of dentistry in the discharge of official duties by dentists in the United States federal services on federal reservations, including but not limited to the armed services, coast guard, public health service, veterans' bureau, or bureau of Indian affairs;

(3) Dental schools or colleges approved under RCW 18.32.040, and the practice of dentistry by students in accredited dental schools or colleges approved by the commission, when acting under the direction and supervision of Washington state-licensed dental school faculty;

(4) The practice of dentistry by licensed dentists of other states or countries while appearing as clinicians at meetings of the Washington state dental association, or component parts thereof, or at meetings sanctioned by them, or other groups approved by the commission;

(5) The use of roentgen and other rays for making radiographs or similar records of dental or oral tissues, under the supervision of a licensed dentist or physician;

(6) The making, repairing, altering, or supplying of artificial restorations, substitutions, appliances, or materials for the correction of disease, loss, deformity, malposition, dislocation, fracture, injury to the jaws, teeth, lips, gums, cheeks, palate, or associated tissues or parts; providing the same are made, repaired, altered, or supplied pursuant to the written instructions and order of a licensed dentist which may be accompanied by casts, models, or impressions furnished by the dentist, and the prescriptions shall be retained and filed for a period of not less than three years and shall be available to and subject to the examination of the secretary or the secretary's authorized representatives;

(7) The removal of deposits and stains from the surfaces of the teeth, the application of topical preventative or prophylactic agents, and the polishing and smoothing of restorations, when performed or prescribed by a dental hygienist licensed under the laws of this state;

(8) A qualified and licensed physician and surgeon or osteopathic physician and surgeon extracting teeth or performing oral surgery pursuant to the scope of practice under chapter 18.71 or 18.57 RCW;

(9) The performing of dental operations or services by persons not licensed under this chapter when performed under the supervision of a licensed dentist: PROVIDED HOWEVER, That such nonlicensed person shall in no event perform the following dental operations or services unless permitted to be performed by the person under this chapter or

chapters 18.29, 18.57, 18.71, and 18.79 RCW as it applies to registered nurses and advanced registered nurse practitioners:

(a) Any removal of or addition to the hard or soft tissue of the oral cavity;

(b) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure;

(c) Any administration of general or injected local anesthetic of any nature in connection with a dental operation, including intravenous sedation;

(d) Any oral prophylaxis;

(e) The taking of any impressions of the teeth or jaw or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis. [2003 c 282 § 1; 1994 sp.s. c 9 § 203; 1991 c 3 § 59; 1989 c 202 § 13; 1979 c 158 § 35; 1971 ex.s. c 236 § 1; 1969 c 47 § 7; 1957 c 52 § 21; 1953 c 93 § 1; 1951 c 130 § 1. Prior: (i) 1941 c 92 § 3; 1935 c 112 § 25; Rem. Supp. 1941 § 10031-25; prior: 1923 c 16 § 23. (ii) 1935 c 112 § 6; RRS § 10031-6; prior: 1923 c 16 § 1; 1901 c 152 § 5; 1893 c 55 § 11.]

18.32.215 Licensure without examination—Licensed in another state. An applicant holding a valid license and currently engaged in practice in another state may be granted a license without examination required by this chapter, on the payment of any required fees, if the applicant is a graduate of a dental college, school, or dental department of an institution approved by the commission under RCW 18.32.040(1). The commission may also require the applicant to: (1) File with the commission documentation certifying the applicant is licensed to practice in another state; and (2) provide information as the commission deems necessary pertaining to the conditions and criteria of the Uniform Disciplinary Act, chapter 18.130 RCW, and to demonstrate to the commission a knowledge of Washington law pertaining to the practice of dentistry. [2003 c 57 § 2; 1994 sp.s. c 9 § 219; 1989 c 202 § 30.]

Finding—2003 c 57: "The legislature finds and declares that access to dental care is severely hampered by a critical and emergent shortage of dental providers in Washington state. Dental disease is an epidemic among poor children, the elderly, the disabled, and anyone who does not have access to adequate dental care. Dental decay is worsening among children under four years of age, with forty-one percent of the state's Headstart children needing treatment for dental decay. The lack of qualified dentists poses a serious and compelling threat to the oral health of the people of this state.

Shortages are also due to licensing restrictions that have discouraged qualified dentists from coming into this state. Increasing the number of dentists from other states and from military service would enable retiring dentists in this state to sell their practices to other qualified practitioners." [2003 c 57 § 1.]

18.32.675 Practice or solicitation by corporations prohibited—Penalty. (Effective July 1, 2004.) (1) No corporation shall practice dentistry or shall solicit through itself, or its agent, officers, employees, directors or trustees, dental patronage for any dentists or dental surgeon employed by any corporation: PROVIDED, That nothing contained in this chapter shall prohibit a corporation from employing a dentist or dentists to render dental services to its employees: PROVIDED, FURTHER, That such dental services shall be rendered at no cost or charge to the employees; nor shall it apply to corporations or associations in which the dental services were originated and are being conducted upon a purely char-

itable basis for the worthy poor, nor shall it apply to corporations or associations furnishing information or clerical services which can be furnished by persons not licensed to practice dentistry, to any person lawfully engaged in the practice of dentistry, when such dentist assumes full responsibility for such information and services.

(2) Any corporation violating this section is guilty of a gross misdemeanor, and each day that this chapter is violated shall be considered a separate offense. [2003 c 53 § 124; 1935 c 112 § 19; RRS § 10031-19. Formerly RCW 18.32.310.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

18.32.745 Unlawful practice—Employing unlicensed dentist—Penalty. (Effective July 1, 2004.) (1) No manager, proprietor, partnership, or association owning, operating, or controlling any room, office, or dental parlors, where dental work is done, provided, or contracted for, shall employ or retain any unlicensed person or dentist as an operator; nor shall fail, within ten days after demand made by the secretary of health or the commission in writing sent by certified mail, addressed to any such manager, proprietor, partnership, or association at the room, office, or dental parlor, to furnish the secretary of health or the commission with the names and addresses of all persons practicing or assisting in the practice of dentistry in his or her place of business or under his or her control, together with a sworn statement showing by what license or authority the persons are practicing dentistry.

(2) The sworn statement shall not be used as evidence in any subsequent court proceedings, except in a prosecution for perjury connected with its execution.

(3) Any violation of this section is improper, unprofessional, and dishonorable conduct, and grounds for injunction proceedings as provided by this chapter.

(4)(a) Except as provided in (b) of this subsection, a violation of this section is also a gross misdemeanor.

(b) The failure to furnish the information as may be requested in accordance with this section is a misdemeanor. [2003 c 53 § 125; 1994 sp.s. c 9 § 224; 1991 c 3 § 73; 1977 ex.s. c 5 § 31; 1957 c 52 § 38; 1953 c 93 § 7. Prior: 1937 c 45 § 1, part; 1935 c 112 § 18, part; RRS § 10031-18, part. Formerly RCW 18.32.350.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

18.32.755 Advertising—Names used—Penalty. (Effective July 1, 2004.) (1) Any advertisement or announcement for dental services must include for each office location advertised the names of all persons practicing dentistry at that office location.

(2) Any violation of this section is improper, unprofessional, and dishonorable conduct, and grounds for injunction proceedings as provided by RCW 18.130.190(4).

(3) A violation of this section is also a gross misdemeanor. [2003 c 53 § 126; 1994 sp.s. c 9 § 225; 1986 c 259 § 37; 1957 c 52 § 39. Prior: 1937 c 45 § 1, part; 1935 c 112 § 18, part; RRS § 10031-18, part. Formerly RCW 18.32.360.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Savings—1986 c 259 §§ 36, 37, 41, 43: See note following RCW 18.32.660.

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

Chapter 18.39 RCW

EMBALMERS—FUNERAL DIRECTORS

Sections

- 18.39.215 Embalmers—Authorization required—Exception—Information required—Immediate care of body—Waiver—Penalty. (*Effective July 1, 2004.*)
- 18.39.217 Permit or endorsement required for cremation—Penalty—Regulation of crematories. (*Effective July 1, 2004.*)
- 18.39.220 Unlawful business practices—Penalty. (*Effective July 1, 2004.*)
- 18.39.231 Prohibited advice and transactions—Exceptions—Rules—Penalty. (*Effective July 1, 2004.*)

18.39.215 Embalmers—Authorization required—Exception—Information required—Immediate care of body—Waiver—Penalty. (Effective July 1, 2004.) (1)(a) No licensed embalmer shall embalm a deceased body without first having obtained authorization from a family member or representative of the deceased.

(b) Notwithstanding the above prohibition a licensee may embalm without such authority when after due diligence no authorized person can be contacted and embalming is in accordance with legal or accepted standards of care in the community, or the licensee has good reason to believe that the family wishes embalming. If embalming is performed under these circumstances, the licensee shall not be deemed to be in violation of the provisions of this subsection.

(c) The funeral director or embalmer shall inform the family member or representative of the deceased that embalming is not required by state law, except that embalming is required under certain conditions as determined by rule by the state board of health.

(2)(a) Any person authorized to dispose of human remains shall refrigerate or embalm the body within twenty-four hours upon receipt of the body, unless disposition of the body has been made. However, subsection (1) of this section and RCW 68.50.108 shall be complied with before a body is embalmed. Upon written authorization of the proper state or local authority, the provisions of this subsection may be waived for a specified period of time.

(b) Violation of this subsection is a gross misdemeanor. [2003 c 53 § 127; 1987 c 331 § 76; 1985 c 402 § 5; 1981 c 43 § 15.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—1987 c 331: See RCW 68.05.900.

Legislative finding—1985 c 402: See note following RCW 68.50.165.

18.39.217 Permit or endorsement required for cremation—Penalty—Regulation of crematories. (Effective July 1, 2004.) (1) A permit or endorsement issued by the board or under chapter 68.05 RCW is required in order to operate a crematory or conduct a cremation.

(2) Conducting a cremation without a permit or endorsement is a misdemeanor. Each such cremation is a separate violation.

(3) Crematories owned or operated by or located on property licensed as a funeral establishment shall be regu-

lated by the board of funeral directors and embalmers. Crematories not affiliated with a funeral establishment shall be regulated by the cemetery board. [2003 c 53 § 128; 1985 c 402 § 7.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Legislative finding—1985 c 402: See note following RCW 68.50.165.

18.39.220 Unlawful business practices—Penalty. (*Effective July 1, 2004.*) (1) Every funeral director or embalmer who pays, or causes to be paid, directly or indirectly, money, or other valuable consideration, for the securing of business, and every person who accepts money, or other valuable consideration, directly or indirectly, from a funeral director or from an embalmer, in order that the latter may obtain business is guilty of a gross misdemeanor.

(2) Every person who sells, or offers for sale, any share, certificate, or interest in the business of any funeral director or embalmer, or in any corporation, firm, or association owning or operating a funeral establishment, which promises or purports to give to the purchaser a right to the services of the funeral director, embalmer, or corporation, firm, or association at a charge or cost less than that offered or given to the public, is guilty of a gross misdemeanor. [2003 c 53 § 129; 1981 c 43 § 16; 1937 c 108 § 13; RRS § 8323-2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Violations—Penalty—Unfair practice under chapter 19.86 RCW: RCW 18.39.350.

18.39.231 Prohibited advice and transactions—Exceptions—Rules—Penalty. (*Effective July 1, 2004.*) (1) A funeral director or any person under the supervision of a funeral director shall not, in conjunction with any professional services performed for compensation under this chapter, provide financial or investment advice to any person other than a family member, represent any person in a real estate transaction, or act as an agent under a power of attorney for any person. However, this section shall not be deemed to prohibit a funeral establishment from entering into prearrangement funeral service contracts in accordance with this chapter or to prohibit a funeral director from providing advice about government or insurance benefits.

(2) A violation of this section is a gross misdemeanor and is grounds for disciplinary action.

(3) The board shall adopt such rules as the board deems reasonably necessary to prevent unethical financial dealings between funeral directors and their clients. [2003 c 53 § 130; 1986 c 259 § 66; 1982 c 66 § 15.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

Effective dates—1982 c 66: See note following RCW 18.39.240.

Chapter 18.51 RCW NURSING HOMES

Sections

18.51.550 Investigation of complaints of violations concerning nursing technicians.

18.51.550 Investigation of complaints of violations concerning nursing technicians. The department shall investigate complaints of violations of RCW 18.79.350 and 18.79.360 by an employer. The department shall maintain records of all employers that have violated RCW 18.79.350 and 18.79.360. [2003 c 258 § 9.]

Severability—Effective date—2003 c 258: See notes following RCW 18.79.330.

Chapter 18.53 RCW OPTOMETRY

Sections

18.53.010 Definition—Scope of practice.
18.53.140 Unlawful acts.

18.53.010 Definition—Scope of practice. (1) The practice of optometry is defined as the examination of the human eye, the examination and ascertaining any defects of the human vision system and the analysis of the process of vision. The practice of optometry may include, but not necessarily be limited to, the following:

(a) The employment of any objective or subjective means or method, including the use of drugs, for diagnostic and therapeutic purposes by those licensed under this chapter and who meet the requirements of subsections (2) and (3) of this section, and the use of any diagnostic instruments or devices for the examination or analysis of the human vision system, the measurement of the powers or range of human vision, or the determination of the refractive powers of the human eye or its functions in general; and

(b) The prescription and fitting of lenses, prisms, therapeutic or refractive contact lenses and the adaption or adjustment of frames and lenses used in connection therewith; and

(c) The prescription and provision of visual therapy, therapeutic aids, and other optical devices; and

(d) The ascertainment of the perceptive, neural, muscular, or pathological condition of the visual system; and

(e) The adaptation of prosthetic eyes.

(2)(a) Those persons using topical drugs for diagnostic purposes in the practice of optometry shall have a minimum of sixty hours of didactic and clinical instruction in general and ocular pharmacology as applied to optometry, as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to use drugs for diagnostic purposes.

(b) Those persons using or prescribing topical drugs for therapeutic purposes in the practice of optometry must be certified under (a) of this subsection, and must have an additional minimum of seventy-five hours of didactic and clinical instruction as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to use drugs for therapeutic purposes.

(c) Those persons using or prescribing drugs administered orally for diagnostic or therapeutic purposes in the prac-

tice of optometry shall be certified under (b) of this subsection, and shall have an additional minimum of sixteen hours of didactic and eight hours of supervised clinical instruction as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to administer, dispense, or prescribe oral drugs for diagnostic or therapeutic purposes.

(d) Those persons administering epinephrine by injection for treatment of anaphylactic shock in the practice of optometry must be certified under (b) of this subsection and must have an additional minimum of four hours of didactic and supervised clinical instruction, as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board to administer epinephrine by injection.

(e) Such course or courses shall be the fiscal responsibility of the participating and attending optometrist.

(3) The board shall establish a list of topical drugs for diagnostic and treatment purposes limited to the practice of optometry, and no person licensed pursuant to this chapter shall prescribe, dispense, purchase, possess, or administer drugs except as authorized and to the extent permitted by the board.

(4) The board must establish a list of oral Schedule III through V controlled substances and any oral legend drugs, with the approval of and after consultation with the board of pharmacy. No person licensed under this chapter may use, prescribe, dispense, purchase, possess, or administer these drugs except as authorized and to the extent permitted by the board. No optometrist may use, prescribe, dispense, or administer oral corticosteroids.

(a) The board, with the approval of and in consultation with the board of pharmacy, must establish, by rule, specific guidelines for the prescription and administration of drugs by optometrists, so that licensed optometrists and persons filling their prescriptions have a clear understanding of which drugs and which dosages or forms are included in the authority granted by this section.

(b) An optometrist may not:

(i) Prescribe, dispense, or administer a controlled substance for more than seven days in treating a particular patient for a single trauma, episode, or condition or for pain associated with or related to the trauma, episode, or condition; or

(ii) Prescribe an oral drug within ninety days following ophthalmic surgery unless the optometrist consults with the treating ophthalmologist.

(c) If treatment exceeding the limitation in (b)(i) of this subsection is indicated, the patient must be referred to a physician licensed under chapter 18.71 RCW.

(d) The prescription or administration of drugs as authorized in this section is specifically limited to those drugs appropriate to treatment of diseases or conditions of the human eye and the adnexa that are within the scope of practice of optometry. The prescription or administration of drugs for any other purpose is not authorized by this section.

(5) The board shall develop a means of identification and verification of optometrists certified to use therapeutic drugs for the purpose of issuing prescriptions as authorized by this section.

(6) Nothing in this chapter may be construed to authorize the use, prescription, dispensing, purchase, possession, or administration of any Schedule I or II controlled substance. The provisions of this subsection must be strictly construed.

(7) With the exception of the administration of epinephrine by injection for the treatment of anaphylactic shock, no injections or infusions may be administered by an optometrist.

(8) Nothing in this chapter may be construed to authorize optometrists to perform ophthalmic surgery. Ophthalmic surgery is defined as any invasive procedure in which human tissue is cut, ablated, or otherwise penetrated by incision, injection, laser, ultrasound, or other means, in order to: Treat human eye diseases; alter or correct refractive error; or alter or enhance cosmetic appearance. Nothing in this chapter limits an optometrist's ability to use diagnostic instruments utilizing laser or ultrasound technology. Ophthalmic surgery, as defined in this subsection, does not include removal of superficial ocular foreign bodies, epilation of misaligned eyelashes, placement of punctal or lacrimal plugs, diagnostic dilation and irrigation of the lacrimal system, orthokeratology, prescription and fitting of contact lenses with the purpose of altering refractive error, or other similar procedures within the scope of practice of optometry. [2003 c 142 § 1; 1989 c 36 § 1; 1981 c 58 § 2; 1975 1st ex.s. c 69 § 2; 1919 c 144 § 1; RRS § 10147. Prior: 1909 c 235 § 1.]

Severability—2003 c 142: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 142 § 5.]

18.53.140 Unlawful acts. It shall be unlawful for any person:

(1) To sell or barter, or offer to sell or barter any license issued by the secretary; or

(2) To purchase or procure by barter any license with the intent to use the same as evidence of the holder's qualification to practice optometry; or

(3) To alter with fraudulent intent in any material regard such license; or

(4) To use or attempt to use any such license which has been purchased, fraudulently issued, counterfeited or materially altered as a valid license; or

(5) To practice optometry under a false or assumed name, or as a representative or agent of any person, firm or corporation with which the licensee has no connection: PROVIDED, Nothing in this chapter nor in the optometry law shall make it unlawful for any lawfully licensed optometrist or association of lawfully licensed optometrists to practice optometry under the name of any lawfully licensed optometrist who may transfer by inheritance or otherwise the right to use such name; or

(6) To practice optometry in this state either for him or herself or any other individual, corporation, partnership, group, public or private entity, or any member of the licensed healing arts without having at the time of so doing a valid license issued by the secretary of health; or

(7) To in any manner barter or give away as premiums either on his or her own account or as agent or representative for any other purpose, firm or corporation, any eyeglasses, spectacles, lenses or frames; or

(8) To use drugs in the practice of optometry, except as authorized under RCW 18.53.010; or

(9) To use advertising whether printed, radio, display, or of any other nature, which is misleading or inaccurate in any material particular, nor shall any such person in any way misrepresent any goods or services (including but without limitation, its use, trademark, grade, quality, size, origin, substance, character, nature, finish, material, content, or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted; or

(10) To advertise the "free examination of eyes," "free consultation," "consultation without obligation," "free advice," or any words or phrases of similar import which convey the impression to the public that eyes are examined free or of a character tending to deceive or mislead the public, or in the nature of "bait advertising;" or

(11) To use an advertisement of a frame or mounting which is not truthful in describing the frame or mounting and all its component parts. Or advertise a frame or mounting at a price, unless it shall be depicted in the advertisement without lenses inserted, and in addition the advertisement must contain a statement immediately following, or adjacent to the advertised price, that the price is for frame or mounting only, and does not include lenses, eye examination and professional services, which statement shall appear in type as large as that used for the price, or advertise lenses or complete glasses, viz.: frame or mounting with lenses included, at a price either alone or in conjunction with professional services; or

(12) To use advertising, whether printed, radio, display, or of any other nature, which inaccurately lays claim to a policy or continuing practice of generally underselling competitors; or

(13) To use advertising, whether printed, radio, display or of any other nature which refers inaccurately in any material particular to any competitors or their goods, prices, values, credit terms, policies or services; or

(14) To use advertising whether printed, radio, display, or of any other nature, which states any definite amount of money as "down payment" and any definite amount of money as a subsequent payment, be it daily, weekly, monthly, or at the end of any period of time. [2003 c 142 § 2; 1991 c 3 § 138; 1989 c 36 § 2; 1986 c 259 § 82; 1981 c 58 § 3; 1979 c 158 § 47; 1975 1st ex.s. c 69 § 7; 1945 c 78 § 1; 1935 c 134 § 1; 1919 c 144 § 7; Rem. Supp. 1945 § 10152. Cf. 1909 c 235 § 5.]

Severability—2003 c 142: See note following RCW 18.53.010.

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

False advertising: Chapter 9.04 RCW.

Violation of Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

Chapter 18.57 RCW

OSTEOPATHY—OSTEOPATHIC MEDICINE AND SURGERY

Sections

18.57.160 Unlawful practices. (*Effective July 1, 2004.*)

18.57.160 Unlawful practices. (*Effective July 1, 2004.*) Every person falsely claiming himself or herself to be the person named in a certificate issued to another, or falsely claiming himself or herself to be the person entitled to the same, is guilty of forgery under RCW 9A.60.020. [2003 c 53 § 131; 1981 c 277 § 9; 1919 c 4 § 15; RRS § 10067. Cf. 1909 c 192 § 15.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Forgery: RCW 9A.60.020.

Chapter 18.64 RCW

PHARMACISTS

Sections

- 18.64.045 Manufacturer's license—Fees—Display—Declaration of ownership and location—Penalties. (*Effective July 1, 2004.*)
- 18.64.046 Wholesaler's license—Required—Authority of licensee—Penalty. (*Effective July 1, 2004.*)
- 18.64.047 Itinerant vendor's or peddler's registration—Fee—Penalties. (*Effective July 1, 2004.*)
- 18.64.245 Prescription records—Penalty. (*Effective July 1, 2004.*)
- 18.64.246 Prescriptions—Labels—Cover or cap to meet safety standards—Penalty. (*Effective July 1, 2004.*)
- 18.64.247 Repealed. (*Effective July 1, 2004.*)
- 18.64.270 Responsibility for drug purity—Adulteration—Penalty. (*Effective July 1, 2004.*)

18.64.045 Manufacturer's license—Fees—Display—Declaration of ownership and location—Penalties. (*Effective July 1, 2004.*) (1) The owner of each and every place of business which manufactures drugs shall pay a license fee to be determined by the secretary, and thereafter, on or before a date to be determined by the secretary, a fee to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280, for which the owner shall receive a license of location from the department, which shall entitle the owner to manufacture drugs at the location specified for the period ending on a date to be determined by the secretary, and each such owner shall at the time of payment of such fee file with the department, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein. It shall be the duty of the owner to notify immediately the department of any change of location or ownership and to keep the license of location or the renewal thereof properly exhibited in such place of business.

(2) Failure to conform with this section is a misdemeanor, and each day that the failure continues is a separate offense.

(3) In event the license fee remains unpaid on the date due, no renewal or new license shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. [2003 c 53 § 132; 1996 c 191 § 44; 1991 c 229 § 4; 1989 1st ex.s. c 9 § 416; 1984 c 153 § 6; 1979 c 90 § 9; 1971 ex.s. c 201 § 3; 1963 c 38 § 4; 1949 c 153 § 5; Rem. Supp. 1949 § 10154-4. Formerly RCW 18.67.140.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1971 ex.s. c 201: See note following RCW 18.64.040.

18.64.046 Wholesaler's license—Required—Authority of licensee—Penalty. (Effective July 1, 2004.) (1) The owner of each place of business which sells legend drugs and nonprescription drugs, or nonprescription drugs at wholesale shall pay a license fee to be determined by the secretary, and thereafter, on or before a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280, a like fee to be determined by the secretary, for which the owner shall receive a license of location from the department, which shall entitle such owner to either sell legend drugs and nonprescription drugs or nonprescription drugs at wholesale at the location specified for the period ending on a date to be determined by the secretary, and each such owner shall at the time of payment of such fee file with the department, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein. It shall be the duty of the owner to notify immediately the department of any change of location and ownership and to keep the license of location or the renewal thereof properly exhibited in such place of business.

(2) Failure to conform with this section is a misdemeanor, and each day that the failure continues is a separate offense.

(3) In event the license fee remains unpaid on the date due, no renewal or new license shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. [2003 c 53 § 133; 1996 c 191 § 45; 1991 c 229 § 5; 1989 1st ex.s. c 9 § 417; 1984 c 153 § 7; 1979 c 90 § 18.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64.047 Itinerant vendor's or peddler's registration—Fee—Penalties. (Effective July 1, 2004.) (1) Any itinerant vendor or any peddler of any nonprescription drug or preparation for the treatment of disease or injury, shall pay a registration fee determined by the secretary on a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280. The department may issue a registration to such vendor on an approved application made to the department.

(2) Any itinerant vendor or peddler who shall vend or sell, or offer to sell to the public any such nonprescription drug or preparation without having registered to do so as provided in this section, is guilty of a misdemeanor and each sale or offer to sell shall constitute a separate offense.

(3) In event the registration fee remains unpaid on the date due, no renewal or new registration shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. This registration shall not authorize the sale of legend drugs or controlled substances.

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[2003 c 53 § 134; 1996 c 191 § 46; 1991 c 229 § 6; 1989 1st ex.s. c 9 § 418; 1984 c 153 § 8; 1979 c 90 § 10; 1971 ex.s. c 201 § 4; 1963 c 38 § 5; 1949 c 153 § 3; 1935 c 98 § 7; 1899 c 121 § 16; Rem. Supp. 1949 § 10141. Formerly RCW 18.60.010 through 18.60.030.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1971 ex.s. c 201: See note following RCW 18.64.040.

18.64.245 Prescription records—Penalty. (Effective July 1, 2004.) (1) Every proprietor or manager of a pharmacy shall keep readily available a suitable record of prescriptions which shall preserve for a period of not less than two years the record of every prescription dispensed at such pharmacy which shall be numbered, dated, and filed, and shall produce the same in court or before any grand jury whenever lawfully required to do so. The record shall be maintained either separately from all other records of the pharmacy or in such form that the information required is readily retrievable from ordinary business records of the pharmacy. All record-keeping requirements for controlled substances must be complied with. Such record of prescriptions shall be for confidential use in the pharmacy, only. The record of prescriptions shall be open for inspection by the board of pharmacy or any officer of the law, who is authorized to enforce chapter 18.64, 69.41, or 69.50 RCW.

(2) A person violating this section is guilty of a misdemeanor. [2003 c 53 § 135. Prior: 1989 1st ex.s. c 9 § 402; 1989 c 352 § 2; 1979 c 90 § 15; 1939 c 28 § 1; RRS § 6154-1. Formerly RCW 18.67.090.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64.246 Prescriptions—Labels—Cover or cap to meet safety standards—Penalty. (Effective July 1, 2004.)

(1) To every box, bottle, jar, tube or other container of a prescription which is dispensed there shall be fixed a label bearing the name and address of the dispensing pharmacy, the prescription number, the name of the prescriber, the prescriber's directions, the name and strength of the medication, the name of the patient, the date, and the expiration date. The security of the cover or cap on every bottle or jar shall meet safety standards adopted by the state board of pharmacy. At the prescriber's request, the name and strength of the medication need not be shown. If the prescription is for a combination medication product, the generic names of the medications combined or the trade name used by the manufacturer or distributor for the product shall be noted on the label. The identification of the licensed pharmacist responsible for each dispensing of medication must either be recorded in the pharmacy's record system or on the prescription label. This section shall not apply to the dispensing of medications to inpatients in hospitals.

(2) A person violating this section is guilty of a misdemeanor. [2003 c 53 § 136; 2002 c 96 § 1; 1984 c 153 § 13; 1971 ex.s. c 99 § 1; 1939 c 28 § 2; RRS § 6154-2. Formerly RCW 18.67.080.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

18.64.247 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

18.64.270 Responsibility for drug purity—Adulteration—Penalty. (*Effective July 1, 2004.*) (1) Every proprietor of a wholesale or retail drug store shall be held responsible for the quality of all drugs, chemicals or medicines sold or dispensed by him or her except those sold in original packages of the manufacturer and except those articles or preparations known as patent or proprietary medicines.

(2) Any person who shall knowingly, willfully or fraudulently falsify or adulterate any drug or medicinal substance or preparation authorized or recognized by an official compendium or used or intended to be used in medical practice, or shall willfully, knowingly or fraudulently offer for sale, sell or cause the same to be sold for medicinal purposes, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in any sum not less than seventy-five nor more than one hundred and fifty dollars or by imprisonment in the county jail for a period of not less than one month nor more than three months, and any person convicted a third time for violation of this section may suffer both fine and imprisonment. In any case he or she shall forfeit to the state of Washington all drugs or preparations so falsified or adulterated. [2003 c 53 § 137; 1963 c 38 § 13; 1899 c 121 § 14; RRS § 10139. Prior: 1891 c 153 § 15. Formerly RCW 18.67.100 and 18.67.120.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 18.71 RCW PHYSICIANS

Sections

18.71.040 Application—Fee.
18.71.190 False personation. (*Effective July 1, 2004.*)

18.71.040 Application—Fee. Every applicant for a license to practice medicine and surgery shall pay a fee determined by the secretary as provided in RCW 43.70.250. [2003 c 275 § 1; 1991 c 3 § 160; 1985 c 322 § 1. Prior: 1975 1st ex.s. c 171 § 6; 1975 1st ex.s. c 30 § 61; 1955 c 202 § 35; prior: 1941 c 166 § 1, part; 1913 c 82 § 1, part; 1909 c 192 § 7, part; Rem. Supp. 1941 § 10010-1, part.]

18.71.190 False personation. (*Effective July 1, 2004.*) Every person filing for record, or attempting to file for record, the certificate issued to another, falsely claiming himself or herself to be the person named in such certificate, or falsely claiming himself or herself to be the person entitled to the same, is guilty of forgery under RCW 9A.60.020. [2003 c 53 § 138; 1909 c 192 § 16; RRS § 10019.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

False personation: RCW 9A.60.040.

Chapter 18.79 RCW NURSING CARE

Sections

18.79.040 "Registered nursing practice" defined—Exceptions.
18.79.240 Construction.
18.79.260 Registered nurse—Activities allowed—Delegation of tasks.
18.79.330 Finding.
18.79.340 Nursing technicians.
18.79.350 Nursing technicians—Nursing functions.
18.79.360 Applications for registration as a nursing technician—Fee.
18.79.370 Nursing technicians—Registration renewal.

18.79.040 "Registered nursing practice" defined—Exceptions. (1) "Registered nursing practice" means the performance of acts requiring substantial specialized knowledge, judgment, and skill based on the principles of the biological, physiological, behavioral, and sociological sciences in either:

(a) The observation, assessment, diagnosis, care or counsel, and health teaching of individuals with illnesses, injuries, or disabilities, or in the maintenance of health or prevention of illness of others;

(b) The performance of such additional acts requiring education and training and that are recognized by the medical and nursing professions as proper and recognized by the commission to be performed by registered nurses licensed under this chapter and that are authorized by the commission through its rules;

(c) The administration, supervision, delegation, and evaluation of nursing practice. However, nothing in this subsection affects the authority of a hospital, hospital district, in-home service agency, community-based care setting, medical clinic, or office, concerning its administration and supervision;

(d) The teaching of nursing;

(e) The executing of medical regimen as prescribed by a licensed physician and surgeon, dentist, osteopathic physician and surgeon, podiatric physician and surgeon, physician assistant, osteopathic physician assistant, or advanced registered nurse practitioner.

(2) Nothing in this section prohibits a person from practicing a profession for which a license has been issued under the laws of this state or specifically authorized by any other law of the state of Washington.

(3) This section does not prohibit (a) the nursing care of the sick, without compensation, by an unlicensed person who does not hold himself or herself out to be a registered nurse, (b) the practice of licensed practical nursing by a licensed practical nurse, or (c) the practice of a nursing assistant, providing delegated nursing tasks under chapter 18.88A RCW. [2003 c 140 § 1; 1995 1st sp.s. c 18 § 50; 1994 sp.s. c 9 § 404.]

Effective date—2003 c 140: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 140 § 13.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

18.79.240 Construction. (1) In the context of the definition of registered nursing practice and advanced registered nursing practice, this chapter shall not be construed as:

(a) Prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers, so long as they do not practice registered nursing within the meaning of this chapter;

(b) Preventing a person from the domestic administration of family remedies or the furnishing of nursing assistance in case of emergency;

(c) Prohibiting the practice of nursing by students enrolled in approved schools as may be incidental to their course of study or prohibiting the students from working as nursing technicians;

(d) Prohibiting auxiliary services provided by persons carrying out duties necessary for the support of nursing services, including those duties that involve minor nursing services for persons performed in hospitals, nursing homes, or elsewhere under the direction of licensed physicians or the supervision of licensed registered nurses;

(e) Prohibiting the practice of nursing in this state by a legally qualified nurse of another state or territory whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six months in length, if the person does not represent or hold himself or herself out as a registered nurse licensed to practice in this state;

(f) Prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of a church by adherents of the church so long as they do not engage in the practice of nursing as defined in this chapter;

(g) Prohibiting the practice of a legally qualified nurse of another state who is employed by the United States government or a bureau, division, or agency thereof, while in the discharge of his or her official duties;

(h) Permitting the measurement of the powers or range of human vision, or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses for the aid thereof;

(i) Permitting the prescribing or directing the use of, or using, an optical device in connection with ocular exercises, visual training, vision training, or orthoptics;

(j) Permitting the prescribing of contact lenses for, or the fitting and adaptation of contact lenses to, the human eye;

(k) Prohibiting the performance of routine visual screening;

(l) Permitting the practice of dentistry or dental hygiene as defined in chapters 18.32 and 18.29 RCW, respectively;

(m) Permitting the practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulation of the spine;

(n) Permitting the practice of podiatric medicine and surgery as defined in chapter 18.22 RCW;

(o) Permitting the performance of major surgery, except such minor surgery as the commission may have specifically authorized by rule adopted in accordance with chapter 34.05 RCW;

(p) Permitting the prescribing of controlled substances as defined in Schedules I through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW, except as provided in (r) or (s) of this subsection;

(q) Prohibiting the determination and pronouncement of death;

(r) Prohibiting advanced registered nurse practitioners, approved by the commission as certified registered nurse anesthetists from selecting, ordering, or administering controlled substances as defined in Schedules II through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW, consistent with their commission-recognized scope of practice; subject to facility-specific protocols, and subject to a request for certified registered nurse anesthetist anesthesia services issued by a physician licensed under chapter 18.71 RCW, an osteopathic physician and surgeon licensed under chapter 18.57 RCW, a dentist licensed under chapter 18.32 RCW, or a podiatric physician and surgeon licensed under chapter 18.22 RCW; the authority to select, order, or administer Schedule II through IV controlled substances being limited to those drugs that are to be directly administered to patients who require anesthesia for diagnostic, operative, obstetrical, or therapeutic procedures in a hospital, clinic, ambulatory surgical facility, or the office of a practitioner licensed under chapter 18.71, 18.22, 18.36, 18.36A, 18.57, 18.57A, or 18.32 RCW; "select" meaning the decision-making process of choosing a drug, dosage, route, and time of administration; and "order" meaning the process of directing licensed individuals pursuant to their statutory authority to directly administer a drug or to dispense, deliver, or distribute a drug for the purpose of direct administration to a patient, under instructions of the certified registered nurse anesthetist. "Protocol" means a statement regarding practice and documentation concerning such items as categories of patients, categories of medications, or categories of procedures rather than detailed case-specific formulas for the practice of nurse anesthesia;

(s) Prohibiting advanced registered nurse practitioners from ordering or prescribing controlled substances as defined in Schedules II through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW, if and to the extent: (i) Doing so is permitted by their scope of practice; (ii) it is in response to a combined request from one or more physicians licensed under chapter 18.71 or 18.57 RCW and an advanced registered nurse practitioner licensed under this chapter, proposing a joint practice arrangement under which such prescriptive authority will be exercised with appropriate collaboration between the practitioners; and (iii) it is consistent with rules adopted under this subsection. The medical quality assurance commission, the board of osteopathic medicine and surgery, and the commission are directed to jointly adopt by consensus by rule a process and criteria that implements the joint practice arrangements authorized under this subsection. This subsection (1)(s) does not apply to certified registered nurse anesthetists.

(2) In the context of the definition of licensed practical nursing practice, this chapter shall not be construed as:

(a) Prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers, so long as they do not practice practical nursing within the meaning of this chapter;

(b) Preventing a person from the domestic administration of family remedies or the furnishing of nursing assistance in case of emergency;

(c) Prohibiting the practice of practical nursing by students enrolled in approved schools as may be incidental to their course of study or prohibiting the students from working as nursing assistants;

(d) Prohibiting auxiliary services provided by persons carrying out duties necessary for the support of nursing services, including those duties that involve minor nursing services for persons performed in hospitals, nursing homes, or elsewhere under the direction of licensed physicians or the supervision of licensed registered nurses;

(e) Prohibiting or preventing the practice of nursing in this state by a legally qualified nurse of another state or territory whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six months in length, if the person does not represent or hold himself or herself out as a licensed practical nurse licensed to practice in this state;

(f) Prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of a church by adherents of the church so long as they do not engage in licensed practical nurse practice as defined in this chapter;

(g) Prohibiting the practice of a legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof, while in the discharge of his or her official duties. [2003 c 258 § 6; 2000 c 64 § 3; 1994 sp.s. c 9 § 424.]

Severability—Effective date—2003 c 258: See notes following RCW 18.79.330.

Effective date—2000 c 64 §§ 1-3: See note following RCW 18.79.255.

Severability—2000 c 64: See note following RCW 18.79.255.

18.79.260 Registered nurse—Activities allowed—Delegation of tasks. (1) A registered nurse under his or her license may perform for compensation nursing care, as that term is usually understood, to individuals with illnesses, injuries, or disabilities.

(2) A registered nurse may, at or under the general direction of a licensed physician and surgeon, dentist, osteopathic physician and surgeon, naturopathic physician, podiatric physician and surgeon, physician assistant, osteopathic physician assistant, or advanced registered nurse practitioner acting within the scope of his or her license, administer medications, treatments, tests, and inoculations, whether or not the severing or penetrating of tissues is involved and whether or not a degree of independent judgment and skill is required. Such direction must be for acts which are within the scope of registered nursing practice.

(3) A registered nurse may delegate tasks of nursing care to other individuals where the registered nurse determines that it is in the best interest of the patient.

(a) The delegating nurse shall:

(i) Determine the competency of the individual to perform the tasks;

(ii) Evaluate the appropriateness of the delegation;

(iii) Supervise the actions of the person performing the delegated task; and

(iv) Delegate only those tasks that are within the registered nurse's scope of practice.

(b) A registered nurse, working for a home health or hospice agency regulated under chapter 70.127 RCW, may delegate the application, instillation, or insertion of medications to a registered or certified nursing assistant under a plan of care.

(c) Except as authorized in (b) or (e) of this subsection, a registered nurse may not delegate the administration of medications. Except as authorized in (e) of this subsection, a registered nurse may not delegate acts requiring substantial skill, and may not delegate piercing or severing of tissues. Acts that require nursing judgment shall not be delegated.

(d) No person may coerce a nurse into compromising patient safety by requiring the nurse to delegate if the nurse determines that it is inappropriate to do so. Nurses shall not be subject to any employer reprisal or disciplinary action by the nursing care quality assurance commission for refusing to delegate tasks or refusing to provide the required training for delegation if the nurse determines delegation may compromise patient safety.

(e) For delegation in community-based care settings or in-home care settings, a registered nurse may delegate nursing care tasks only to registered or certified nursing assistants. Simple care tasks such as blood pressure monitoring, personal care service, or other tasks as defined by the nursing care quality assurance commission are exempted from this requirement.

(i) "Community-based care settings" includes: Community residential programs for the developmentally disabled, certified by the department of social and health services under chapter 71A.12 RCW; adult family homes licensed under chapter 70.128 RCW; and boarding homes licensed under chapter 18.20 RCW. Community-based care settings do not include acute care or skilled nursing facilities.

(ii) "In-home care settings" include an individual's place of temporary or permanent residence, but does not include acute care or skilled nursing facilities, and does not include community-based care settings as defined in (e)(i) of this subsection.

(iii) Delegation of nursing care tasks in community-based care settings and in-home care settings is only allowed for individuals who have a stable and predictable condition. "Stable and predictable condition" means a situation in which the individual's clinical and behavioral status is known and does not require the frequent presence and evaluation of a registered nurse.

(iv) The determination of the appropriateness of delegation of a nursing task is at the discretion of the registered nurse. However, the administration of medications by injection, sterile procedures, and central line maintenance may never be delegated.

(v) The registered nurse shall verify that the nursing assistant has completed the required core nurse delegation training required in chapter 18.88A RCW prior to authorizing delegation.

(vi) The nurse is accountable for his or her own individual actions in the delegation process. Nurses acting within the protocols of their delegation authority are immune from liability for any action performed in the course of their delegation duties.

(vii) Nursing task delegation protocols are not intended to regulate the settings in which delegation may occur, but

are intended to ensure that nursing care services have a consistent standard of practice upon which the public and the profession may rely, and to safeguard the authority of the nurse to make independent professional decisions regarding the delegation of a task.

(f) The nursing care quality assurance commission may adopt rules to implement this section.

(4) Only a person licensed as a registered nurse may instruct nurses in technical subjects pertaining to nursing.

(5) Only a person licensed as a registered nurse may hold herself or himself out to the public or designate herself or himself as a registered nurse. [2003 c 140 § 2; 2000 c 95 § 3; 1995 1st sp.s. c 18 § 51; 1995 c 295 § 1; 1994 sp.s. c 9 § 426.]

Effective date—2003 c 140: See note following RCW 18.79.040.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective date—1995 c 295: "This act shall take effect August 1, 1996." [1995 c 295 § 4.]

18.79.330 Finding. The legislature finds a need to provide additional work-related opportunities for nursing students. Nursing students enrolled in bachelor of science programs or associate degree programs, working within the limits of their education, gain valuable judgment and knowledge through expanded work opportunities. [2003 c 258 § 1.]

Severability—2003 c 258: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 258 § 11.]

Effective date—2003 c 258: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 258 § 12.]

18.79.340 Nursing technicians. (1) "Nursing technician" means a nursing student employed in a hospital licensed under chapter 70.41 RCW or a nursing home licensed under chapter 18.51 RCW, who:

(a) Is currently enrolled in good standing in a nursing program approved by the commission and has not graduated; or

(b) Is a graduate of a nursing program approved by the commission who graduated:

(i) Within the past thirty days; or

(ii) Within the past sixty days and has received a determination from the secretary that there is good cause to continue the registration period, as defined by the secretary in rule.

(2) No person may practice or represent oneself as a nursing technician by use of any title or description of services without being registered under this chapter, unless otherwise exempted by this chapter.

(3) The commission may adopt rules to implement chapter 258, Laws of 2003. [2003 c 258 § 2.]

Severability—Effective date—2003 c 258: See notes following RCW 18.79.330.

18.79.350 Nursing technicians—Nursing functions. (1) Nursing technicians are authorized to perform specific nursing functions within the limits of their education, up to their skill and knowledge, but they may not:

(a) Administer chemotherapy, blood or blood products, intravenous medications, or scheduled drugs, or carry out procedures on central lines;

(b) Assume ongoing responsibility for assessments, planning, implementation, or evaluation of the care of patients;

(c) Function independently, act as a supervisor, or delegate tasks to licensed practical nurses, nursing assistants, or unlicensed personnel; or

(d) Perform or attempt to perform nursing techniques or procedures for which the nursing technician lacks the appropriate knowledge, experience, and education.

(2) Nursing technicians may function only under the direct supervision of a registered nurse who agrees to act as supervisor and is immediately available to the nursing technician. The supervising registered nurse must have an unrestricted license with at least two years of clinical practice in the setting where the nursing technician works.

(3) Nursing technicians may only perform specific nursing functions based upon and limited to their education and when they have demonstrated the ability and been verified to safely perform these functions by the nursing program in which the nurse technician is enrolled. The nursing program providing verification is immune from liability for any nursing function performed or not performed by the nursing technician.

(4) Nursing technicians are responsible and accountable for their specific nursing functions. [2003 c 258 § 3.]

Severability—Effective date—2003 c 258: See notes following RCW 18.79.330.

18.79.360 Applications for registration as a nursing technician—Fee. (1) Applications for registration must be submitted on forms provided by the secretary. The secretary may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria for registration provided for in chapter 18.130 RCW. Each applicant shall pay a fee determined by the secretary under RCW 43.70.250. The fee must accompany the application.

(2) An applicant for registration as a nursing technician shall submit:

(a) A signed statement from the applicant's nursing program verifying enrollment in, or graduation from, the nursing program; and

(b) A signed statement from the applicant's employer certifying that the employer understands the role of the nursing technician and agrees to meet the requirements of subsection (4) of this section.

(3) The secretary shall issue a registration to an applicant who has met the requirements for registration or deny a registration to an applicant who does not meet the requirements, except that proceedings concerning the denial of registration based on unprofessional conduct or impairment are governed by the uniform disciplinary act, chapter 18.130 RCW.

(4) The employer:

(a) Shall not require the nursing technician to work beyond his or her education and training;

(b) Shall verify that the nursing technician continues to qualify as a nursing technician as described in RCW 18.79.340;

(c) Shall advise the department and nursing program of any practice-related action taken against the nursing technician;

(d) Shall maintain documentation of the specific nursing functions the nursing technician is authorized to perform; and

(e) Shall provide training regarding the provisions of chapter 258, Laws of 2003, including procedures for filing a complaint with the department of health or the department of social and health services concerning violations of chapter 258, Laws of 2003, to all nursing technicians and registered nurses who shall supervise nursing technicians and document the training and make it available for any inspection or survey. [2003 c 258 § 4.]

Severability—Effective date—2003 c 258: See notes following RCW 18.79.330.

18.79.370 Nursing technicians—Registration renewal. The secretary shall establish by rule the procedural requirements and fees for renewal of the registration. Failure to renew invalidates the registration and all privileges granted by the registration. For renewal of registration, a nursing technician must attest that he or she continues to qualify as a nursing technician as described in RCW 18.79.340. [2003 c 258 § 5.]

Severability—Effective date—2003 c 258: See notes following RCW 18.79.330.

Chapter 18.85 RCW

REAL ESTATE BROKERS AND SALESPERSONS

Sections

18.85.010	Definitions.
18.85.560	Out-of-state broker/salesperson/associate broker—Requirements in lieu of licensing.

18.85.010 Definitions. In this chapter words and phrases have the following meanings unless otherwise apparent from the context:

(1) "Real estate broker," or "broker," means a person, while acting for another for commissions or other compensation or the promise thereof, or a licensee under this chapter while acting in his or her own behalf, who:

(a) Sells or offers for sale, lists or offers to list, buys or offers to buy real estate or business opportunities, or any interest therein, for others;

(b) Negotiates or offers to negotiate, either directly or indirectly, the purchase, sale, exchange, lease, or rental of real estate or business opportunities, or any interest therein, for others;

(c) Negotiates or offers to negotiate, either directly or indirectly, the purchase, sale, lease, or exchange of a manufactured or mobile home in conjunction with the purchase, sale, exchange, rental, or lease of the land upon which the manufactured or mobile home is, or will be, located;

(d) Advertises or holds himself or herself out to the public by any oral or printed solicitation or representation that he or she is so engaged; or

(e) Engages, directs, or assists in procuring prospects or in negotiating or closing any transaction which results or is calculated to result in any of these acts;

(2) "Real estate salesperson" or "salesperson" means any natural person employed, either directly or indirectly, by a

real estate broker, or any person who represents a real estate broker in the performance of any of the acts specified in subsection (1) of this section;

(3) An "associate real estate broker" is a person who has qualified as a "real estate broker" who works with a broker and whose license states that he or she is associated with a broker;

(4) The word "person" as used in this chapter shall be construed to mean and include a corporation, limited liability company, limited liability partnership, or partnership, except where otherwise restricted;

(5) "Business opportunity" shall mean and include business, business opportunity and good will of an existing business or any one or combination thereof;

(6) "Commission" means the real estate commission of the state of Washington;

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

(8) "Real estate multiple listing association" means any association of real estate brokers:

(a) Whose members circulate listings of the members among themselves so that the properties described in the listings may be sold by any member for an agreed portion of the commission to be paid; and

(b) Which require in a real estate listing agreement between the seller and the broker, that the members of the real estate multiple listing association shall have the same rights as if each had executed a separate agreement with the seller;

(9) "Clock hours of instruction" means actual hours spent in classroom instruction in any tax supported, public technical college, community college, or any other institution of higher learning or a correspondence course from any of the aforementioned institutions certified by such institution as the equivalent of the required number of clock hours, and the real estate commission may certify courses of instruction other than in the aforementioned institutions;

(10) "Incapacitated" means the physical or mental inability to perform the duties of broker prescribed by this chapter; and

(11) "Commercial real estate" means any parcel of real estate in this state other than real estate containing one to four residential units. "Commercial real estate" does not include a single-family residential lot or single-family residential units such as condominiums, townhouses, manufactured homes, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis, even when those units are part of a larger building or parcel of real estate, unless the property is sold or leased for a commercial purpose. [2003 c 201 § 1; 1998 c 46 § 2; 1997 c 322 § 1; 1987 c 332 § 1; 1981 c 305 § 1; 1979 c 158 § 68; 1977 ex.s. c 370 § 1; 1973 1st ex.s. c 57 § 1; 1972 ex.s. c 139 § 1; 1969 c 78 § 1; 1953 c 235 § 1; 1951 c 222 § 1; 1943 c 118 § 1; 1941 c 252 § 2; Rem. Supp. 1943 § 8340-25. Prior: 1925 ex.s. c 129 § 4.]

18.85.560 Out-of-state broker/salesperson/associate broker—Requirements in lieu of licensing. (1) An out-of-state broker, for a fee, commission, or other valuable consideration, or in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, may perform those acts that require a license under

this chapter, with respect to commercial real estate, provided that the out-of-state broker does all of the following:

(a) Works in cooperation with a Washington real estate broker who holds a valid, active license issued under this chapter;

(b) Enters into a written agreement with the Washington broker that includes the terms of cooperation, oversight by the Washington broker, compensation, and a statement that the out-of-state broker and its agents will agree to adhere to the laws of Washington;

(c) Furnishes the Washington broker with a copy of the out-of-state broker's current license in good standing from any jurisdiction where the out-of-state broker maintains an active real estate license;

(d) Consents to jurisdiction that legal actions arising out of the conduct of the out-of-state broker or its agents may be commenced against the out-of-state broker in the court of proper jurisdiction of any county in Washington where the cause of action arises or where the plaintiff resides;

(e) Includes the name of the Washington broker on all advertising in accordance with RCW 18.85.230(8); and

(f) Deposits all documentation required by this section and records and documents related to the transaction with the Washington broker, for a period of three years after the date the documentation is provided, or the transaction occurred, as appropriate.

(2) An out-of-state salesperson or associate broker may perform those acts that require a real estate salesperson or associate broker license under this chapter with respect to commercial real estate, provided that the out-of-state salesperson or associate broker meets all of the following requirements:

(a) Is licensed with and works under the direct supervision of an out-of-state broker who meets all of the requirements under subsection (1) of this section; and

(b) Provides the Washington broker who is working in cooperation with the out-of-state broker with whom the salesperson or associate broker is associated with a copy of the salesperson's or associate broker's current license in good standing from the jurisdiction where the out-of-state salesperson or associate broker maintains an active real estate license in connection with the out-of-state broker.

(3) A person licensed in a jurisdiction where there is no legal distinction between a real estate broker license and a real estate salesperson license must meet the requirements of subsection (1) of this section before engaging in any activity described in this section that requires a real estate broker license in this state. [2003 c 201 § 2.]

Chapter 18.88A RCW NURSING ASSISTANTS

Sections

- 18.88A.140 Exemptions.
- 18.88A.200 Delegation of nursing care tasks—Legislative finding.
- 18.88A.210 Delegation—Generally.
- 18.88A.230 Delegation—Liability—Reprisal or disciplinary action.

18.88A.140 Exemptions. Nothing in this chapter may be construed to prohibit or restrict:

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

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

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

(4) A nursing assistant, while employed as a personal aide as defined in RCW 74.39.007, from accepting direction from an individual who is self-directing their care. [2003 c 140 § 3; 2000 c 171 § 25; 1991 c 16 § 5.]

Effective date—2003 c 140: See note following RCW 18.79.040.

18.88A.200 Delegation of nursing care tasks—Legislative finding. The legislature recognizes that nurses have been successfully delegating nursing care tasks to family members and auxiliary staff for many years. The opportunity for a nurse to delegate to nursing assistants qualifying under RCW 18.88A.210 may enhance the viability and quality of health care services in community-based care settings and in-home care settings to allow individuals to live as independently as possible with maximum safeguards. [2003 c 140 § 4; 1995 1st sp.s. c 18 § 45.]

Effective date—2003 c 140: See note following RCW 18.79.040.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

18.88A.210 Delegation—Generally. (1) A nursing assistant meeting the requirements of this section who provides care to individuals in community-based care settings or in-home care settings, as defined in RCW 18.79.260(3), may accept delegation of nursing care tasks by a registered nurse as provided in RCW 18.79.260(3).

(2) For the purposes of this section, "nursing assistant" means a nursing assistant-registered or a nursing assistant-certified. Nothing in this section may be construed to affect the authority of nurses to delegate nursing tasks to other persons, including licensed practical nurses, as authorized by law.

(3) Before commencing any specific nursing care tasks authorized under this chapter, the nursing assistant must (a) provide to the delegating nurse a certificate of completion issued by the department of social and health services indicating the completion of basic core nurse delegation training, (b) be regulated by the department of health pursuant to this chapter, subject to the uniform disciplinary act under chapter 18.130 RCW, and (c) meet any additional training requirements identified by the nursing care quality assurance commission. Exceptions to these training requirements must adhere to RCW 18.79.260(3)(e)(v). [2003 c 140 § 5; 2000 c 95 § 1; 1998 c 272 § 10; 1995 1st sp.s. c 18 § 46.]

Effective date—2003 c 140: See note following RCW 18.79.040.

Findings—Severability—Effective date—1998 c 272: See notes following RCW 18.20.230.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

18.88A.230 Delegation—Liability—Reprisal or disciplinary action. (1) The nursing assistant shall be accountable for their own individual actions in the delegation process. Nursing assistants following written delegation instructions from registered nurses performed in the course of their accurately written, delegated duties shall be immune from liability.

(2) Nursing assistants shall not be subject to any employer reprisal or disciplinary action by the secretary for refusing to accept delegation of a nursing task based on patient safety issues. No community-based care setting as defined in RCW 18.79.260(3)(e), or in-home services agency as defined in RCW 70.127.010, may discriminate or retaliate in any manner against a person because the person made a complaint or cooperated in the investigation of a complaint. [2003 c 140 § 6; 2000 c 95 § 2; 1998 c 272 § 11; 1997 c 275 § 6; 1995 1st sp.s. c 18 § 48.]

Effective date—2003 c 140: See note following RCW 18.79.040.

Findings—Severability—Effective date—1998 c 272: See notes following RCW 18.20.230.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Chapter 18.92 RCW

VETERINARY MEDICINE, SURGERY, AND DENTISTRY

Sections

18.92.230 Use of another's license or diploma a felony. (*Effective July 1, 2004.*)

18.92.230 Use of another's license or diploma a felony. (*Effective July 1, 2004.*) Any person filing or attempting to file, as his or her own, the diploma or license of another is guilty of forgery under RCW 9A.60.020. [2003 c 53 § 139; 1941 c 71 § 23; Rem. Supp. 1941 § 10040-23.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Forgery: RCW 9A.60.020.

Chapter 18.106 RCW

PLUMBERS

Sections

18.106.010 Definitions.

18.106.070 Certificates of competency, installer endorsement—Issuance—Renewal—Rights of holder—Training certificates—Supervision—Training, certified plumber.

18.106.150 Exemptions.

18.106.010 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meaning:

(1) "Advisory board" means the state advisory board of plumbers;

(2) "Contractor" means any person, corporate or otherwise, who engages in, or offers or advertises to engage in, any work covered by the provisions of this chapter by way of trade or business, or any person, corporate or otherwise, who employs anyone, or offers or advertises to employ anyone, to engage in any work covered by the provisions of this chapter;

(3) "Department" means the department of labor and industries;

(4) "Director" means the director of department of labor and industries;

(5) "Journeyman plumber" means any person who has been issued a certificate of competency by the department of labor and industries as provided in this chapter;

(6) "Like-in-kind" means having similar characteristics such as plumbing size, type, and function, and being in the same location;

(7) "Medical gas piping" means oxygen, nitrous oxide, high pressure nitrogen, medical compressed air, and medical vacuum systems;

(8) "Medical gas piping installer" means a journeyman plumber who has been issued a medical gas piping installer endorsement;

(9) "Plumbing" means that craft involved in installing, altering, repairing and renovating potable water systems, liquid waste systems, and medical gas piping systems within a building. Installation in a water system of water softening or water treatment equipment is not within the meaning of plumbing as used in this chapter;

(10) "Specialty plumber" means anyone who has been issued a specialty certificate of competency limited to:

(a) Installation, maintenance, and repair of the plumbing of single-family dwellings, duplexes, and apartment buildings that do not exceed three stories; or

(b) Maintenance and repair of backflow prevention assemblies. [2003 c 399 § 102; 2002 c 82 § 1; 2001 c 281 § 1; 1997 c 326 § 2; 1995 c 282 § 2; 1983 c 124 § 1; 1977 ex.s. c 149 § 1; 1975 1st ex.s. c 71 § 1; 1973 1st ex.s. c 175 § 1.]

Part headings not law—2003 c 399: See note following RCW 19.28.006.

Effective date—1997 c 326: "This act takes effect July 1, 1998." [1997 c 326 § 7.]

18.106.070 Certificates of competency, installer endorsement—Issuance—Renewal—Rights of holder—Training certificates—Supervision—Training, certified plumber.

(1) The department shall issue a certificate of competency to all applicants who have passed the examination and have paid the fee for the certificate. The certificate shall bear the date of issuance, and shall expire on the birthdate of the holder immediately following the date of issuance. The certificate shall be renewable every other year, upon application, on or before the birthdate of the holder. The department shall renew a certificate of competency if the applicant: (a) Pays the renewal fee assessed by the department; and (b) during the past two years has completed sixteen hours of continuing education approved by the department with the advice of the advisory board, including four hours related to electrical safety. If a person fails to renew the certificate by the renewal date, he or she must pay a doubled fee. If the person does not renew the certificate within ninety days of the renewal date, he or she must retake the examination and pay the examination fee.

The journeyman plumber and specialty plumber certificates of competency, the medical gas piping installer endorsement, and the temporary permit provided for in this chapter grant the holder the right to engage in the work of plumbing as a journeyman plumber, specialty plumber, or

medical gas piping installer, in accordance with their provisions throughout the state and within any of its political subdivisions on any job or any employment without additional proof of competency or any other license or permit or fee to engage in the work. This section does not preclude employees from adhering to a union security clause in any employment where such a requirement exists.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the plumbing construction trade or who is learning the plumbing construction trade may work in the plumbing construction trade if supervised by a certified journeyman plumber or a certified specialty plumber in that plumber's specialty. All apprentices and individuals learning the plumbing construction trade shall obtain a plumbing training certificate from the department. The certificate shall authorize the holder to learn the plumbing construction trade while under the direct supervision of a journeyman plumber or a specialty plumber working in his or her specialty. The holder of the plumbing training certificate shall renew the certificate annually. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the plumbing construction industry for the previous year and the number of hours worked for each employer. An annual fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter. Apprentices and individuals learning the plumbing construction trade shall have their plumbing training certificates in their possession at all times that they are performing plumbing work. They shall show their certificates to an authorized representative of the department at the representative's request.

(3) Any person who has been issued a plumbing training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a journeyman plumber or an appropriate specialty plumber who has an applicable certificate of competency issued under this chapter. Either a journeyman plumber or an appropriate specialty plumber shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter. The ratio of noncertified individuals to certified journeymen or specialty plumbers working on a job site shall be: (a) Not more than two noncertified plumbers working on any one job site for every certified specialty plumber or journeyman plumber working as a specialty plumber; and (b) not more than one noncertified plumber working on any one job site for every certified journeyman plumber working as a journeyman plumber.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in a technical school program in the plumbing construction trade in a school approved by the work force training and education coordinating board, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(4) An individual who has a current training certificate and who has successfully completed or is currently enrolled in a medical gas piping installer training course approved by the department may work on medical gas piping systems if the individual is under the direct supervision of a certified medical gas piping installer who holds a medical gas piping installer endorsement one hundred percent of a working day on a one-to-one ratio.

(5) The training to become a certified plumber must include not less than sixteen hours of classroom training established by the director with the advice of the advisory board. The classroom training must include, but not be limited to, electrical wiring safety, grounding, bonding, and other related items plumbers need to know to work under RCW 19.28.091.

(6) All persons who are certified plumbers before January 1, 2003, are deemed to have received the classroom training required in subsection (5) of this section. [2003 c 399 § 801; 1997 c 326 § 6; 1985 c 465 § 1; 1983 c 124 § 3; 1977 ex.s. c 149 § 7; 1973 1st ex.s. c 175 § 7.]

Part headings not law—2003 c 399: See note following RCW 19.28.006.

Effective date—1997 c 326: See note following RCW 18.106.010.

18.106.150 Exemptions. (1) Nothing in this chapter shall be construed to require that a person obtain a license or a certified plumber in order to do plumbing work at his or her residence or farm or place of business or on other property owned by him or her.

(2) A current certificate of competency or apprentice permit is not required for:

(a) Persons performing plumbing work on a farm; or

(b) Certified journeyman electricians, certified residential specialty electricians, or electrical trainees working for an electrical contractor and performing exempt work under RCW 18.27.090(18).

(3) Nothing in this chapter shall be intended to derogate from or dispense with the requirements of any valid plumbing code enacted by a political subdivision of the state, except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the trade of plumbing.

(4) This chapter shall not apply to common carriers subject to Part I of the Interstate Commerce Act, nor to their officers and employees.

(5) Nothing in this chapter shall be construed to apply to any farm, business, industrial plant, or corporation doing plumbing work on premises it owns or operates.

(6) Nothing in this chapter shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative or other person when none of the individuals doing such plumbing hold themselves out as engaged in the trade or business of plumbing. [2003 c 399 § 402; 1973 1st ex.s. c 175 § 15.]

Part headings not law—2003 c 399: See note following RCW 19.28.006.

Chapter 18.130 RCW
REGULATION OF HEALTH PROFESSIONS—
UNIFORM DISCIPLINARY ACT

Sections

- 18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules.
 18.130.075 Temporary practice permits—Penalties. (*Effective July 1, 2004.*)
 18.130.190 Practice without license—Investigation of complaints—Cease and desist orders—Injunctions—Penalties. (*Effective July 1, 2004.*)

18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

- (i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;
 - (ii) Naturopaths licensed under chapter 18.36A RCW;
 - (iii) Midwives licensed under chapter 18.50 RCW;
 - (iv) Ocularists licensed under chapter 18.55 RCW;
 - (v) Massage operators and businesses licensed under chapter 18.108 RCW;
 - (vi) Dental hygienists licensed under chapter 18.29 RCW;
 - (vii) Acupuncturists licensed under chapter 18.06 RCW;
 - (viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;
 - (ix) Respiratory care practitioners licensed under chapter 18.89 RCW;
 - (x) Persons registered under chapter 18.19 RCW;
 - (xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;
 - (xii) Persons registered as nursing pool operators under chapter 18.52C RCW;
 - (xiii) Nursing assistants registered or certified under chapter 18.88A RCW;
 - (xiv) Health care assistants certified under chapter 18.135 RCW;
 - (xv) Dietitians and nutritionists certified under chapter 18.138 RCW;
 - (xvi) Chemical dependency professionals certified under chapter 18.205 RCW;
 - (xvii) Sex offender treatment providers certified under chapter 18.155 RCW;
 - (xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;
 - (xix) Denturists licensed under chapter 18.30 RCW;
 - (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;
 - (xxi) Surgical technologists registered under chapter 18.215 RCW; and
 - (xxii) Recreational therapists.
- (b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section. [2003 c 275 § 2; 2003 c 258 § 7. Prior: 2002 c 223 § 6; 2002 c 216 § 11; 2001 c 251 § 27; 1999 c 335 § 10; 1998 c 243 § 16; prior: 1997 c 392 § 516; 1997 c 334 § 14; 1997 c 285 § 13; 1997 c 275 § 2; prior: 1996 c 200 § 32; 1996 c 81 § 5; prior: 1995 c 336 § 2; 1995 c 323 § 16; 1995 c 260 § 11; 1995 c 1 § 19 (Initiative Measure No. 607, approved November 8, 1994); prior: 1994 sp.s. c 9 § 603; 1994 c 17 § 19; 1993 c 367 § 4; 1992 c 128 § 6; 1990 c 3 § 810; prior: 1988 c 277 § 13; 1988 c 267 § 22; 1988 c 243 § 7; prior: 1987 c 512 § 22; 1987 c 447 § 18; 1987 c 415 § 17; 1987 c 412 § 15; 1987 c 150 § 1; prior: 1986 c 259 § 3; 1985 c 326 § 29; 1984 c 279 § 4.]

Reviser's note: This section was amended by 2003 c 258 § 7 and by 2003 c 275 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 275 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 275 § 4.]

Severability—Effective date—2003 c 258: See notes following RCW 18.79.330.

Severability—Effective date—2002 c 216: See RCW 18.230.900 and 18.230.901.

Severability—2001 c 251: See RCW 18.225.900.

Effective dates—1998 c 243: See RCW 18.205.900.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Effective dates—1997 c 334: See note following RCW 18.89.010.

Intent—Purpose—1997 c 285: See RCW 18.200.005.

Severability—1997 c 285: See RCW 18.200.901.

Severability—1996 c 200: See RCW 18.35.902.

Effective date—1996 c 81: See note following RCW 70.128.120.

Effective date—1995 c 336 §§ 2 and 3: "Sections 2 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 336 § 11.]

Effective date—1995 c 260 §§ 7-11: "Sections 7 through 11 of this act shall take effect July 1, 1996." [1995 1st sp.s. c 18 § 116; 1995 c 260 § 12.]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability—1987 c 512: See RCW 18.19.901.

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

Severability—1987 c 415: See RCW 18.89.901.

Effective date—Severability—1987 c 412: See RCW 18.84.901 and 18.84.902.

Severability—1987 c 150: See RCW 18.122.901.

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

18.130.075 Temporary practice permits—Penalties. (Effective July 1, 2004.) (1) If an individual licensed in another state that has licensing standards substantially equivalent to Washington applies for a license, the disciplining authority shall issue a temporary practice permit authorizing the applicant to practice the profession pending completion of documentation that the applicant meets the requirements for a license and is also not subject to denial of a license or issuance of a conditional license under this chapter. The temporary permit may reflect statutory limitations on the scope of practice. The permit shall be issued only upon the disciplining authority receiving verification from the states in which the applicant is licensed that the applicant is currently licensed and is not subject to charges or disciplinary action for unprofessional conduct or impairment. Notwithstanding RCW 34.05.422(3), the disciplining authority shall establish, by rule, the duration of the temporary practice permits.

(2) Failure to surrender the temporary practice permit is a misdemeanor under RCW 9A.20.010 and shall be unprofessional conduct under this chapter.

(3) The issuance of temporary permits is subject to the provisions of this chapter, including summary suspensions. [2003 c 53 § 140; 1991 c 332 § 2.]

[2003 RCW Supp—page 202]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

18.130.190 Practice without license—Investigation of complaints—Cease and desist orders—Injunctions—Penalties. (Effective July 1, 2004.) (1) The secretary shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. In the investigation of the complaints, the secretary shall have the same authority as provided the secretary under RCW 18.130.050.

(2) The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed practice of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. The person to whom such notice is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intention to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.

(3) If the secretary makes a final determination that a person has engaged or is engaging in unlicensed practice, the secretary may issue a cease and desist order. In addition, the secretary may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed practice of a business or profession for which a license is required by one or more of the chapters specified in RCW 18.130.040. The proceeds of such fines shall be deposited to the health professions account.

(4) If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the secretary. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine.

(5) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(6) The attorney general, a county prosecuting attorney, the secretary, a board, or any person may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing

a profession or business for which a license is required by the chapters specified in RCW 18.130.040 without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(7)(a) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW 18.130.040, unless otherwise exempted by law, constitutes a gross misdemeanor for a single violation.

(b) Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony punishable according to chapter 9A.20 RCW.

(8) All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account. [2003 c 53 § 141; 2001 c 207 § 2. Prior: 1995 c 285 § 35; 1993 c 367 § 19; 1991 c 3 § 271; prior: 1989 c 373 § 20; 1989 c 175 § 71; 1987 c 150 § 7; 1986 c 259 § 11; 1984 c 279 § 19.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Purpose—2001 c 207: "The purpose of this act is to respond to *State v. Thomas*, 103 Wn. App. 800, by reenacting and ranking, without changes, legislation relating to the crime of unlicensed practice of a profession or a business, enacted as section 35, chapter 285, Laws of 1995." [2001 c 207 § 1.]

Effective date—2001 c 207: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2001]." [2001 c 207 § 4.]

Effective date—1995 c 285: See RCW 48.30A.900.

Severability—1989 c 373: See RCW 7.21.900.

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

Severability—1987 c 150: See RCW 18.122.901.

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

Chapter 18.160 RCW

FIRE SPRINKLER SYSTEM CONTRACTORS

Sections

- 18.160.030 State director of fire protection—Duties.
- 18.160.120 Infractions—Failure to obtain certificate of competency—Fines.

18.160.030 State director of fire protection—Duties.

(1) This chapter shall be administered by the state director of fire protection.

(2) The state director of fire protection shall have the authority, and it shall be his or her duty to:

(a) Issue such administrative regulations as necessary for the administration of this chapter;

(b)(i) Set reasonable fees for licenses, certificates, testing, and other aspects of the administration of this chapter. However, the license fee for fire protection sprinkler system contractors engaged solely in the installation, inspection, maintenance, or servicing of NFPA 13-D fire protection sprinkler systems shall not exceed one hundred dollars, and the license fee for fire protection sprinkler system contractors engaged solely in the installation, inspection, maintenance, or servicing of NFPA 13-R fire protection sprinkler systems shall not exceed three hundred dollars;

(ii) Adopt rules establishing a special category restricted to contractors registered under chapter 18.27 RCW who install underground systems that service fire protection sprinkler systems. The rules shall be adopted within ninety days of March 31, 1992;

(iii) Subject to RCW 18.160.120, adopt rules defining infractions under this chapter and fines to be assessed for those infractions;

(c) Enforce the provisions of this chapter;

(d) Conduct investigations of complaints to determine if any infractions of this chapter or the regulations developed under this chapter have occurred;

(e) Assign a certificate number to each certificate of competency holder; and

(f) Adopt rules necessary to implement and administer a program which requires the affixation of a seal any time a fire protection sprinkler system is installed, which seal shall include the certificate number of any certificate of competency holder who installs, in whole or in part, the fire protection sprinkler system. [2003 c 74 § 1; 2000 c 171 § 35; 1992 c 116 § 2; 1990 c 177 § 4.]

18.160.120 Infractions—Failure to obtain certificate of competency—Fines.

(1) A fire protection sprinkler system contractor found to have committed an infraction under this chapter as defined in rule under RCW 18.160.030(2)(b)(iii) shall be assessed a fine of not less than two hundred dollars and not more than five thousand dollars.

(2) A fire protection sprinkler system contractor who fails to obtain a certificate of competency under RCW 18.160.040 shall be assessed a fine of not less than one thousand dollars and not more than five thousand dollars.

(3) All fines collected under this section shall be deposited into the fire protection contractor license fund. [2003 c 74 § 2.]

Chapter 18.220 RCW

GEOLOGISTS

Sections

- 18.220.060 Requirements for licensure.
- 18.220.210 Public bodies—Use of either soil scientist or licensed geologist permitted. (*Expires July 1, 2005.*)

18.220.060 Requirements for licensure. In order to become a licensed geologist, an applicant must meet the following requirements:

(1) The applicant shall be of good moral and ethical character as attested to by letters of reference submitted by the applicant or as otherwise determined by the board;

(2) The applicant shall have graduated from a course of study in geology satisfactory to the board or satisfy educational equivalents determined by the board;

(3) The applicant shall have a documented record of a minimum of five years of experience in geology or a specialty of geology, obtained subsequent to completion of the academic requirements specified in this section, in geological work of a character satisfactory to the board, demonstrating that the applicant is qualified to assume responsible charge of such work upon licensing as a geologist. The board shall require that three years of the experience be gained under the

supervision of a geologist licensed in this or any other state, or under the supervision of others who, in the opinion of the board, are qualified to have responsible charge of geological work;

(4) The applicant shall have passed an examination covering the fundamentals and practice of geology prescribed or accepted by the board;

(5) The applicant shall meet other general or individual requirements established by the board pursuant to its authority under this chapter;

(6) For licensing in any geological specialty recognized under this chapter, an applicant must first be a licensed geologist under this chapter, and then meet the following requirements:

(a) In addition to the educational requirements for licensing as a geologist defined in subsection (2) of this section, an applicant for licensing in any specialty of geology established by the board shall have successfully completed advanced study pertinent to their specialty, or equivalent seminars or on-the-job training acceptable to the board;

(b) The applicant's experience shall include a documented record of five years of experience, after completion of the academic requirements specified in this subsection, in geological work in the applicable specialty of a character satisfactory to the board, and demonstrating that the applicant is qualified to assume responsible charge of the specialty work upon licensing in that specialty of geology. The board shall require that three years of the experience be gained under the supervision of a geologist licensed in the specialty in this or any other state, or under the supervision of others who, in the opinion of the board, are qualified to have responsible charge of geological work in the specialty; and

(c) The applicant must pass an examination in the applicable specialty prescribed or accepted by the board;

(7) The following standards are applicable to experience in the practice of geology or a specialty required under subsections (3) and (6) of this section:

(a) Each year of professional practice of a character acceptable to the board, carried out under the direct supervision of a geologist who (i) is licensed in this state or is licensed in another state with licensing standards substantially similar to those under this chapter; or (ii) meets the educational and experience requirements for licensing, but who is not required to be licensed under the limitations of this chapter, qualifies as one year of professional experience in geology;

(b) Each year of professional specialty practice of a character acceptable to the board, carried out under the direct supervision of a (i) geologist who is licensed in a specialty under this chapter, or who is licensed as a specialty geologist in another state that has licensing requirements that are substantially similar to this chapter; or (ii) specialty geologist who meets the educational and experience requirements for licensing, but who is not required to be licensed under the limitations of this chapter, qualifies as one year of practice in the applicable specialty of geology; and

(c) Experience in professional practice, of a character acceptable to the board and acquired prior to one year after July 1, 2001, qualifies if the experience (i) was acquired under the direct supervision of a geologist who meets the educational and experience requirements for licensing under

this chapter, or who is licensed in another state that has licensing requirements that are substantially similar to this chapter; or (ii) would constitute responsible charge of professional geological work, as determined by the board;

(8) Each year of full-time graduate study in the geological sciences or in a specialty of geology shall qualify as one year of professional experience in geology or the applicable specialty of geology, up to a maximum of two years. The board may accept geological research, teaching of geology, or a geological specialty at the college or university level as qualifying experience, provided that such research or teaching, in the judgment of the board, is comparable to experience obtained in the practice of geology or a specialty thereof;

(9) An applicant who applies for licensing before July 1, 2003, shall be considered to be qualified for licensing, without further written examination, if the applicant possesses the following qualifications:

(a)(i) A specific record of graduation with a bachelor of science or bachelor of arts or higher degree, with a major in geology granted by an approved institution of higher education acceptable to the board; or

(ii) Graduation from an approved institution of higher education in a four-year academic degree program other than geology, but with the required number of course hours as defined by the board to qualify as a geologist or engineering geologist; and

(b) Experience consisting of a minimum of five years of professional practice in geology or a specialty thereof as required under subsections (3) and (7) of this section, of a character acceptable to the board;

(10) An applicant who applies for licensing in a specialty within one year after recognition of the specialty under this chapter shall be considered qualified for licensing in that specialty, without further written examination, if the applicant:

(a) Is qualified for licensing as a geologist in this state; and

(b) Has experience consisting of a minimum five years of professional practice in the applicable specialty of geology as required under subsections (3) and (7) of this section, of a character acceptable to the board; and

(11) The geologists initially appointed to the board under RCW 18.220.030 shall be qualified for licensing under subsections (7) and (8) of this section. [2003 c 292 § 1; 2000 c 253 § 7.]

Effective date—2003 c 292: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2003]." [2003 c 292 § 3.]

18.220.210 Public bodies—Use of either soil scientist or licensed geologist permitted. (Expires July 1, 2005.) (1)

This chapter permits the state, any state agency or any political subdivision of the state, or a county, city, or other public body to use the services of either a soil scientist engaging in the practice of soil science, as defined in subsection (2) of this section, or a licensed geologist or licensed specialty geologist engaging in the practice of geology, as defined in RCW 18.220.010, to perform work that is within the scope of practice of both professions.

(2) For the purpose of this section, "practice of soil science" means the performance of or offer to perform soil sci-

ence work including, but not limited to, the investigation, evaluation, planning, management, classification, and mapping of soil and the interpretation of soil behavior, including surface erosion, and the inspection and responsible charge of such work.

(3) This section expires July 1, 2005. [2003 c 292 § 2.]

Effective date—2003 c 292: See note following RCW 18.220.060.

Chapter 18.225 RCW

MENTAL HEALTH COUNSELORS, MARRIAGE AND FAMILY THERAPISTS, SOCIAL WORKERS

Sections

18.225.090 Issuance of license—Requirements.

18.225.105 Disclosure of information—Exceptions.

18.225.090 Issuance of license—Requirements. (1)

The secretary shall issue a license to any applicant who demonstrates to the satisfaction of the secretary that the applicant meets the following education and experience requirements for the applicant's practice area.

(a) Licensed social work classifications:

(i) Licensed advanced social worker:

(A) Graduation from a master's or doctorate social work educational program accredited by the council on social work education and approved by the secretary based upon nationally recognized standards;

(B) Successful completion of an approved examination;

(C) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of three thousand two hundred hours with ninety hours of supervision by a licensed independent clinical social worker or a licensed advanced social worker who has been licensed or certified for at least two years. Of those hours, fifty hours must include direct supervision by a licensed advanced social worker or licensed independent clinical social worker; the other forty hours may be with an equally qualified licensed mental health practitioner. Forty hours must be in one-to-one supervision and fifty hours may be in one-to-one supervision or group supervision. Distance supervision is limited to forty supervision hours. Eight hundred hours must be in direct client contact; and

(D) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(ii) Licensed independent clinical social worker:

(A) Graduation from a master's or doctorate level social work educational program accredited by the council on social work education and approved by the secretary based upon nationally recognized standards;

(B) Successful completion of an approved examination;

(C) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of four thousand hours of experience, of which one thousand hours must be direct client contact, over a three-year period supervised by a licensed independent clinical social worker who has been licensed or certified for at least five years and who has had at least one year of experience in supervising the clinical social work practice of others, with supervision of at least one hundred thirty hours by a licensed mental health practitioner. Of the total supervision, seventy

hours must be with an independent clinical social worker meeting the qualifications under this subsection (1)(a)(ii)(C); the other sixty hours may be with an equally qualified licensed mental health practitioner. Sixty hours must be in one-to-one supervision and seventy hours may be in one-to-one supervision or group supervision. Distance supervision is limited to sixty supervision hours; and

(D) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(b) Licensed mental health counselor:

(i) Graduation from a master's or doctoral level educational program in mental health counseling or a related discipline from a college or university approved by the secretary based upon nationally recognized standards;

(ii) Successful completion of an approved examination;

(iii) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of thirty-six months full-time counseling or three thousand hours of postgraduate mental health counseling under the supervision of a qualified licensed mental health counselor in an approved setting. The three thousand hours of required experience includes a minimum of one hundred hours spent in immediate supervision with the qualified licensed mental health counselor, and includes a minimum of one thousand two hundred hours of direct counseling with individuals, couples, families, or groups; and

(iv) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(c) Licensed marriage and family therapist:

(i) Graduation from a master's degree or doctoral degree educational program in marriage and family therapy or graduation from an educational program in an allied field equivalent to a master's degree or doctoral degree in marriage and family therapy approved by the secretary based upon nationally recognized standards;

(ii) Successful passage of an approved examination;

(iii) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of two calendar years of full-time marriage and family therapy. Of the total supervision, one hundred hours must be with a licensed marriage and family therapist with at least five years' clinical experience; the other one hundred hours may be with an equally qualified licensed mental health practitioner. Total experience requirements include:

(A) A minimum of three thousand hours of experience, one thousand hours of which must be direct client contact; at least five hundred hours must be gained in diagnosing and treating couples and families; plus

(B) At least two hundred hours of qualified supervision with a supervisor. At least one hundred of the two hundred hours must be one-on-one supervision, and the remaining hours may be in one-on-one or group supervision.

Applicants who have completed a master's program accredited by the commission on accreditation for marriage and family therapy education of the American association for marriage and family therapy may be credited with five hundred hours of direct client contact and one hundred hours of formal meetings with an approved supervisor; and

(iv) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(2) The department shall establish by rule what constitutes adequate proof of meeting the criteria.

(3) In addition, applicants shall be subject to the grounds for denial of a license or issuance of a conditional license under chapter 18.130 RCW. [2003 c 108 § 1; 2001 c 251 § 9.]

18.225.105 Disclosure of information—Exceptions.

A person licensed under this chapter shall not disclose the written acknowledgment of the disclosure statement pursuant to RCW 18.225.100, nor any information acquired from persons consulting the individual in a professional capacity when the information was necessary to enable the individual to render professional services to those persons except:

(1) With the written authorization of that person or, in the case of death or disability, the person's personal representative;

(2) If the person waives the privilege by bringing charges against the person licensed under this chapter;

(3) In response to a subpoena from the secretary. The secretary may subpoena only records related to a complaint or report under RCW 18.130.050;

(4) As required under chapter 26.44 or 74.34 RCW or RCW 71.05.250; or

(5) To any individual if the person licensed under this chapter reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the individual or any other individual; however, there is no obligation on the part of the provider to so disclose. [2003 c 204 § 1.]

Title 19

BUSINESS REGULATIONS— MISCELLANEOUS

Chapters

19.09	Charitable solicitations.
19.16	Collection agencies.
19.25	Reproduced sound recordings.
19.27	State building code.
19.28	Electricians and electrical installations.
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19.86	Unfair business practices—Consumer protection.
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19.105	Camping resorts.
19.110	Business opportunity fraud act.
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19.126	Wholesale distributors and suppliers of malt beverages.
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19.146	Mortgage broker practices act.
19.158	Commercial telephone solicitation.

19.190	Commercial electronic mail.
19.192	Proof of identity.
19.220	International matchmaking organizations.
19.230	Uniform money services act.

Chapter 19.09 RCW

CHARITABLE SOLICITATIONS

Sections

19.09.275 Violations—Penalties. (*Effective July 1, 2004.*)

19.09.275 Violations—Penalties. (*Effective July 1, 2004.*) (1) Any person who knowingly violates any provision of this chapter or who knowingly gives false or incorrect information to the secretary, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) Any person who violates any provisions of this chapter or who gives false or incorrect information to the secretary, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified, is guilty of a misdemeanor punishable under chapter 9A.20 RCW. [2003 c 53 § 142; 1993 c 471 § 15; 1986 c 230 § 18; 1983 c 265 § 11; 1982 c 227 § 12; 1977 ex.s. c 222 § 14.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—1982 c 227: See note following RCW 19.09.100.

Chapter 19.16 RCW

COLLECTION AGENCIES

Sections

19.16.100 Definitions.

19.16.100 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.

(2) "Collection agency" means and includes:

(a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person;

(b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself or herself in his or her own name;

(c) Any person who in attempting to collect or in collecting his or her own claim uses a fictitious name or any name other than his or her own which would indicate to the debtor that a third person is collecting or attempting to collect such claim.

(3) "Collection agency" does not mean and does not include:

(a) Any individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a licensee under this chapter, if said individual is an employee of the licensee;

(b) Any individual collecting or attempting to collect claims for not more than one employer, if all the collection efforts are carried on in the name of the employer and if the individual is an employee of the employer;

(c) Any person whose collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to: Trust companies; savings and loan associations; building and loan associations; abstract companies doing an escrow business; real estate brokers; property management companies collecting assessments, charges, or fines on behalf of condominium unit owners associations, associations of apartment owners, or homeowners' associations; public officers acting in their official capacities; persons acting under court order; lawyers; insurance companies; credit unions; loan or finance companies; mortgage banks; and banks;

(d) Any person who on behalf of another person prepares or mails monthly or periodic statements of accounts due if all payments are made to that other person and no other collection efforts are made by the person preparing the statements of account;

(e) An "out-of-state collection agency" as defined in this chapter; or

(f) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of the person is not the collection of debts.

(4) "Out-of-state collection agency" means a person whose activities within this state are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission, from the person's location in another state on behalf of clients located outside of this state, but does not include any person who is excluded from the definition of the term "debt collector" under the federal fair debt collection practices act (15 U.S.C. Sec. 1692a(6)).

(5) "Claim" means any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied.

(6) "Statement of account" means a report setting forth only amounts billed, invoices, credits allowed, or aged balance due.

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

(8) "Client" or "customer" means any person authorizing or employing a collection agency to collect a claim.

(9) "Licensee" means any person licensed under this chapter.

(10) "Board" means the Washington state collection agency board.

(11) "Debtor" means any person owing or alleged to owe a claim.

(12) "Commercial claim" means any obligation for payment of money or thing of value arising out of any agreement or contract, express or implied, where the transaction which

is the subject of the agreement or contract is not primarily for personal, family, or household purposes. [2003 c 203 § 1. Prior: 2001 c 47 § 1; 2001 c 43 § 1; 1994 c 195 § 1; 1990 c 190 § 1; 1979 c 158 § 81; 1971 ex.s. c 253 § 1.]

Chapter 19.25 RCW

REPRODUCED SOUND RECORDINGS

Sections

19.25.020	Reproduction of sound without consent of owner unlawful—Fine and penalty. (<i>Effective July 1, 2004.</i>)
19.25.030	Use of recording of live performance without consent of owner unlawful—Fine and penalty. (<i>Effective July 1, 2004.</i>)
19.25.040	Failure to disclose origin of certain recordings unlawful—Fine and penalty. (<i>Effective July 1, 2004.</i>)

19.25.020 Reproduction of sound without consent of owner unlawful—Fine and penalty. (*Effective July 1, 2004.*) (1) A person commits an offense if the person:

(a) Knowingly reproduces for sale or causes to be transferred any recording with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain without the consent of the owner;

(b) Transports within this state, for commercial advantage or private financial gain, a recording with the knowledge that the sounds have been reproduced or transferred without the consent of the owner; or

(c) Advertises, offers for sale, sells, or rents, or causes the sale, resale, or rental of or possesses for one or more of these purposes any recording that the person knows has been reproduced or transferred without the consent of the owner.

(2)(a) An offense under this section is a class B felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both if:

(i) The offense involves at least one thousand unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section.

(b) An offense under this section is a class C felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than one hundred but less than one thousand unauthorized recordings during a one hundred eighty-day period.

(c) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

(3) This section does not affect the rights and remedies of a party in private litigation.

(4) This section applies only to recordings that were initially fixed before February 15, 1972. [2003 c 53 § 143; 1991 c 38 § 2; 1974 ex.s. c 100 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

19.25.030 Use of recording of live performance without consent of owner unlawful—Fine and penalty. (*Effective July 1, 2004.*) (1) A person commits an offense if the person:

(a) For commercial advantage or private financial gain advertises, offers for sale, sells, rents, transports, causes the sale, resale, rental, or transportation of or possesses for one or more of these purposes a recording of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner; or

(b) With the intent to sell for commercial advantage or private financial gain records or fixes or causes to be recorded or fixed on a recording a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner.

(2)(a) An offense under this section is a class B felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one thousand unauthorized recordings embodying sound or at least one hundred unauthorized audiovisual recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section.

(b) An offense under this section is a class C felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than one hundred but less than one thousand unauthorized recordings embodying sound or more than ten but less than one hundred unauthorized audiovisual recordings during a one hundred eighty-day period.

(c) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

(3) In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix those sounds.

(4) For the purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether or not the owner of the live performance consented to having the live performance recorded or fixed is a competent witness in a proceeding regarding the issue of consent.

(5) This section does not affect the rights and remedies of a party in private litigation. [2003 c 53 § 144; 1991 c 38 § 3; 1974 ex.s. c 100 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

19.25.040 Failure to disclose origin of certain recordings unlawful—Fine and penalty. (Effective July 1, 2004.)

(1) A person is guilty of failure to disclose the origin of a recording when, for commercial advantage or private financial gain, the person knowingly advertises, or offers for sale, resale, or rent, or sells or resells, or rents, leases, or lends, or possesses for any of these purposes, any recording which does not contain the true name and address of the manufacturer in a prominent place on the cover, jacket, or label of the recording.

(2)(a) An offense under this section is a class B felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one hundred unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section.

(b) An offense under this section is a class C felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than ten but less than one hundred unauthorized recordings during a one hundred eighty-day period.

(c) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

(3) This section does not affect the rights and remedies of a party in private litigation. [2003 c 53 § 145; 1991 c 38 § 4; 1974 ex.s. c 100 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

**Chapter 19.27 RCW
STATE BUILDING CODE**

Sections

19.27.031	State building code—Adoption—Conflicts—Opinions.
19.27.080	Chapters of RCW not affected.
19.27.110	International fire code—Administration and enforcement by counties, other political subdivisions and municipal corporations—Fees.
19.27.490	Fish habitat enhancement project.

19.27.031 State building code—Adoption—Conflicts—Opinions. Except as otherwise provided in this chapter, there shall be in effect in all counties and cities the state building code which shall consist of the following codes which are hereby adopted by reference:

(1)(a) The International Building Code, published by the International Code Council[,] Inc.;

(b) The International Residential Code, published by the International Code Council, Inc.;

(2) The International Mechanical Code, published by the International Code Council[,] Inc., except that the standards for liquified petroleum gas installations shall be NFPA 58 (Storage and Handling of Liquified Petroleum Gases) and ANSI Z223.1/NFPA 54 (National Fuel Gas Code);

(3) The International Fire Code, published by the International Code Council[,] Inc., including those standards of the National Fire Protection Association specifically referenced in the International Fire Code: PROVIDED, That, notwithstanding any wording in this code, participants in religious ceremonies shall not be precluded from carrying hand-held candles;

(4) Except as provided in RCW 19.27.170, the Uniform Plumbing Code and Uniform Plumbing Code Standards, published by the International Association of Plumbing and Mechanical Officials: PROVIDED, That any provisions of such code affecting sewers or fuel gas piping are not adopted; and

(5) The rules adopted by the council establishing standards for making buildings and facilities accessible to and usable by the physically disabled or elderly persons as provided in RCW 70.92.100 through 70.92.160.

In case of conflict among the codes enumerated in subsections (1), (2), (3), and (4) of this section, the first named code shall govern over those following.

The codes enumerated in this section shall be adopted by the council as provided in RCW 19.27.074. The council shall solicit input from first responders to ensure that fire fighter safety issues are addressed during the code adoption process.

The council may issue opinions relating to the codes at the request of a local official charged with the duty to enforce the enumerated codes. [2003 c 291 § 2; 1995 c 343 § 1. Prior: 1989 c 348 § 9; 1989 c 266 § 1; 1985 c 360 § 5.]

Intent—Finding—2003 c 291: "(1) The intent of the adoption of the International Building Code by the legislature is to remain consistent with state laws regulating construction, including electrical, plumbing, and energy codes established in chapters 19.27, 19.27A, and 19.28 RCW. The International Building Code references the International Residential Code for provisions related to the construction of single and multiple-family dwellings. No portion of the International Residential Code shall supersede or take precedent over provisions in chapter 19.28 RCW, regulating the electrical code; nor provisions in RCW 19.27.031(4), regulating the plumbing code; nor provisions in chapter 19.27A RCW, regulating the energy code.

(2) It is in the state's interest and consistent with the state building code act to have in effect provisions regulating the construction of single and multiple-family residences. It is the legislative intent that the state building code council adopt the International Residential Code through rule making granted in RCW 19.27.074, consistent with state law regulating construction for electrical, plumbing, and energy codes, and other state and federal laws regulating single and multiple-family construction.

(3) In accordance with RCW 19.27.020, the state building code council shall promote fire and life safety in buildings consistent with accepted standards. In adopting the codes for the state of Washington, the state building code council shall consider provisions related to fire fighter safety published by nationally recognized organizations. The state building code council shall review all nationally recognized codes as set forth in RCW 19.27.074.

(4) The legislature finds that building codes are an integral component of affordable housing. In accordance with this finding, the state building code council shall consider and review building code provisions related to improving affordable housing." [2003 c 291 § 1.]

Severability—1989 c 348: See note following RCW 90.54.020.

Rights not impaired—1989 c 348: See RCW 90.54.920.

19.27.080 Chapters of RCW not affected. Nothing in this chapter affects the provisions of chapters 19.27A, 19.28, 43.22, 70.77, 70.79, 70.87, 48.48, 18.20, 18.46, 18.51, 28A.305, 70.41, 70.62, 70.75, 70.108, 71.12, 74.15, 70.94, 76.04, 90.76 RCW, or RCW 28A.195.010, or grants rights to duplicate the authorities provided under chapters 70.94 or 76.04 RCW. [2003 c 291 § 3; 1990 c 33 § 555; 1989 c 346 § 19; 1975 1st ex.s. c 282 § 1; 1974 ex.s. c 96 § 8.]

Intent—Finding—2003 c 291: See note following RCW 19.27.031.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Captions—Severability—Effective date—1989 c 346: See RCW 90.76.900 through 90.76.902.

19.27.110 International fire code—Administration and enforcement by counties, other political subdivisions and municipal corporations—Fees. Each county government shall administer and enforce the International Fire Code in the unincorporated areas of the county: PROVIDED, That any political subdivision or municipal corporation providing fire protection pursuant to RCW 14.08.120 shall, at its sole option, be responsible for administration and enforcement of the International Fire Code on its facility. Any fire protection district or political subdivision may, pursuant to chapter 39.34 RCW, the interlocal cooperation act, assume all or a

portion of the administering responsibility and coordinate and cooperate with the county government in the enforcement of the International Fire Code.

It is not the intent of RCW 19.27.110 and 19.27.111 to preclude or limit the authority of any city, town, county, fire protection district, state agency, or political subdivision from engaging in those fire prevention activities with which they are charged.

It is not the intent of the legislature by adopting the state building code or RCW 19.27.110 and 19.27.111 to grant counties any more power to suppress or extinguish fires than counties currently possess under the Constitution or other statutes.

Each county is authorized to impose fees sufficient to pay the cost of inspections, administration, and enforcement pursuant to RCW 19.27.110 and 19.27.111. [2003 c 291 § 4; 1975-'76 2nd ex.s. c 37 § 1.]

Intent—Finding—2003 c 291: See note following RCW 19.27.031.

19.27.490 Fish habitat enhancement project. A fish habitat enhancement project meeting the criteria of RCW 77.55.290(1) is not subject to grading permits, inspections, or fees and shall be reviewed according to the provisions of RCW 77.55.290. [2003 c 39 § 11; 1998 c 249 § 14.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.290.

Chapter 19.28 RCW

ELECTRICIANS AND ELECTRICAL INSTALLATIONS

Sections

19.28.006	Definitions.
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19.28.095	Equipment repair specialty—Scope of work.
19.28.101	Inspections—Notice to repair and change—Disconnection—Entry—Concealment—Accessibility—Connection to utility—Permits, fees—Limitation.
19.28.141	RCW 19.28.101 inapplicable in certain cities and towns, electricity supply agency service areas, and rights of way of state highways.
19.28.191	Certificate of competency—Eligibility for examination—Rules.
19.28.261	Exemptions from RCW 19.28.161 through 19.28.271.
19.28.351	Electrical license fund.
19.28.371	Medical device—Installation, maintenance, or repair—Compliance with chapter—Limit of exemption.

19.28.006 Definitions. The definitions in this section apply throughout this subchapter.

(1) "Administrator" means a person designated by an electrical contractor to supervise electrical work and electricians in accordance with the rules adopted under this chapter.

(2) "Basic electrical work" means the work classified in (a) and (b) of this subsection as class A and class B basic electrical work:

(a) "Class A basic electrical work" means the like-kind replacement of a: Contactor, relay, timer, starter, circuit board, or similar control component; household appliance; circuit breaker; fuse; residential luminaire; lamp; snap switch; dimmer; receptacle outlet; thermostat; heating element; luminaire ballast with an exact same ballast; ten horsepower or smaller motor; or wiring, appliances, devices, or equipment as specified by rule.

(b) "Class B basic electrical work" means work other than class A basic electrical work that requires minimal electrical circuit modifications and has limited exposure hazards. Class B basic electrical work includes the following:

(i) Extension of not more than one branch electrical circuit limited to one hundred twenty volts and twenty amps each where:

(A) No cover inspection is necessary; and

(B) The extension does not supply more than two outlets;

(ii) Like-in-kind replacement of a single luminaire not exceeding two hundred seventy-seven volts and twenty amps;

(iii) Like-in-kind replacement of a motor larger than ten horsepower;

(iv) The following low voltage systems:

(A) Repair and replacement of devices not exceeding one hundred volt-amperes in Class 2, Class 3, or power limited low voltage systems in one and two-family dwellings;

(B) Repair and replacement of the following devices not exceeding one hundred volt-amperes in Class 2, Class 3, or power limited low voltage systems in other buildings, provided the equipment is not for fire alarm or nurse call systems and is not located in an area classified as hazardous by the national electrical code; or

(v) Wiring, appliances, devices, or equipment as specified by rule.

(3) "Board" means the electrical board under RCW 19.28.311.

(4) "Chapter" or "subchapter" means the subchapter, if no chapter number is referenced.

(5) "Department" means the department of labor and industries.

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

(7) "Electrical construction trade" includes but is not limited to installing or maintaining electrical wires and equipment that are used for light, heat, or power and installing and maintaining remote control, signaling, power limited, or communication circuits or systems.

(8) "Electrical contractor" means a person, firm, partnership, corporation, or other entity that offers to undertake, undertakes, submits a bid for, or does the work of installing or maintaining wires or equipment that convey electrical current.

(9) "Equipment" means any equipment or apparatus that directly uses, conducts, insulates, or is operated by electricity but does not mean: Plug-in appliances; or plug-in equipment as determined by the department by rule.

(10) "Industrial control panel" means a factory-wired or user-wired assembly of industrial control equipment such as motor controllers, switches, relays, power supplies, computers, cathode ray tubes, transducers, and auxiliary devices. The panel may include disconnect means and motor branch circuit protective devices.

(11) "Journeyman electrician" means a person who has been issued a journeyman electrician certificate of competency by the department.

(12) "Like-in-kind" means having similar characteristics such as voltage requirements, current draw, and function, and being in the same location.

(13) "Master electrician" means either a master journeyman electrician or master specialty electrician.

(14) "Master journeyman electrician" means a person who has been issued a master journeyman electrician certificate of competency by the department and who may be designated by an electrical contractor to supervise electrical work and electricians in accordance with rules adopted under this chapter.

(15) "Master specialty electrician" means a person who has been issued a specialty electrician certificate of competency by the department and who may be designated by an electrical contractor to supervise electrical work and electricians in accordance with rules adopted under this chapter.

(16) "Specialty electrician" means a person who has been issued a specialty electrician certificate of competency by the department. [2003 c 399 § 101; 2002 c 249 § 1; 2001 c 211 § 1; 2000 c 238 § 103; 1993 c 275 § 1; 1988 c 81 § 1; 1986 c 156 § 1; 1983 c 206 § 1. Formerly RCW 19.28.005.]

Part headings not law—2003 c 399: "Part headings used in this act are not any part of the law." [2003 c 399 § 901.]

Severability—2000 c 238: See note following RCW 19.28.301.

19.28.091 Licensing—Exemptions. (1) No license under the provision of this chapter shall be required from any utility or any person, firm, partnership, corporation, or other entity employed by a utility because of work in connection with the installation, repair, or maintenance of lines, wires, apparatus, or equipment owned by or under the control of a utility and used for transmission or distribution of electricity from the source of supply to the point of contact at the premises and/or property to be supplied and service connections and meters and other apparatus or appliances used in the measurement of the consumption of electricity by the customer.

(2) No license under the provisions of this chapter shall be required from any utility because of work in connection with the installation, repair, or maintenance of the following:

(a) Lines, wires, apparatus, or equipment used in the lighting of streets, alleys, ways, or public areas or squares;

(b) Lines, wires, apparatus, or equipment owned by a commercial, industrial, or public institution customer that are an integral part of a transmission or distribution system, either overhead or underground, providing service to such customer and located outside the building or structure: PROVIDED, That a utility does not initiate the sale of services to perform such work;

(c) Lines and wires, together with ancillary apparatus, and equipment, owned by a customer that is an independent power producer who has entered into an agreement for the sale of electricity to a utility and that are used in transmitting electricity from an electrical generating unit located on premises used by such customer to the point of interconnection with the utility's system.

(3) Any person, firm, partnership, corporation, or other entity licensed under RCW 19.28.041 may enter into a contract with a utility for the performance of work under subsection (2) of this section.

(4) No license under the provisions of this chapter shall be required from any person, firm, partnership, corporation, or other entity because of the work of installing and repairing ignition or lighting systems for motor vehicles.

(5) No license under the provisions of this chapter shall be required from any person, firm, partnership, corporation, or other entity because of work in connection with the installation, repair, or maintenance of wires and equipment, and installations thereof, exempted in RCW 19.28.010.

(6) The department may by rule exempt from licensing requirements under this chapter work performed on premanufactured electric power generation equipment assemblies and control gear involving the testing, repair, modification, maintenance, or installation of components internal to the power generation equipment, the control gear, or the transfer switch.

(7) This chapter does not require an electrical contractor license if: (a) An appropriately certified electrician or a properly supervised certified electrical trainee is performing the installation, repair, or maintenance of wires and equipment for a nonprofit corporation that holds a current tax exempt status as provided under 26 U.S.C. Sec. 501(c)(3) or a nonprofit religious organization; (b) the certified electrician or certified electrical trainee is not compensated for the electrical work; and (c) the value of the electrical work does not exceed thirty thousand dollars.

(8) An entity that currently holds a valid specialty or general plumbing contractor's registration under chapter 18.27 RCW may employ a certified plumber, a certified residential plumber, or a plumber trainee meeting the requirements of chapter 18.106 RCW to perform electrical work that is incidentally, directly, and immediately appropriate to the like-in-kind replacement of a household appliance or other small household utilization equipment that requires limited electric power and limited waste and/or water connections. A plumber trainee must be supervised by a certified plumber or a certified residential plumber while performing electrical work. The electrical work is subject to the permitting and inspection requirements of this chapter. [2003 c 399 § 301; 2003 c 242 § 1; 2001 c 211 § 6; 1998 c 98 § 1; 1992 c 240 § 1; 1980 c 30 § 15; 1935 c 169 § 11; RRS § 8307-11. Formerly RCW 19.28.200.]

Reviser's note: This section was amended by 2003 c 242 § 1 and by 2003 c 399 § 301, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings not law—2003 c 399: See note following RCW 19.28.006.

19.28.095 Equipment repair specialty—Scope of work. (1) The scope of work for the equipment repair specialty involves servicing, maintaining, repairing, or replacing utilization equipment.

(2) "Utilization equipment" means equipment that is: (a) Self-contained on a single skid or frame; (b) factory built to standardized sizes or types; (c) listed or field evaluated by a laboratory or approved by the department under WAC 296-46B-030; and (d) connected as a single unit to a single source of electrical power limited to a maximum of six hundred volts. The equipment may also be connected to a separate single source of electrical control power limited to a maximum of two hundred fifty volts. Utilization equipment does not include devices used for occupant space heating by industrial, commercial, hospital, educational, public, and private commercial buildings, and other end users.

(3) "Servicing, maintaining, repairing, or replacing utilization equipment" includes:

(a) The like-in-kind replacement of the equipment if the same unmodified electrical circuit is used to supply the equipment being replaced;

(b) The like-in-kind replacement or repair of remote control components that are integral to the operation of the equipment;

(c) The like-in-kind replacement or repair of electrical components within the equipment; and

(d) The disconnection, replacement, and reconnection of low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit.

(4) "Servicing, maintaining, repairing, or replacing utilization equipment" does not include:

(a) The installation, repair, or modification of wiring that interconnects equipment and/or remote components, branch circuit conductors, services, feeders, panelboards, disconnect switches, motor control centers, remote magnetic starters/contactors, or raceway/conductor systems interconnecting multiple equipment or other electrical components;

(b) Any work providing electrical feeds into the power distribution unit or installation of conduits and raceways; or

(c) Any electrical work governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations), except for electrical work in sewage pumping stations. [2003 c 399 § 602.]

Part headings not law—2003 c 399: See note following RCW 19.28.006.

19.28.101 Inspections—Notice to repair and change—Disconnection—Entry—Concealment—Accessibility—Connection to utility—Permits, fees—Limitation. (1) The director shall cause an inspector to inspect all wiring, appliances, devices, and equipment to which this chapter applies except for basic electrical work as defined in this chapter. The department may not require an electrical work permit for class A basic electrical work unless deficiencies in the installation or repair require inspection. The department may inspect class B basic electrical work on a random basis as specified by the department in rule. Nothing contained in this chapter may be construed as providing any authority for any subdivision of government to adopt by ordinance any provisions contained or provided for in this chapter except those pertaining to cities and towns pursuant to RCW 19.28.010(3).

(2) Upon request, electrical inspections will be made by the department within forty-eight hours, excluding holidays, Saturdays, and Sundays. If, upon written request, the electrical inspector fails to make an electrical inspection within twenty-four hours, the serving utility may immediately connect electrical power to the installation if the necessary electrical work permit is displayed: PROVIDED, That if the request is for an electrical inspection that relates to a mobile home installation, the applicant shall provide proof of a current building permit issued by the local government agency authorized to issue such permits as a prerequisite for inspection approval or connection of electrical power to the mobile home.

(3) Whenever the installation of any wiring, device, appliance, or equipment is not in accordance with this chapter, or is in such a condition as to be dangerous to life or property, the person, firm, partnership, corporation, or other entity owning, using, or operating it shall be notified by the department and shall within fifteen days, or such further reasonable time as may upon request be granted, make such repairs and changes as are required to remove the danger to life or property and to make it conform to this chapter. The director, through the inspector, is hereby empowered to disconnect or order the discontinuance of electrical service to conductors or equipment that are found to be in a dangerous or unsafe condition and not in accordance with this chapter. Upon making a disconnection the inspector shall attach a notice stating that the conductors have been found dangerous to life or property and are not in accordance with this chapter. It is unlawful for any person to reconnect such defective conductors or equipment without the approval of the department, and until the conductors and equipment have been placed in a safe and secure condition, and in a condition that complies with this chapter.

(4) The director, through the electrical inspector, has the right during reasonable hours to enter into and upon any building or premises in the discharge of his or her official duties for the purpose of making any inspection or test of the installation of new construction or altered electrical wiring, electrical devices, equipment, or material contained in or on the buildings or premises. No electrical wiring or equipment subject to this chapter may be concealed until it has been approved by the inspector making the inspection. At the time of the inspection, electrical wiring or equipment subject to this chapter must be sufficiently accessible to permit the inspector to employ any testing methods that will verify conformance with the national electrical code and any other requirements of this chapter.

(5) Persons, firms, partnerships, corporations, or other entities making electrical installations shall obtain inspection and approval from an authorized representative of the department as required by this chapter before requesting the electric utility to connect to the installations. Electric utilities may connect to the installations if approval is clearly indicated by certification of the electrical work permit required to be affixed to each installation or by equivalent means, except that increased or relocated services may be reconnected immediately at the discretion of the utility before approval if an electrical work permit is displayed. The permits shall be furnished upon payment of the fee to the department.

(6) The director, subject to the recommendations and approval of the board, shall set by rule a schedule of license and electrical work permit fees that will cover the costs of administration and enforcement of this chapter. The rules shall be adopted in accordance with the administrative procedure act, chapter 34.05 RCW. No fee may be charged for plug-in mobile homes, recreational vehicles, or portable appliances.

(7) Nothing in this chapter shall authorize the inspection of any wiring, appliance, device, or equipment, or installations thereof, by any utility or by any person, firm, partnership, corporation, or other entity employed by a utility in connection with the installation, repair, or maintenance of lines, wires, apparatus, or equipment owned by or under the control

of the utility. All work covered by the national electric code not exempted by the 1981 edition of the national electric code 90-2(B)(5) shall be inspected by the department. [2003 c 399 § 201; 1996 c 241 § 4; 1992 c 240 § 2; 1989 c 344 § 1; 1988 c 81 § 7; 1983 c 206 § 7; 1971 ex.s. c 129 § 2; 1969 ex.s. c 71 § 4; 1967 c 88 § 3; 1965 ex.s. c 117 § 5; 1963 c 207 § 3; 1959 c 325 § 2; 1935 c 169 § 8; RRS § 8307-8. Formerly RCW 19.28.210, 19.28.220, 19.28.230, 19.28.240.]

Part headings not law—2003 c 399: See note following RCW 19.28.006.

Effective date—1971 ex.s. c 129: See note following RCW 19.28.041.

Adoption of certain regulations proscribed: RCW 36.32.125.

RCW 19.28.101 inapplicable in certain cities, towns, electricity supply agency service areas, and rights of way of state highways: RCW 19.28.141.

19.28.141 RCW 19.28.101 inapplicable in certain cities and towns, electricity supply agency service areas, and rights of way of state highways. (1) Except as provided in subsection (2) of this section, the provisions of RCW 19.28.101 shall not apply:

(a) Within the corporate limits of any incorporated city or town which has heretofore adopted and enforced or subsequently adopts and enforces an ordinance requiring an equal, higher or better standard of construction and of materials, devices, appliances and equipment than is required by this chapter.

(b) Within the service area of an electricity supply agency owned and operated by a city or town which is supplying electricity and enforcing a standard of construction and materials outside its corporate limits [on] July 1, 1963. The city, town, or agency shall enforce by inspection within its service area outside its corporate limits the same standards of construction and of materials, devices, appliances and equipment as are enforced by the department of labor and industries under this chapter. Fees charged in connection with such enforcement shall not exceed those established in RCW 19.28.101.

(c) Within the rights of way of state highways, provided the state department of transportation maintains and enforces an equal, higher or better standard of construction and of materials, devices, appliances and equipment than is required by RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361.

(2) A city, town, or electrical supply agency is permitted, but not required, to enforce the same permitting and inspection standards applicable to basic electrical work as are enforced by the department of labor and industries. [2003 c 399 § 202; 2001 c 211 § 9; 1986 c 156 § 12; 1967 ex.s. c 97 § 1; 1963 c 207 § 4; 1959 c 325 § 3. Formerly RCW 19.28.360.]

Part headings not law—2003 c 399: See note following RCW 19.28.006.

Effective date—1963 c 207: See RCW 19.28.910.

19.28.191 Certificate of competency—Eligibility for examination—Rules. (1) Upon receipt of the application, the department shall review the application and determine whether the applicant is eligible to take an examination for the master journeyman electrician, journeyman electrician,

master specialty electrician, or specialty electrician certificate of competency.

(a) Before July 1, 2005, an applicant who possesses a valid journeyman electrician certificate of competency in effect for the previous four years and a valid general administrator's certificate may apply for a master journeyman electrician certificate of competency without examination.

(b) Before July 1, 2005, an applicant who possesses a valid specialty electrician certificate of competency, in the specialty applied for, for the previous two years and a valid specialty administrator's certificate, in the specialty applied for, may apply for a master specialty electrician certificate of competency without examination.

(c) Before December 1, 2003, the following persons may obtain an equipment repair specialty electrician certificate of competency without examination:

(i) A person who has successfully completed an apprenticeship program approved under chapter 49.04 RCW for the machinist trade; and

(ii) A person who provides evidence in a form prescribed by the department affirming that: (A) He or she was employed as of April 1, 2003, by a factory-authorized equipment dealer or service company; and (B) he or she has worked in equipment repair for a minimum of four thousand hours.

(d) To be eligible to take the examination for a master journeyman electrician certificate of competency the applicant must have possessed a valid journeyman electrician certificate of competency for four years.

(e) To be eligible to take the examination for a master specialty electrician certificate of competency the applicant must have possessed a valid specialty electrician certificate of competency, in the specialty applied for, for two years.

(f) To be eligible to take the examination for a journeyman certificate of competency the applicant must have:

(i) Worked in the electrical construction trade for a minimum of eight thousand hours, of which four thousand hours shall be in industrial or commercial electrical installation under the supervision of a master journeyman electrician or journeyman electrician and not more than a total of four thousand hours in all specialties under the supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Specialty electricians with less than a four thousand hour work experience requirement cannot credit the time required to obtain that specialty towards qualifying to become a journeyman electrician; or

(ii) Successfully completed an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade.

(g) To be eligible to take the examination for a specialty electrician certificate of competency the applicant must have:

(i) Worked in the residential (as specified in WAC 296-46A-930(2)(a)), pump and irrigation (as specified in WAC 296-46A-930(2)(b)(i)), sign (as specified in WAC 296-46A-930(2)(c)), limited energy (as specified in WAC 296-46A-930(2)(e)(i)), nonresidential maintenance (as specified in WAC 296-46A-930(2)(f)(i)), or other new nonresidential specialties as determined by the department in rule under the supervision of a master journeyman electrician, journeyman

electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty for a minimum of four thousand hours; or

(ii) Worked in the appliance repair specialty as determined by the department in rule, restricted nonresidential maintenance as determined by the department in rule, the equipment repair specialty as determined by the department in rule, or a specialty other than the designated specialties in (g)(i) of this subsection for a minimum of the initial ninety days, or longer if set by rule by the department. The restricted nonresidential maintenance specialty is limited to a maximum of 277 volts and 20 amperes for lighting branch circuits and/or a maximum of 250 volts and 60 amperes for other circuits, but excludes the replacement or repair of circuit breakers. The initial period must be spent under one hundred percent supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. After this initial period, a person may take the specialty examination. If the person passes the examination, the person may work unsupervised for the balance of the minimum hours required for certification. A person may not be certified as a specialty electrician in the appliance repair specialty or in a specialty other than the designated specialties in (g)(i) of this subsection, however, until the person has worked a minimum of two thousand hours in that specialty, or longer if set by rule by the department; or

(iii) Successfully completed an approved apprenticeship program under chapter 49.04 RCW for the applicant's specialty in the electrical construction trade.

(h) Any applicant for a journeyman electrician certificate of competency who has successfully completed a two-year program in the electrical construction trade at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the work force training and education coordinating board under chapter 28C.10 RCW may substitute up to two years of the technical or trade school program for two years of work experience under a master journeyman electrician or journeyman electrician. The applicant shall obtain the additional two years of work experience required in industrial or commercial electrical installation prior to the beginning, or after the completion, of the technical school program. Any applicant who has received training in the electrical construction trade in the armed service of the United States may be eligible to apply armed service work experience towards qualification to take the examination for the journeyman electrician certificate of competency.

(i) An applicant for a specialty electrician certificate of competency who, after January 1, 2000, has successfully completed a two-year program in the electrical construction trade at a public community or technical college, or a not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW, may substitute up to one year of the technical or trade school program for one year of work experience under a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Any applicant who has received train-

ing in the electrical construction trade in the armed services of the United States may be eligible to apply armed service work experience towards qualification to take the examination for an appropriate specialty electrician certificate of competency.

(j) The department must determine whether hours of training and experience in the armed services or school program are in the electrical construction trade and appropriate as a substitute for hours of work experience. The department must use the following criteria for evaluating the equivalence of classroom electrical training programs and work in the electrical construction trade:

(i) A two-year electrical training program must consist of three thousand or more hours.

(ii) In a two-year electrical training program, a minimum of two thousand four hundred hours of student/instructor contact time must be technical electrical instruction directly related to the scope of work of the electrical specialty. Student/instructor contact time includes lecture and in-school lab.

(iii) The department may not allow credit for a program that accepts more than one thousand hours transferred from another school's program.

(iv) Electrical specialty training school programs of less than two years will have all of the above student/instructor contact time hours proportionately reduced. Such programs may not apply to more than fifty percent of the work experience required to attain certification.

(v) Electrical training programs of less than two years may not be credited towards qualification for journeyman electrician unless the training program is used to gain qualification for a four thousand hour electrical specialty.

(k) No other requirement for eligibility may be imposed.

(2) The department shall establish reasonable rules for the examinations to be given applicants for certificates of competency. In establishing the rules, the department shall consult with the board. Upon determination that the applicant is eligible to take the examination, the department shall so notify the applicant, indicating the time and place for taking the examination.

(3) No noncertified individual may work unsupervised more than one year beyond the date when the trainee would be eligible to test for a certificate of competency if working on a full-time basis after original application for the trainee certificate. For the purposes of this section, full-time basis means two thousand hours. [2003 c 399 § 601; 2003 c 211 § 1; 2002 c 249 § 5; 1997 c 309 § 3; 1988 c 81 § 13; 1983 c 206 § 14; 1980 c 30 § 4. Formerly RCW 19.28.530.]

Reviser's note: This section was amended by 2003 c 211 § 1 and by 2003 c 399 § 601, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 399 §§ 501, 601, and 701: "Sections *501, 601, and 701 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 20, 2003]." [2003 c 399 § 902.]

***Reviser's note:** Section 501, chapter 399, Laws of 2003 was vetoed by the governor.

Part headings not law—2003 c 399: See note following RCW 19.28.006.

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19.28.261 Exemptions from RCW 19.28.161 through 19.28.271. (1) Nothing in RCW 19.28.161 through 19.28.271 shall be construed to require that a person obtain a license or a certified electrician in order to do electrical work at his or her residence or farm or place of business or on other property owned by him or her unless the electrical work is on the construction of a new building intended for rent, sale, or lease. However, if the construction is of a new residential building with up to four units intended for rent, sale, or lease, the owner may receive an exemption from the requirement to obtain a license or use a certified electrician if he or she provides a signed affidavit to the department stating that he or she will be performing the work and will occupy one of the units as his or her principal residence. The owner shall apply to the department for this exemption and may only receive an exemption once every twenty-four months. It is intended that the owner receiving this exemption shall occupy the unit as his or her principal residence for twenty-four months after completion of the units.

(2) Nothing in RCW 19.28.161 through 19.28.271 shall be intended to derogate from or dispense with the requirements of any valid electrical code enacted by a city or town pursuant to RCW 19.28.010(3), except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the electrical construction trade.

(3) RCW 19.28.161 through 19.28.271 shall not apply to common carriers subject to Part I of the Interstate Commerce Act, nor to their officers and employees.

(4) Nothing in RCW 19.28.161 through 19.28.271 shall be deemed to apply to the installation or maintenance of telephone, telegraph, radio, or television wires and equipment; nor to any electrical utility or its employees in the installation, repair, and maintenance of electrical wiring, circuits, and equipment by or for the utility, or comprising a part of its plants, lines or systems.

(5) The licensing provisions of RCW 19.28.161 through 19.28.271 shall not apply to:

(a) Persons making electrical installations on their own property or to regularly employed employees working on the premises of their employer, unless the electrical work is on the construction of a new building intended for rent, sale, or lease;

(b) Employees of an employer while the employer is performing utility type work of the nature described in RCW 19.28.091 so long as such employees have registered in the state of Washington with or graduated from a state-approved outside lineman apprenticeship course that is recognized by the department and that qualifies a person to perform such work;

(c) Any work exempted under RCW 19.28.091(6); and

(d) Certified plumbers, certified residential plumbers, or plumber trainees meeting the requirements of chapter 18.106 RCW and performing exempt work under RCW 19.28.091(8).

(6) Nothing in RCW 19.28.161 through 19.28.271 shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative or other person when none of the individuals doing the electrical

installation hold themselves out as engaged in the trade or business of electrical installations.

(7) Nothing precludes any person who is exempt from the licensing requirements of this chapter under this section from obtaining a journeyman or specialty certificate of competency if they otherwise meet the requirements of this chapter. [2003 c 399 § 302; 2001 c 211 § 19; 1998 c 98 § 2; 1994 c 157 § 1; 1992 c 240 § 3; 1986 c 156 § 16; 1983 c 206 § 21; 1980 c 30 § 12. Formerly RCW 19.28.610.]

Part headings not law—2003 c 399: See note following RCW 19.28.006.

19.28.351 Electrical license fund. All sums received from licenses, permit fees, or other sources, herein shall be paid to the state treasurer and placed in a special fund designated as the "electrical license fund," and paid out upon vouchers duly and regularly issued therefor and approved by the director of labor and industries or the director's designee following determination by the board that the sums are necessary to accomplish the intent of chapter 19.28 RCW. The treasurer shall keep an accurate record of payments into, or receipts of, the fund, and of all disbursements therefrom.

During the 2003-2005 biennium, the legislature may transfer moneys from the electrical license fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2003 1st sp.s. c 25 § 910; 1988 c 81 § 11; 1979 ex.s. c 67 § 1; 1935 c 169 § 18; RRS § 8307-18. Formerly RCW 19.28.330.]

Severability—2003 1st sp.s. c 25: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 25 § 945.]

Effective date—2003 1st sp.s. c 25: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2003]." [2003 1st sp.s. c 25 § 946.]

Severability—1979 ex.s. c 67: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 67 § 22.]

19.28.371 Medical device—Installation, maintenance, or repair—Compliance with chapter—Limit of exemption. (1) A medical device which is not in violation of the Medical Device Amendments of 1976, Public Law No. 94-295, 90 Stat. 539, as amended from time to time, and as interpreted by the Food and Drug Administration of the United States Department of Health and Human Services or its successor, shall be deemed to be in compliance with all requirements imposed by this chapter.

(2) The installation, maintenance, or repair of a medical device deemed in compliance with this chapter is exempt from licensing requirements under RCW 19.28.091, certification requirements under RCW 19.28.161, and inspection and permitting requirements under RCW 19.28.101. This exemption does not include work providing electrical feeds into the power distribution unit or installation of conduits and raceways. This exemption covers only those factory engineers or third-party service companies with equivalent training who are qualified to perform such service. [2003 c 78 § 1; 1981 c 57 § 1. Formerly RCW 19.28.390.]

Chapter 19.48 RCW

HOTELS, LODGING HOUSES, ETC.—RESTAURANTS

Sections

19.48.110 Obtaining hotel, restaurant, lodging house, ski area, etc., accommodations by fraud—Penalty. (*Effective July 1, 2004.*)

19.48.110 Obtaining hotel, restaurant, lodging house, ski area, etc., accommodations by fraud—Penalty. (*Effective July 1, 2004.*)

(1)(a) Any person who willfully obtains food, money, credit, use of ski area facilities, lodging or accommodation at any hotel, inn, restaurant, commercial ski area, boarding house or lodging house, without paying therefor, with intent to defraud the proprietor, owner, operator or keeper thereof; or who obtains food, money, credit, use of ski area facilities, lodging or accommodation at such hotel, inn, restaurant, commercial ski area, boarding house or lodging house, by the use of any false pretense; or who, after obtaining food, money, credit, use of ski area facilities, lodging, or accommodation at such hotel, inn, restaurant, commercial ski area, boarding house, or lodging house, removes or causes to be removed from such hotel, inn, restaurant, commercial ski area, boarding house or lodging house, his or her baggage, without the permission or consent of the proprietor, manager or authorized employee thereof, before paying for such food, money, credit, use of ski area facilities, lodging or accommodation, is guilty of a gross misdemeanor, except as provided in (b) of this subsection.

(b) If the aggregate amount of food, money, use of ski area facilities, lodging or accommodation, or credit so obtained is seventy-five dollars or more such person is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Proof that food, money, credit, use of ski area facilities, lodging or accommodation were obtained by false pretense or by false or fictitious show or pretense of any baggage or other property, or that the person refused or neglected to pay for such food, money, credit, use of ski area facilities, lodging or accommodation on demand, or that he or she gave in payment for such food, money, credit, use of ski area facilities, lodging or accommodation, negotiable paper on which payment was refused, or that he or she absconded, or departed from, or left, the premises without paying for such food, money, credit, use of ski area facilities, lodging or accommodation, or that he or she removed, or attempted to remove, or caused to be removed, or caused to be attempted to be removed his or her property or baggage, shall be prima facie evidence of the fraudulent intent hereinbefore mentioned. [2003 c 53 § 146; 1985 c 129 § 2; 1974 ex.s. c 21 § 1; 1929 c 216 § 6; 1915 c 190 § 7; 1890 p 96 § 2; RRS § 6866. Formerly RCW 19.48.110, 19.48.120.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Legislative findings—1985 c 129: "The legislature finds that commercial ski areas, which contribute significantly to the economic well-being of the state, suffer substantial financial losses from the fraudulent use of their facilities by persons who obtain services without paying for them. It is therefore the intent of the legislature that the law that protects hotels, inns, and restaurants from such fraud be extended to also protect commercial ski areas." [1985 c 129 § 1.]

Leaving restaurant or hotel or motel without paying: RCW 4.24.230.

Chapter 19.68 RCW

REBATING BY PRACTITIONERS OF HEALING PROFESSIONS

Sections

19.68.010 Rebating prohibited—Disclosure—List of alternative facilities. (*Effective July 1, 2004.*)

19.68.010 Rebating prohibited—Disclosure—List of alternative facilities. (*Effective July 1, 2004.*) (1) It shall be unlawful for any person, firm, corporation or association, whether organized as a cooperative, or for profit or nonprofit, to pay, or offer to pay or allow, directly or indirectly, to any person licensed by the state of Washington to engage in the practice of medicine and surgery, drugless treatment in any form, dentistry, or pharmacy and it shall be unlawful for such person to request, receive or allow, directly or indirectly, a rebate, refund, commission, unearned discount or profit by means of a credit or other valuable consideration in connection with the referral of patients to any person, firm, corporation or association, or in connection with the furnishings of medical, surgical or dental care, diagnosis, treatment or service, on the sale, rental, furnishing or supplying of clinical laboratory supplies or services of any kind, drugs, medication, or medical supplies, or any other goods, services or supplies prescribed for medical diagnosis, care or treatment.

(2) Ownership of a financial interest in any firm, corporation or association which furnishes any kind of clinical laboratory or other services prescribed for medical, surgical, or dental diagnosis shall not be prohibited under this section where (a) the referring practitioner affirmatively discloses to the patient in writing, the fact that such practitioner has a financial interest in such firm, corporation, or association; and (b) the referring practitioner provides the patient with a list of effective alternative facilities, informs the patient that he or she has the option to use one of the alternative facilities, and assures the patient that he or she will not be treated differently by the referring practitioner if the patient chooses one of the alternative facilities.

(3) Any person violating this section is guilty of a misdemeanor. [2003 c 53 § 147; 1993 c 492 § 233; 1973 1st ex.s. c 26 § 1; 1965 ex.s. c 58 § 1. Prior: 1949 c 204 § 1; Rem. Supp. 1949 § 10185-14.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Chapter 19.76 RCW

BEVERAGE BOTTLES, ETC.— LABELING—REFILLING

Sections

19.76.110 Refilling bottles, etc.—Forbidden. (*Effective July 1, 2004.*)

19.76.130 Refilling bottles, etc.—Penalty. (*Effective July 1, 2004.*)

19.76.110 Refilling bottles, etc.—Forbidden. (*Effective July 1, 2004.*) It is hereby declared to be unlawful for any person or persons hereafter, without the written consent of the owner or owners thereof, to fill with ale, porter, lager

beer or soda, mineral water or other beverages, for sale or to be furnished to customers, any such casks, barrels, kegs, bottles or boxes so marked or stamped, or to sell, dispose of, buy or traffic in, or wantonly destroy any such cask, barrel, keg, bottle or box so marked, stamped, by the owner or owners thereof, after such owner or owners shall have complied with the provisions of RCW 19.76.100. [2003 c 53 § 148; 1897 c 38 § 2; RRS § 11547.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Crimes relating to brands and marks: Chapter 9.16 RCW.

19.76.130 Refilling bottles, etc.—Penalty. (*Effective July 1, 2004.*) Any person who violates RCW 19.76.100 through 19.76.120 is guilty of a misdemeanor, and upon conviction shall be fined five dollars for each and every cask, barrel, keg, or box, and fifty cents for each and every bottle so by him, her, or them filled, bought, sold, used, trafficked in, or wantonly destroyed, together with costs of suit for first offense, and ten dollars for each and every cask, barrel, keg, and box and one dollar for each and every bottle so filled, bought, sold, used, trafficked in, or wantonly destroyed, together with the costs of suit for each subsequent offense. [2003 c 53 § 149.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 19.77 RCW

TRADEMARK REGISTRATION

Sections

19.77.010 Definitions.
19.77.020 Registration of certain trademarks prohibited.
19.77.050 Duration of certificate—Renewal—Fees—Rules.
19.77.110 Repealed.
19.77.115 Classification of goods and services.
19.77.140 Trademark imitation.
19.77.150 Remedies of registrants.
19.77.160 Injunctive relief for owners of famous marks.

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

(1) "Alien" when used with reference to a person means a person who is not a citizen of the United States.

(2) "Applicant" means the person filing an application for registration of a trademark under this chapter, his or her legal representatives, predecessors, successors, or assigns of record with the secretary of state.

(3) "Domestic" when used with reference to a person means a person who is a citizen of the United States.

(4) The term "colorable imitation" includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive.

(5) A "counterfeit" is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark.

(6) "Dilution" means the lessening of the capacity of a famous mark to identify and distinguish goods or services through use of a mark by another person, regardless of the presence or absence of (a) competition between the owner of the famous mark and other parties, or (b) likelihood of confusion, mistake, or deception arising from that use.

(7) "Person" means any individual, firm, partnership, corporation, association, union, or other organization capable of suing and being sued in a court of law.

(8) "Registered mark" means a trademark registered under this chapter.

(9) "Registrant" means the person to whom the registration of a trademark under this chapter is issued, his or her legal representatives, successors, or assigns of record with the secretary of state.

(10) "Trademark" or "mark" means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him or her and to distinguish them from goods made or sold by others, and any word, name, symbol, or device, or any combination thereof, and any title, designation, slogan, character name, and distinctive feature of radio or television programs, used by a person in the sale or advertising of services to identify the services provided by him or her and to distinguish them from the services of others.

(11) A trademark shall be deemed to be "used" in this state when it is placed in the ordinary course of trade and not merely to reserve a right in a mark in any manner on the goods or their containers, or on tabs or labels affixed thereto, or displayed in connection with such goods, and such goods are sold or otherwise distributed in this state, or when it is used or displayed in the sale or advertising of services rendered in this state.

(12) "Trade name" means any name used by a person to identify a business or vocation of such a person.

(13) A mark shall be deemed to be "abandoned":

(a) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for three consecutive years shall be prima facie evidence of abandonment; or

(b) When any course of conduct of the registrant, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services or causes the mark to lose its significance as an indication of source or origin. Purchaser motivation shall not be a test for determining abandonment under this subsection. [2003 c 34 § 1; 1994 c 60 § 6; 1989 c 72 § 1; 1955 c 211 § 1.]

Effective date—1955 c 211: "This act shall be in force and take effect on September 1, 1955." [1955 c 211 § 19.]

19.77.020 Registration of certain trademarks prohibited. (1) A trademark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(a) Consists of or comprises immoral, deceptive, or scandalous matter; or

(b) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute; or

(c) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or

(d) Consists of or comprises the name, portrait, or signature identifying a particular living individual who has not consented in writing to its registration; or

(e) Consists of or comprises a trademark which so resembles a trademark registered in this state, or a trademark or trade name used in this state by another prior to the date of the applicant's or applicant's predecessor's first use in this state and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

(2) Registration under this title does not constitute prima facie evidence that a mark is not merely descriptive, deceptively misdescriptive, or geographically descriptive or deceptively misdescriptive of the goods or services with which it is used, or is not primarily merely a surname, unless the applicant has made substantially exclusive and continuous use thereof as a trademark in this state or elsewhere in the United States for the five years next preceding the date of the filing of the application for registration.

(3) A trade name is not registrable under this chapter. However, if a trade name also functions as a trademark, it is registrable as a trademark.

(4) The secretary of state shall make a determination of registerability by considering the application record and the marks previously registered and subsisting under this chapter. [2003 c 34 § 2; 1989 c 72 § 2; 1955 c 211 § 2.]

19.77.050 Duration of certificate—Renewal—Fees—

Rules. Registration of a trademark hereunder shall be effective for a term of five years from the date of registration. Upon application filed within six months prior to the expiration of such term, on a form to be furnished by the secretary of state requiring all the allegations of an application for original registration, the registration may be renewed for successive terms of five years as to the goods or services for which the trademark is still in use in this state. A renewal fee as set by rule by the secretary of state, payable to the secretary of state, shall accompany each application for renewal of the registration.

The secretary of state shall notify registrants of trademarks hereunder or their agents for service of record with the secretary of state of the necessity of renewal within the year, but not less than six months, next preceding the expiration of the unexpired original or renewed term by writing to the last known address of the registrants or their agents according to the files of the secretary of state. Neither the secretary of state's failure to notify a registrant nor the registrant's nonreceipt of a notice under this section shall extend the term of a registration or excuse the registrant's failure to renew a registration. [2003 c 34 § 3; 1994 c 60 § 3; 1989 c 72 § 5; 1982 c 35 § 182; 1955 c 211 § 5.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

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

19.77.115 Classification of goods and services. The secretary of state must adopt by rule a classification of goods and services for convenience of administration of this chapter, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate

class or classes of goods or services. When a single application includes goods or services that fall within multiple classes, the secretary of state may require payment of a fee for each class. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States patent and trademark office. [2003 c 34 § 4.]

19.77.140 Trademark imitation. (1) Subject to the provisions of RCW 19.77.900 any person who shall:

(a) Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a trademark registered under this chapter in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source or origin of such goods or services; or

(b) Reproduce, counterfeit, copy or colorably imitate any such trademark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution of goods or services in this state on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive as to the source or origin of such goods or services shall be liable to a civil action by the registrant for any or all of the remedies provided in RCW 19.77.150, except that under (b) of this subsection the registrant shall not be entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

(2) In determining whether, under this chapter, there is a likelihood of confusion, mistake, or deception between marks when used in association with goods or services, the court shall consider all relevant factors, including, but not limited to the following:

(a) The similarity or dissimilarity of the marks in their entireties to appearance, sound, meaning, connotation, and commercial impression;

(b) The similarity or dissimilarity of the goods or services and nature of the goods and services;

(c) The similarity or dissimilarity of trade channels;

(d) The conditions under which sales are made and buyers to whom sales are made;

(e) The fame of the marks;

(f) The number and nature of similar marks in use on similar goods or services;

(g) The nature and extent of any actual confusion;

(h) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion;

(i) The variety of goods or services on which each of the marks is or is not used;

(j) The nature and extent of potential confusion, i.e., whether de minimis or substantial;

(k) Any other established fact probative of the effect of use. [2003 c 34 § 5; 1989 c 72 § 9; 1955 c 211 § 14.]

19.77.150 Remedies of registrants. Any registrant may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or colorable imitations of a trade-

mark registered under this chapter, and any court of competent jurisdiction may grant an injunction to restrain such manufacture, use, display, or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such registrant all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display, or sale; and such court may also order that any such counterfeits or colorable imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the registrant, to be destroyed. The court, in its discretion, may enter judgment awarding reasonable attorneys' fees and/or an amount not to exceed three times such profits and damages in such cases where the court finds the other party committed the wrongful acts in bad faith or otherwise as according to the circumstances of the case.

The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state. [2003 c 34 § 6; 1989 c 72 § 11; 1955 c 211 § 15.]

19.77.160 Injunctive relief for owners of famous marks. (1) The owner of a mark that is famous in this state shall be entitled, subject to the principles of equity and upon such terms as the court deems reasonable, to an injunction against another person's commercial use in this state of a mark, commencing after the mark becomes famous, which causes dilution of the distinctive quality of the mark, and to obtain such other relief as is provided in this section. In determining whether a mark is famous and has distinctive quality, a court shall consider all relevant factors, including, but not limited to the following:

(a) The degree or inherent or acquired distinctiveness of the mark in this state;

(b) The duration and extent of use of the mark in connection with the goods or services with which the mark is used;

(c) The duration and extent of advertising and publicity of the mark in this state;

(d) The geographical extent of the trading area in which the mark is used;

(e) The channels of trade for the goods or services with which the mark is used;

(f) The degree of recognition of the mark in the trading areas and channels of trade in this state used by the mark's owner and the person against whom the injunction is sought;

(g) The nature and extent of use of the same or similar marks by third parties; and

(h) Whether the mark is the subject of state registration in this state or United States registration.

(2) The owner shall be entitled only to injunctive relief in an action brought under this section, unless the subsequent user willfully intended to trade on the owner's reputation or to cause dilution of the owner's mark. If such willful intent is proven, the owner shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity.

(3) The following are not actionable under this section:

(a) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify competing goods or services of the owner of the famous mark;

(b) Noncommercial use of a famous mark; and

(c) All forms of reporting and news commentary. [2003 c 34 § 7; 1989 c 72 § 10.]

Chapter 19.85 RCW REGULATORY FAIRNESS ACT

Sections

19.85.020 Definitions.

19.85.020 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply through this chapter.

(1) "Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.

(2) "Small business economic impact statement" means a statement meeting the requirements of RCW 19.85.040 prepared by a state agency pursuant to RCW 19.85.030.

(3) "Industry" means all of the businesses in this state in any one four-digit standard industrial classification as published by the United States department of commerce. However, if the use of a four-digit standard industrial classification would result in the release of data that would violate state confidentiality laws, "industry" means all businesses in a three-digit standard industrial classification. [2003 c 166 § 1; 1994 c 249 § 10; 1993 c 280 § 34; 1989 c 374 § 1; 1982 c 6 § 2.]

Effective date—1994 c 249 § 10: "Section 10 of this act shall take effect July 1, 1994." [1994 c 249 § 37.]

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

Chapter 19.86 RCW UNFAIR BUSINESS PRACTICES— CONSUMER PROTECTION

Sections

19.86.145 Penalties—Animals used in biomedical research. (*Effective July 1, 2004.*)

19.86.145 Penalties—Animals used in biomedical research. (*Effective July 1, 2004.*) Any violation of RCW 9.08.070 through 9.08.078 or 16.52.220 constitutes an unfair or deceptive practice in violation of this chapter. The relief available under this chapter for violations of RCW 9.08.070 through 9.08.078 or 16.52.220 by a research institution shall be limited to only monetary penalties in an amount not to exceed two thousand five hundred dollars. [2003 c 53 § 150; 1989 c 359 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 19.100 RCW FRANCHISE INVESTMENT PROTECTION

Sections

19.100.210 Violations—Injunctions—Assurance of discontinuance—Civil and criminal penalties—Chapter nonexclusive. (*Effective July 1, 2004.*)

19.100.210 Violations—Injunctions—Assurance of discontinuance—Civil and criminal penalties—Chapter nonexclusive. (*Effective July 1, 2004.*) (1) The attorney general or director may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The prevailing party may in the discretion of the court recover the costs of such action including a reasonable attorneys' fee.

(2) Every person who shall violate the terms of any injunction issued as in this chapter provided shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

(3) Every person who violates RCW 19.100.020, 19.100.080, 19.100.150, and 19.100.170 shall forfeit a civil penalty of not more than two thousand dollars for each violation.

(4) For the purpose of this section the superior court issuing an injunction shall retain jurisdiction and the cause shall be continued and in such cases the attorney general or director acting in the name of the state may petition for the recovery of civil penalties.

(5) In the enforcement of this chapter, the attorney general or director may accept an assurance of discontinuance with the provisions of this chapter from any person deemed by the attorney general or director in violation hereof. Any such assurance shall be in writing, shall state that the person giving such assurance does not admit to any violation of this chapter or to any facts alleged by the attorney general or director, and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his or her principal place of business, or in Thurston county. Proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter.

(6) Any person who willfully violates any provision of this chapter or who willfully violates any rule adopted or order issued under this chapter is guilty of a class B felony and shall upon conviction be fined not more than five thousand dollars or imprisoned for not more than ten years or both, but no person may be imprisoned for the violation of any rule or order if he or she proves that he or she had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation.

(7) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law. [2003 c 53 § 151; 1980 c 63 § 2; 1979 ex.s. c 13 § 1; 1972 ex.s. c 116 § 13; 1971 ex.s. c 252 § 21.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 19.105 RCW CAMPING RESORTS

Sections

- 19.105.480 Violations—As gross misdemeanors—Statute of limitations. (*Effective July 1, 2004.*)
- 19.105.520 Unlawful to represent director's administrative approval as determination as to merits of resort—Penalty. (*Effective July 1, 2004.*)

19.105.480 Violations—As gross misdemeanors—Statute of limitations. (*Effective July 1, 2004.*) (1) Any person who willfully fails to register an offering of camping resort contracts under this chapter is guilty of a gross misdemeanor.

(2) It is a gross misdemeanor for any person in connection with the offer or sale of any camping resort contracts willfully and knowingly:

(a) To make any untrue or misleading statement of a material fact, or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(b) To employ any device, scheme, or artifice to defraud;

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(d) To file, or cause to be filed, with the director any document which contains any untrue or misleading information;

(e) To breach any impound, escrow, trust, or other security arrangement provided for by this chapter;

(f) To cause the breaching of any trust, escrow, impound, or other arrangement placed in a registration for compliance with RCW 19.105.336; or

(g) To employ unlicensed salespersons or permit salespersons or employees to make misrepresentations or violate this chapter.

(3) No indictment or information may be returned under this chapter more than five years after the date of the event alleged to have been a violation. [2003 c 53 § 152; 1988 c 159 § 24; 1982 c 69 § 19.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

19.105.520 Unlawful to represent director's administrative approval as determination as to merits of resort—Penalty. (*Effective July 1, 2004.*) (1) Neither the fact that an application for registration nor the written disclosures required by this chapter have been filed, nor the fact that a camping resort contract offering has been effectively registered or exempted, constitutes a finding by the director that the offering or any document filed under this chapter is true, complete, and not misleading, nor does the fact mean that the director has determined in any way the merits or qualifications of or recommended or given approval to any person, camping resort operator, or camping resort contract transaction.

(2) It is a gross misdemeanor to make or cause to be made to any prospective purchaser any representation inconsistent with this section. [2003 c 53 § 153; 1988 c 159 § 26; 1982 c 69 § 24.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 19.110 RCW

BUSINESS OPPORTUNITY FRAUD ACT

Sections

[2003 RCW Supp—page 220]

- 19.110.075 Business opportunity fraud—Penalties. (*Effective July 1, 2004.*)
- 19.110.120 Unlawful acts. (*Effective July 1, 2004.*)
- 19.110.160 Actions by attorney general or prosecuting attorney to enjoin violations—Injunction—Appointment of receiver or conservator—Civil penalties. (*Effective July 1, 2004.*)

19.110.075 Business opportunity fraud—Penalties. (*Effective July 1, 2004.*) (1) Any person who violates RCW 19.110.050 or 19.110.070 is guilty of a gross misdemeanor.

(2) Any person who knowingly violates RCW 19.110.050 or 19.110.070 is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation. [2003 c 53 § 156.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

19.110.120 Unlawful acts. (*Effective July 1, 2004.*) (1) It is unlawful for any person to:

(a) Make any untrue or misleading statement of a material fact or to omit to state a material fact in connection with the offer, sale, or lease of any business opportunity in the state; or

(b) Employ any device, scheme, or artifice to defraud; or

(c) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or

(d) Knowingly file or cause to be filed with the director any document which contains any untrue or misleading information; or

(e) Knowingly violate any rule or order of the director.

(2) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 154; 1981 c 155 § 12.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

19.110.160 Actions by attorney general or prosecuting attorney to enjoin violations—Injunction—Appointment of receiver or conservator—Civil penalties. (*Effective July 1, 2004.*) (1)(a) The attorney general, in the name of the state or the director, or the proper prosecuting attorney may bring an action to enjoin any person from violating any provision of this chapter. Upon proper showing, the superior court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus.

The court may make such additional orders or judgments as may be necessary to restore to any person in interest and money or property, real or personal, which may have been acquired by means of an act prohibited or declared unlawful by this chapter.

The prevailing party may recover costs of the action, including a reasonable attorney's fee.

(b) The superior court issuing an injunction shall retain jurisdiction. Any person who violates the terms of an injunction shall pay a civil penalty of not more than twenty-five thousand dollars.

(2) The attorney general, in the name of the state or the director, or the proper prosecuting attorney may apply to the superior court to appoint a receiver or conservator for any

person, or the assets of any person, who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

(3) Any person who violates any provision of this chapter except as provided in subsection (1)(b) of this section, is subject to a civil penalty not to exceed two thousand dollars for each violation. Civil penalties authorized by this subsection may be imposed in any civil action brought by the attorney general or proper prosecuting attorney under this chapter and shall be deposited in the state treasury. Any action for recovery of such civil penalty shall be commenced within five years.

(4) The director may refer evidence concerning violations of this chapter to the attorney general or proper prosecuting attorney. The prosecuting attorney, or the attorney general pursuant to authority granted by RCW 10.01.190, 43.10.230, 43.10.232, and 43.10.234 may, with or without such reference, institute appropriate criminal proceedings. [2003 c 53 § 155; 1981 c 155 § 16.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 19.116 RCW

MOTOR VEHICLE SUBLEASING OR TRANSFER

Sections

19.116.080 Unlawful subleasing or transfer—Class C felony. (*Effective July 1, 2004.*)

19.116.080 Unlawful subleasing or transfer—Class C felony. (*Effective July 1, 2004.*) (1) Unlawful subleasing of a motor vehicle is a class C felony punishable under chapter 9A.20 RCW.

(2) Unlawful transfer of an ownership interest in a motor vehicle is a class C felony punishable under chapter 9A.20 RCW. [2003 c 53 § 157; 1990 c 44 § 9.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 19.126 RCW

WHOLESALE DISTRIBUTORS AND SUPPLIERS OF MALT BEVERAGES

Sections

19.126.010 Purpose.
19.126.020 Definitions.

19.126.010 Purpose. (1) The legislature recognizes that both suppliers and wholesale distributors of malt beverages are interested in the goal of best serving the public interest through the fair, efficient, and competitive distribution of such beverages. The legislature encourages them to achieve this goal by:

(a) Assuring the wholesale distributor's freedom to manage the business enterprise, including the wholesale distributor's right to independently establish its selling prices; and

(b) Assuring the supplier and the public of service from wholesale distributors who will devote their best competitive efforts and resources to sales and distribution of the supplier's products which the wholesale distributor has been granted the right to sell and distribute.

(2) This chapter governs the relationship between suppliers of malt beverages and their wholesale distributors to the full extent consistent with the Constitution and laws of this state and of the United States. [2003 c 59 § 1; 1984 c 169 § 1.]

Effective date—2003 c 59: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2003]." [2003 c 59 § 3.]

19.126.020 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agreement of distributorship" means any contract, agreement, commercial relationship, license, association, or any other arrangement, for a definite or indefinite period, between a supplier and distributor.

(2) "Distributor" means any person, including but not limited to a component of a supplier's distribution system constituted as an independent business, importing or causing to be imported into this state, or purchasing or causing to be purchased within this state, any malt beverage for sale or resale to retailers licensed under the laws of this state, regardless of whether the business of such person is conducted under the terms of any agreement with a malt beverage manufacturer.

(3) "Supplier" means any malt beverage manufacturer or importer who enters into or is a party to any agreement of distributorship with a wholesale distributor. "Supplier" does not include: (a) Any domestic brewer or microbrewer licensed under RCW 66.24.240 and producing less than fifty thousand barrels of malt liquor annually; or (b) any brewer or manufacturer of malt liquor producing less than fifty thousand barrels of malt liquor annually and holding a certificate of approval issued under RCW 66.24.270.

(4) "Malt beverage manufacturer" means every brewer, fermenter, processor, bottler, or packager of malt beverages located within or outside this state, or any other person, whether located within or outside this state, who enters into an agreement of distributorship for the resale of malt beverages in this state with any wholesale distributor doing business in the state of Washington.

(5) "Importer" means any distributor importing beer into this state for sale to retailer accounts or for sale to other wholesalers designated as "subjobbers" for resale.

(6) "Person" means any natural person, corporation, partnership, trust, agency, or other entity, as well as any individual officers, directors, or other persons in active control of the activities of such entity. [2003 c 59 § 2; 1997 c 321 § 41; 1984 c 169 § 2.]

Effective date—2003 c 59: See note following RCW 19.126.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Chapter 19.138 RCW

SELLERS OF TRAVEL

(Formerly: Travel charter and tour operators)

Sections

19.138.140 Trust account—Filing—Notice of change—Other funds or accounts—Rules—Exceptions.

19.138.140 Trust account—Filing—Notice of change—Other funds or accounts—Rules—Exceptions.

(1) A seller of travel shall deposit in a trust account maintained in a federally insured financial institution located in Washington state, or other account approved by the director, all sums held for more than five business days that are received from a person or entity, for retail travel services offered by the seller of travel. This subsection does not apply to travel services sold by a seller of travel, when payments for the travel services are made through the airlines reporting corporation.

(2) The trust account or other approved account required by this section shall be established and maintained for the benefit of any person or entity paying money to the seller of travel. The seller of travel shall not in any manner encumber the amounts in trust and shall not withdraw money from the account except the following amounts may be withdrawn at any time:

- (a) Partial or full payment for travel services to the entity directly providing the travel service;
- (b) Refunds as required by this chapter;
- (c) The amount of the sales commission;
- (d) Interest earned and credited to the trust account or other approved account;

(e) Remaining funds of a purchaser once all travel services have been provided or once tickets or other similar documentation binding upon the ultimate provider of the travel services have been provided; or

(f) Reimbursement to the seller of travel for agency operating funds that are advanced for a customer's travel services.

(3) The seller of travel may deposit noncustomer funds into the trust account as needed in an amount equal to a deficiency resulting from dishonored customer payments made by check, draft, credit card, debit card, or other negotiable instrument.

(4) At the time of registration, the seller of travel shall file with the department the account number and the name of the financial institution at which the trust account or other approved account is held as set forth in RCW 19.138.110. The seller of travel shall notify the department of any change in the account number or location within one business day of the change.

(5) The director, by rule, may allow for the use of other types of funds or accounts only if the protection for consumers is no less than that provided by this section.

(6) The seller of travel need not comply with the requirements of this section if all of the following apply, except as exempted in subsection (1) of this section:

- (a) The payment is made by credit card;
- (b) The seller of travel does not deposit, negotiate, or factor the credit card charge or otherwise seek to obtain payment of the credit card charge to any account over which the seller of travel has any control; and

(c) If the charge includes transportation, the carrier that is to provide the transportation processes the credit card charge, or if the charge is only for services, the provider of services processes the credit card charges.

(7) The seller of travel need not maintain a trust account nor comply with the trust account provisions of this section if the seller of travel:

(a)(i) Files and maintains a surety bond approved by the director in an amount of not less than ten thousand nor more than fifty thousand dollars, as determined by rule by the director based on the gross income of business conducted for Washington state residents by the seller of travel during the prior year. The bond shall be executed by the applicant as obligor by a surety company authorized to transact business in this state naming the state of Washington as obligee for the benefit of any person or persons who have suffered monetary loss by reason of the seller of travel's violation of this chapter or a rule adopted under this chapter. The bond shall be conditioned that the seller of travel will conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse any person or persons who suffer monetary loss by reason of a violation of this chapter or a rule adopted under this chapter.

(ii) The bond must be continuous and may be canceled by the surety upon the surety giving written notice to the director of the surety's intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director.

(iii) The applicant may obtain the bond directly from the surety or through other bonding arrangement as approved by the director.

(iv) In lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit, an irrevocable letter of credit, or such other instrument as is approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.

(v) Any person or persons who have suffered monetary loss by any act which constitutes a violation of this chapter or a rule adopted under this chapter may bring a civil action in court against the seller of travel and the surety upon such bond or approved alternate security of the seller of travel who committed the violation of this chapter or a rule adopted under this chapter or who employed the seller of travel who committed such violation. A civil action brought in court pursuant to the provisions of this section must be filed no later than one year following the later of the alleged violation of this chapter or a rule adopted under this chapter or completion of the travel by the customer; or

(b) Is a member in good standing in a professional association, such as the United States tour operators association or national tour association, that is approved by the director and that provides or requires a member to provide a minimum of one million dollars in errors and professional liability insurance and provides a surety bond or equivalent protection in an amount of at least two hundred fifty thousand dollars for its member companies.

(8) If the seller of travel maintains its principal place of business in another state and maintains a trust account or other approved account in that state consistent with the requirement of this section, and if that seller of travel has transacted business within the state of Washington in an amount exceeding five million dollars for the preceding year, the out-of-state trust account or other approved account may be substituted for the in-state account required under this section. [2003 c 38 § 1; 1999 c 238 § 6; 1996 c 180 § 7; 1994 c 237 § 8.]

Severability—1999 c 238: See note following RCW 19.138.030.

Effective date—1996 c 180: See note following RCW 19.138.021.

Chapter 19.146 RCW

MORTGAGE BROKER PRACTICES ACT

Sections

- 19.146.050 Moneys for third-party provider services deemed in trust—
Deposit of moneys in trust account—Use of trust account—
Rules—Tax treatment. (*Effective July 1, 2004.*)
- 19.146.110 Criminal penalty. (*Effective July 1, 2004.*)

19.146.050 Moneys for third-party provider services deemed in trust—Deposit of moneys in trust account—Use of trust account—Rules—Tax treatment. (*Effective July 1, 2004.*) (1) All moneys received by a mortgage broker from a borrower for payment of third-party provider services shall be deemed as held in trust immediately upon receipt by the mortgage broker. A mortgage broker shall deposit, prior to the end of the third business day following receipt of such trust funds, all such trust funds in a trust account of a federally insured financial institution located in this state. All trust account funds collected under this chapter must remain on deposit in a trust account in the state of Washington until disbursement. The trust account shall be designated and maintained for the benefit of borrowers. Moneys maintained in the trust account shall be exempt from execution, attachment, or garnishment. A mortgage broker shall not in any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds. Withdrawals from the trust account shall be only for the payment of bona fide services rendered by a third-party provider or for refunds to borrowers.

(2) The director shall make rules which: (a) Direct mortgage brokers how to handle checks and other instruments that are received by the broker and that combine trust funds with other funds; and (b) permit transfer of trust funds out of the trust account for payment of other costs only when necessary and only with the prior express written permission of the borrower.

(3) Any interest earned on the trust account shall be refunded or credited to the borrowers at closing.

(4) Trust accounts that are operated in a manner consistent with this section and any rules adopted by the director, are not considered gross receipts taxable under chapter 82.04 RCW.

(5) A person violating this section is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 158; 1998 c 311 § 1; 1997 c 106 § 5; 1987 c 391 § 7.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Intent—Retroactive application—1998 c 311: "The intent of sections 1 and 3 of this act is to clarify the original intent of sections 5 and 21, chapter 106, Laws of 1997 and shall not be construed otherwise. Therefore, sections 1 and 3 of this act apply retroactively to July 27, 1997." [1998 c 311 § 30.]

Severability—1997 c 106: See note following RCW 19.146.010.

19.146.110 Criminal penalty. (*Effective July 1, 2004.*)

Any person who violates any provision of this chapter other than RCW 19.146.050 or any rule or order of the director is guilty of a misdemeanor punishable under chapter 9A.20 RCW. [2003 c 53 § 159; 1993 c 468 § 20; 1987 c 391 § 13.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

Chapter 19.158 RCW

COMMERCIAL TELEPHONE SOLICITATION

Sections

- 19.158.020 Definitions.
- 19.158.160 Penalties. (*Effective July 1, 2004.*)

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

(1) A "commercial telephone solicitor" is any person who engages in commercial telephone solicitation, including service bureaus.

(2) "Commercial telephone solicitation" means:

(a) An unsolicited telephone call to a person initiated by a salesperson and conversation for the purpose of inducing the person to purchase or invest in property, goods, or services;

(b) Other communication with a person where:

(i) A free gift, award, or prize is offered to a purchaser who has not previously purchased from the person initiating the communication; and

(ii) A telephone call response is invited; and

(iii) The salesperson intends to complete a sale or enter into an agreement to purchase during the course of the telephone call;

(c) Other communication with a person which misrepresents the price, quality, or availability of property, goods, or services and which invites a response by telephone or which is followed by a call to the person by a salesperson;

(d) For purposes of this section, "other communication" means a written or oral notification or advertisement transmitted through any means.

(3) A "commercial telephone solicitor" does not include any of the following:

(a) A person engaging in commercial telephone solicitation where:

(i) The solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature; or

(ii) Less than sixty percent of such person's prior year's sales were made as a result of a commercial telephone solicitation as defined in this chapter. Where more than sixty percent of a seller's prior year's sales were made as a result of commercial telephone solicitations, the service bureau contracting to provide commercial telephone solicitation services to the seller shall be deemed a commercial telephone solicitor;

(b) A person making calls for religious, charitable, political, or other noncommercial purposes;

(c) A person soliciting business solely from purchasers who have previously purchased from the business enterprise for which the person is calling;

(d) A person soliciting:

(i) Without the intent to complete or obtain provisional acceptance of a sale during the telephone solicitation; and

(ii) Who does not make the major sales presentation during the telephone solicitation; and

(iii) Who only makes the major sales presentation or arranges for the major sales presentation to be made at a later face-to-face meeting between the salesperson and the purchaser;

(e) A person selling a security which is exempt from registration under RCW 21.20.310;

(f) A person licensed under RCW 18.85.090 when the solicited transaction is governed by that law;

(g) A person registered under RCW 18.27.060 when the solicited transaction is governed by that law;

(h) A person licensed under RCW 48.17.150 when the solicited transaction is governed by that law;

(i) Any person soliciting the sale of a franchise who is registered under RCW 19.100.140;

(j) A person primarily soliciting the sale of a newspaper of general circulation, a magazine or periodical, or contractual plans, including book or record clubs: (i) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise; and (ii) which is regulated by the federal trade commission trade regulation concerning "use of negative option plans by sellers in commerce";

(k) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this section, "supervised financial institution" means any commercial bank, trust company, savings and loan association, mutual savings banks, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurer, provided that the institution is subject to supervision by an official or agency of this state or the United States;

(l) A person soliciting the sale of a prearrangement funeral service contract registered under RCW 18.39.240 and 18.39.260;

(m) A person licensed to enter into prearrangement contracts under RCW 68.05.155 when acting subject to that license;

(n) A person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit;

(o) A person or affiliate of a person whose business is regulated by the utilities and transportation commission or the federal communications commission;

(p) A person soliciting the sale of agricultural products, as defined in RCW 20.01.010 where the purchaser is a business;

(q) An issuer or subsidiary of an issuer that has a class of securities that is subject to section 12 of the securities exchange act of 1934 (15 U.S.C. Sec. 781) and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g) of that section;

(r) A commodity broker-dealer as defined in RCW 21.30.010 and registered with the commodity futures trading commission;

(s) A business-to-business sale where:

(i) The purchaser business intends to resell the property or goods purchased, or

(ii) The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing or manufacturing process;

(t) A person licensed under RCW 19.16.110 when the solicited transaction is governed by that law;

(u) A person soliciting the sale of food intended for immediate delivery to and immediate consumption by the purchaser;

(v) A person soliciting the sale of food fish or shellfish when that person is licensed pursuant to the provisions of Title 77 RCW.

(4) "Purchaser" means a person who is solicited to become or does become obligated to a commercial telephone solicitor.

(5) "Salesperson" means any individual employed, appointed, or authorized by a commercial telephone solicitor, whether referred to by the commercial telephone solicitor as an agent, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the commercial telephone solicitor.

(6) "Service bureau" means a commercial telephone solicitor who contracts with any person to provide commercial telephone solicitation services.

(7) "Seller" means any person who contracts with any service bureau to purchase commercial telephone solicitation services.

(8) "Person" includes any individual, firm, association, corporation, partnership, joint venture, sole proprietorship, or any other business entity.

(9) "Free gift, award, or prize" means a gratuity which the purchaser believes of a value equal to or greater than the value of the specific product, good, or service sought to be sold to the purchaser by the seller.

(10) "Solicit" means to initiate contact with a purchaser for the purpose of attempting to sell property, goods or services, where such purchaser has expressed no previous interest in purchasing, investing in, or obtaining information regarding the property, goods, or services attempted to be sold. [2003 c 39 § 12; 1989 c 20 § 3.]

19.158.160 Penalties. (*Effective July 1, 2004.*) (1) Except as provided in RCW 19.158.150, any person who knowingly violates any provision of this chapter or who knowingly, directly or indirectly employs any device, scheme or artifice to deceive in connection with the offer or sale by any commercial telephone solicitor is guilty of the following:

(a) If the value of a transaction made in violation of RCW 19.158.040(1) is less than fifty dollars, the person is guilty of a misdemeanor;

(b) If the value of a transaction made in violation of RCW 19.158.040(1) is fifty dollars or more, then the person is guilty of a gross misdemeanor; and

(c) If the value of a transaction made in violation of RCW 19.158.040(1) is two hundred fifty dollars or more, then the person is guilty of a class C felony.

(2) When any series of transactions which constitute a violation of this section would, when considered separately, constitute a series of misdemeanors or gross misdemeanors because of the value of the transactions, and the series of transactions are part of a common scheme or plan, the transactions may be aggregated in one count and the sum of the value of all the transactions shall be the value considered in determining whether the violations are to be punished as a

class C felony or a gross misdemeanor. [2003 c 53 § 160; 1989 c 20 § 16.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 19.190 RCW COMMERCIAL ELECTRONIC MAIL

Sections

19.190.010	Definitions.
19.190.040	Violations—Damages.
19.190.060	Commercial electronic text message—Prohibition on initiation or assistance—Violation of consumer protection act.
19.190.070	Commercial electronic text message—When allowed.

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

(1) "Assist the transmission" means actions taken by a person to provide substantial assistance or support which enables any person to formulate, compose, send, originate, initiate, or transmit a commercial electronic mail message or a commercial electronic text message when the person providing the assistance knows or consciously avoids knowing that the initiator of the commercial electronic mail message or the commercial electronic text message is engaged, or intends to engage, in any practice that violates the consumer protection act.

(2) "Commercial electronic mail message" means an electronic mail message sent for the purpose of promoting real property, goods, or services for sale or lease. It does not mean an electronic mail message to which an interactive computer service provider has attached an advertisement in exchange for free use of an electronic mail account, when the sender has agreed to such an arrangement.

(3) "Commercial electronic text message" means an electronic text message sent to promote real property, goods, or services for sale or lease.

(4) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

(5) "Electronic text message" means a text message sent to a cellular telephone or pager equipped with short message service or any similar capability, whether the message is initiated as a short message service message or as an electronic mail message.

(6) "Initiate the transmission" refers to the action by the original sender of an electronic mail message or an electronic text message, not to the action by any intervening interactive computer service or wireless network that may handle or retransmit the message, unless such intervening interactive computer service assists in the transmission of an electronic mail message when it knows, or consciously avoids knowing, that the person initiating the transmission is engaged, or intends to engage, in any act or practice that violates the consumer protection act.

(7) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

(8) "Internet domain name" refers to a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

(9) "Person" means a person, corporation, partnership, or association. [2003 c 137 § 2; 1999 c 289 § 1; 1998 c 149 § 2.]

Intent—2003 c 137: See note following RCW 19.190.060.

19.190.040 Violations—Damages. (1) Damages to the recipient of a commercial electronic mail message or a commercial electronic text message sent in violation of this chapter are five hundred dollars, or actual damages, whichever is greater.

(2) Damages to an interactive computer service resulting from a violation of this chapter are one thousand dollars, or actual damages, whichever is greater. [2003 c 137 § 5; 1998 c 149 § 5.]

Intent—2003 c 137: See note following RCW 19.190.060.

19.190.060 Commercial electronic text message—Prohibition on initiation or assistance—Violation of consumer protection act. (1) No person conducting business in the state may initiate or assist in the transmission of an electronic commercial text message to a telephone number assigned to a Washington resident for cellular telephone or pager service that is equipped with short message capability or any similar capability allowing the transmission of text messages.

(2) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2003 c 137 § 3.]

Intent—2003 c 137: "The legislature recognizes that the number of unsolicited commercial text messages sent to cellular telephones and pagers is increasing. This practice is raising serious concerns on the part of cellular telephone and pager subscribers. These unsolicited messages often result in costs to the cellular telephone and pager subscribers in that they pay for use when a message is received through their devices. The limited memory of these devices can be exhausted by unwanted text messages resulting in the inability to receive necessary and expected messages.

The legislature intends to limit the practice of sending unsolicited commercial text messages to cellular telephone or pager numbers in Washington." [2003 c 137 § 1.]

19.190.070 Commercial electronic text message—When allowed. (1) It is not a violation of RCW 19.190.060 if:

(a) The commercial electronic text message is transmitted at the direction of a person offering cellular telephone or pager service to the person's existing subscriber at no cost to the subscriber unless the subscriber has indicated that he or she is not willing to receive further commercial text messages from the person; or

(b) The unsolicited commercial electronic text message is transmitted by a person to a subscriber and the subscriber

has clearly and affirmatively consented in advance to receive these text messages.

(2) No person offering cellular or pager service may be held liable for serving merely as an intermediary between the sender and the recipient of a commercial electronic text message sent in violation of this chapter unless the person is assisting in the transmission of the commercial electronic text message. [2003 c 137 § 4.]

Intent—2003 c 137: See note following RCW 19.190.060.

Chapter 19.192 RCW PROOF OF IDENTITY

Sections

19.192.020 Verification of identity by merchant/retailer—Prohibition on verification void.

19.192.020 Verification of identity by merchant/retailer—Prohibition on verification void. (1) Any provision of a contract between a merchant or retailer and a credit or debit card issuer, financial institution, or other person that prohibits the merchant or retailer from verifying the identity of a customer who offers to pay for goods or services with a credit or debit card by requiring or requesting that the customer present additional identification is void for violation of public policy.

(2) Nothing in this section shall be interpreted as: (a) Compelling merchants or retailers to verify identification; or (b) interfering with the ability of the owner or manager of a retail store or chain to make and enforce its own policies regarding verification of identification. [2003 c 89 § 2.]

Findings—2003 c 89: "The legislature finds that financial fraud is too common, and that it threatens the safety and well-being of the public by driving up the costs of goods and services and unduly burdening the law enforcement community. Further, the legislature finds that financial fraud can be deterred by allowing retailers to verify the identity of persons who seek to pay for goods or services with a credit or debit card. Finally, the legislature finds that some retailers are deterred from verifying their customers' identity by contractual arrangements with credit card issuers. The legislature declares that such contracts violate the public policy that all citizens should be able to take reasonable steps to prevent themselves and their communities from falling victim to crime." [2003 c 89 § 1.]

Chapter 19.220 RCW INTERNATIONAL MATCHMAKING ORGANIZATIONS

Sections

19.220.010 Dissemination of information—Definitions.

19.220.010 Dissemination of information—Definitions. (1) Each international matchmaking organization doing business in Washington state shall disseminate to a recruit, upon request, state background check information and personal history information relating to any Washington state resident about whom any information is provided to the recruit, in the recruit's native language. The organization shall notify all recruits that background check and personal history information is available upon request. The notice that background check and personal history information is available upon request shall be in the recruit's native language and shall be displayed in a manner that separates it from other

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information, is highly noticeable, and in lettering not less than one-quarter of an inch high.

(2) If an international matchmaking organization receives a request for information from a recruit pursuant to subsection (1) of this section, the organization shall notify the Washington state resident of the request. Upon receiving notification, the Washington state resident shall obtain from the state patrol and provide to the organization the complete transcript of any background check information provided pursuant to RCW 43.43.760 based on a submission of fingerprint impressions and provided pursuant to RCW 43.43.838 and shall provide to the organization his or her personal history information. The organization shall require the resident to affirm that personal history information is complete and accurate. The organization shall refrain from knowingly providing any further services to the recruit or the Washington state resident in regards to facilitating future interaction between the recruit and the Washington state resident until the organization has obtained the requested information and provided it to the recruit.

(3) This section does not apply to a traditional matchmaking organization of a religious nature that otherwise operates in compliance with the laws of the countries of the recruits of such organization and the laws of the United States nor to any organization that does not charge a fee to any party for the service provided.

(4) As used in this section:

(a) "International matchmaking organization" means a corporation, partnership, business, or other legal entity, whether or not organized under the laws of the United States or any state, that does business in the United States and for profit offers to Washington state residents, including aliens lawfully admitted for permanent residence and residing in Washington state, dating, matrimonial, or social referral services involving citizens of a foreign country or countries who are not residing in the United States, by: (i) An exchange of names, telephone numbers, addresses, or statistics; (ii) selection of photographs; or (iii) a social environment provided by the organization in a country other than the United States.

(b) "Personal history information" means a declaration of the person's current marital status, the number of previous marriages, annulments, and dissolutions for the person, and whether any previous marriages occurred as a result of receiving services from an international matchmaking organization; founded allegations of child abuse or neglect; and any existing orders under chapter 10.14, 10.99, or 26.50 RCW. Personal history information shall include information from the state of Washington and any information from other states or countries.

(c) "Recruit" means a noncitizen, nonresident person, recruited by an international matchmaking organization for the purpose of providing dating, matrimonial, or social referral services. [2003 c 268 § 1; 2002 c 115 § 2.]

Chapter 19.230 RCW UNIFORM MONEY SERVICES ACT

Sections

19.230.005 Intent.
19.230.010 Definitions.
19.230.020 Application of chapter—Exclusions.
19.230.030 Money transmitter license required.

19.230.040	Application for a money transmitter license.
19.230.050	Surety bond/security.
19.230.060	Net worth for money transmitter.
19.230.070	Issuance of money transmitter license.
19.230.080	Currency exchange license required.
19.230.090	Application for a currency exchange license.
19.230.100	Issuance of a currency exchange license—Surrender of license.
19.230.110	Annual license assessment and annual report.
19.230.120	Relationship between licensee and authorized delegate.
19.230.130	Authority to conduct examinations and investigations.
19.230.140	Joint examinations.
19.230.150	Reports.
19.230.160	Change of control.
19.230.170	Records.
19.230.180	Money laundering reports.
19.230.190	Confidentiality.
19.230.200	Maintenance of permissible investments.
19.230.210	Types of permissible investments.
19.230.220	Administrative proceedings.
19.230.230	License suspension, revocation—Receivership.
19.230.240	Suspension and revocation of authorized delegates.
19.230.250	Unlicensed persons.
19.230.260	Temporary orders to cease and desist.
19.230.270	Consent orders.
19.230.280	Violations—Liability.
19.230.290	Civil penalties.
19.230.300	Criminal penalties.
19.230.310	Administration and rule-making powers.
19.230.320	Fees.
19.230.330	Money transmitter delivery, receipts, and refunds.
19.230.340	Prohibited practices.
19.230.900	Short title.
19.230.901	Effective date—2003 c 287.
19.230.902	Implementation.
19.230.903	Uniformity of application and construction.
19.230.904	Severability—2003 c 287.
19.230.905	Captions not law.

19.230.005 Intent. It is the intent of the legislature to establish a state system of licensure and regulation to ensure the safe and sound operation of money transmission and currency exchange businesses, to ensure that these businesses are not used for criminal purposes, to promote confidence in the state's financial system, and to protect the public interest. [2003 c 287 § 2.]

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

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

(2) "Applicant" means a person that files an application for a license under this chapter, including the applicant's proposed responsible individual and executive officers, and persons in control of the applicant.

(3) "Authorized delegate" means a person a licensee designates to provide money services on behalf of the licensee. A person that is exempt from licensing under this chapter cannot have an authorized delegate.

(4) "Financial institution" means any person doing business under the laws of any state or the United States relating to commercial banks, bank holding companies, savings banks, savings and loan associations, trust companies, or credit unions.

(5) "Control" means:

(a) Ownership of, or the power to vote, directly or indirectly, at least twenty-five percent of a class of voting securities or voting interests of a licensee or applicant, or person in control of a licensee or applicant;

(b) Power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or applicant, or person in control of a licensee or applicant; or

(c) Power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or applicant, or person in control of a licensee or applicant.

(6) "Currency exchange" means exchanging the money of one government for money of another government, or holding oneself out as able to exchange the money of one government for money of another government. The following persons are not considered currency exchangers:

(a) Affiliated businesses that engage in currency exchange for a business purpose other than currency exchange;

(b) A person who provides currency exchange services for a person acting primarily for a business, commercial, agricultural, or investment purpose when the currency exchange is incidental to the transaction;

(c) A person who deals in coins or a person who deals in money whose value is primarily determined because it is rare, old, or collectible; and

(d) A person who in the regular course of business chooses to accept from a customer the currency of a country other than the United States in order to complete the sale of a good or service other than currency exchange, that may include cash back to the customer, and does not otherwise trade in currencies or transmit money for compensation or gain.

(7) "Executive officer" means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

(8) "Licensee" means a person licensed under this chapter.

(9) "Material litigation" means litigation that according to generally accepted accounting principles is significant to an applicant's or a licensee's financial health and would be required to be disclosed in the applicant's or licensee's annual audited financial statements, report to shareholders, or similar records.

(10) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government or other recognized medium of exchange. "Money" includes a monetary unit of account established by an inter-governmental organization or by agreement between two or more governments.

(11) "Money services" means money transmission or currency exchange.

(12) "Money transmission" means receiving money or its equivalent value to transmit, deliver, or instruct to be delivered the money or its equivalent value to another location, inside or outside the United States, by any means including but not limited to by wire, facsimile, or electronic transfer. "Money transmission" does not include the provision solely of connection services to the internet, telecommunications services, or network access.

(13) "Outstanding money transmission" means the value of all money transmissions reported to the licensee for which the money transmitter has received money or its equivalent value from the customer for transmission, but has not yet

completed the money transmission by delivering the money or monetary value to the person designated by the customer.

(14) "Payment instrument" means a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or its equivalent value, whether or not negotiable. "Payment instrument" does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

(15) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture; government, governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(16) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium, and is retrievable in perceivable form.

(17) "Responsible individual" means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this state.

(18) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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

(20) "Unsafe or unsound practice" means a practice or conduct by a person licensed to provide money services, or an authorized delegate of such a person, which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the financial condition of the licensee or the interests of its customers.

(21) "Board director" means a member of the applicant's or licensee's board of directors if the applicant is a corporation or limited liability company, or a partner if the applicant or licensee is a partnership.

(22) "Annual license assessment due date" means the date specified in rule by the director upon which the annual license assessment is due.

(23) "Currency exchanger" means a person that is engaged in currency exchange.

(24) "Money transmitter" means a person that is engaged in money transmission.

(25) "Mobile location" means a vehicle or movable facility where money services are provided.

(26) "Stored value" means the recognition of value or credit to the account of persons, when that value or credit is primarily intended to be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the stored value, its affiliates, or others involved in transactions functionally related to the issuer or its affiliates. [2003 c 287 § 3.]

19.230.020 Application of chapter—Exclusions. This chapter does not apply to:

(1) The United States or a department, agency, or instrumentality thereof;

(2) Money transmission by the United States postal service or by a contractor on behalf of the United States postal service;

(3) A state, county, city, or a department, agency, or instrumentality thereof;

(4) A financial institution or its subsidiaries, affiliates, and service corporations, or any office of an international banking corporation, branch of a foreign bank, or corporation organized pursuant to the Bank Service Corporation Act (12 U.S.C. Sec. 1861-1867) or a corporation organized under the Edge Act (12 U.S.C. Sec. 611-633);

(5) Electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality thereof;

(6) A board of trade designated as a contract market under the federal Commodity Exchange Act (7 U.S.C. Sec. 1-25) or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as, or for, a board of trade;

(7) A registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;

(8) A person that provides clearance or settlement services under a registration as a clearing agency, or an exemption from that registration granted under the federal securities laws, to the extent of its operation as such a provider;

(9) An operator of a payment system only to the extent that it provides processing, clearing, or settlement services, between or among persons who are all excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearinghouse transfers, or similar funds transfers;

(10) A person registered as a securities broker-dealer or investment advisor under federal or state securities laws to the extent of its operation as such a broker-dealer or investment advisor;

(11) An insurance company, title insurance company, or escrow agent to the extent that such an entity is lawfully authorized to conduct business in this state as an insurance company, title insurance company, or escrow agent and to the extent that they engage in money transmission or currency exchange as an ancillary service when conducting insurance, title insurance, or escrow activity;

(12) The issuance, sale, use, redemption, or exchange of stored value or of payment instruments; or

(13) An attorney, to the extent that the attorney is lawfully authorized to practice law in this state and to the extent that the attorney engages in money transmission or currency exchange as an ancillary service to the practice of law. [2003 c 287 § 4.]

19.230.030 Money transmitter license required. (1)

A person may not engage in the business of money transmission, or advertise, solicit, or hold itself out as providing money transmission, unless the person is:

(a) Licensed as a money transmitter under this chapter; or

(b) An authorized delegate of a person licensed as a money transmitter under this chapter.

(2) A money transmitter license is not transferable or assignable. [2003 c 287 § 5.]

19.230.040 Application for a money transmitter license. (1) A person applying for a money transmitter license under this chapter shall do so in a form and in a medium prescribed in rule by the director. The application must state or contain:

(a) The legal name, business addresses, and residential address, if applicable, of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(b) The legal name, residential and business addresses, date of birth, social security number, employment history for the five-year period preceding the submission of the application of the applicant's proposed responsible individual, and documentation that the proposed responsible individual is a citizen of the United States or has obtained legal immigration status to work in the United States. In addition, the applicant shall provide the fingerprints of the proposed responsible individual upon the request of the director;

(c) For the ten-year period preceding submission of the application, a list of any criminal convictions of the proposed responsible individual of the applicant, any material litigation in which the applicant has been involved, and any litigation involving the proposed responsible individual relating to the provision of money services;

(d) A description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in this state;

(e) A list of the applicant's proposed authorized delegates and the locations in this state where the applicant and its authorized delegates propose to engage in the provision of money services;

(f) A list of other states in which the applicant is licensed to engage in money transmission, or provide other money services, and any license revocations, suspensions, restrictions, or other disciplinary action taken against the applicant in another state;

(g) A list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money services business involving the proposed responsible individual;

(h) Information concerning any bankruptcy or receivership proceedings involving or affecting the applicant or the proposed responsible individual;

(i) A sample form of contract for authorized delegates, if applicable;

(j) A description of the source of money and credit to be used by the applicant to provide money services; and

(k) Any other information regarding the background, experience, character, financial responsibility, and general fitness of the applicant, the applicant's responsible individual, or authorized delegates that the director may require in rule.

(2) If an applicant is a corporation, limited liability company, partnership, or other entity, the applicant shall also provide:

(a) The date of the applicant's incorporation or formation and state or country of incorporation or formation;

(b) If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(c) A brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(d) The legal name, any fictitious or trade name, all business and residential addresses, date of birth, social security number, and employment history in the ten-year period preceding the submission of the application for each executive officer, board director, or person that has control of the applicant;

(e) If the applicant or its corporate parent is not a publicly traded entity, the director may request the fingerprints of each executive officer, board director, or person that has control of the applicant;

(f) A list of any criminal convictions, material litigation, and any litigation related to the provision of money services, in the ten-year period preceding the submission of the application in which any executive officer, board director, or person in control of the applicant has been involved;

(g) A copy of the applicant's audited financial statements for the most recent fiscal year or, if the applicant is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the applicant's most recent audited consolidated annual financial statement, and in each case, if available, for the two-year period preceding the submission of the application;

(h) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period preceding the submission of the application;

(i) If the applicant is publicly traded, a copy of the most recent report filed with the United States securities and exchange commission under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m);

(j) If the applicant is a wholly owned subsidiary of:

(i) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m); or

(ii) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(k) If the applicant has a registered agent in this state, the name and address of the applicant's registered agent in this state; and

(l) Any other information that the director may require in rule regarding the applicant, each executive officer, or each board director to determine the applicant's background, experience, character, financial responsibility, and general fitness.

(3) A nonrefundable application fee and an initial license fee, as determined in rule by the director, must accompany an application for a license under this chapter. The initial license fee must be refunded if the application is denied.

(4) The director may waive one or more requirements of subsection (1) or (2) of this section or permit an applicant to submit other information in lieu of the required information. [2003 c 287 § 6.]

19.230.050 Surety bond/security. (1) Each money transmitter licensee shall maintain a surety bond, or other similar security acceptable to the director, in the amount of at

least ten thousand dollars, and not exceeding fifty thousand dollars, as defined in rule by the director, plus ten thousand dollars per location, including locations of authorized delegates, not exceeding a total addition of five hundred thousand dollars.

(2) The surety bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of a licensee's or licensee's authorized delegate's violation of this chapter or the rules adopted under this chapter. A claimant against a money transmitter licensee may maintain an action on the bond, or the director may maintain an action on behalf of the claimant.

(3) The surety bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation is effective thirty days after the notice of cancellation is received by the director or the director's designee. Whether or not the bond is renewed, continued, replaced, or modified, including increases or decreases in the penal sum, it is considered one continuous obligation, and the surety upon the bond is not liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event may the penal sum, or any portion thereof, at two or more points in time, be added together in determining the surety's liability.

(4) A surety bond or other security must cover claims for at least five years after the date of a money transmitter licensee's violation of this chapter, or at least five years after the date the money transmitter licensee ceases to provide money services in this state, whichever is longer. However, the director may permit the amount of the surety bond or other security to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's obligations outstanding in this state are reduced.

(5) In the event that a money transmitter licensee does not maintain a surety bond or other form of security satisfactory to the director in the amount required under subsection (1) of this section, the director may issue a temporary cease and desist order under RCW 19.230.260.

(6) The director may increase the amount of security required to a maximum of one million dollars if the financial condition of a money transmitter licensee so requires, as evidenced by reduction of net worth, financial losses, potential losses as a result of violations of this chapter or rules adopted under this chapter, or other relevant criteria specified by the director in rule. [2003 c 287 § 7.]

19.230.060 Net worth for money transmitter. A money transmitter licensed under this chapter shall maintain a net worth, determined in accordance with generally accepted accounting principles, as determined in rule by the director. The director shall require a net worth of at least ten thousand dollars and not more than fifty thousand dollars. In the event that a licensee's net worth, as determined in accordance with generally accepted accounting principles, falls below the amount required in rule, the director or the director's designee may initiate action under RCW 19.230.230 and 19.230.260. The licensee may request a hearing on such an action under chapter 34.05 RCW. [2003 c 287 § 8.]

19.230.070 Issuance of money transmitter license.

(1) When an application for a money transmitter license is filed under this chapter, the director or the director's designee shall investigate the applicant's financial condition and responsibility, financial and business experience, competence, character, and general fitness. The director or the director's designee may conduct an on-site investigation of the applicant, the cost of which must be paid by the applicant as specified in RCW 19.230.320 or rules adopted under this chapter. The director shall issue a money transmitter license to an applicant under this chapter if the director or the director's designee finds that all of the following conditions have been fulfilled:

(a) The applicant has complied with RCW 19.230.040, 19.230.050, and 19.230.060;

(b) The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, financial and business experience, character, and general fitness of the executive officers, proposed responsible individual, board directors, and persons in control of the applicant; indicate that it is in the interest of the public to permit the applicant to engage in the business of providing money transmission services; and

(c) Neither the applicant, nor any executive officer, nor person who exercises control over the applicant, nor the proposed responsible individual is listed on the specially designated nationals and blocked persons list prepared by the United States department of the treasury or department of state under Presidential Executive Order No. 13224.

(2) The director may for good cause extend the application review period.

(3) An applicant whose application is denied by the director under this chapter may appeal under chapter 34.05 RCW.

(4) A money transmitter license issued under this chapter is valid from the date of issuance and remains in effect with no fixed date of expiration unless otherwise suspended or revoked by the director or unless the license expires for non-payment of the annual license assessment and any late fee, if applicable.

(5) A money transmitter licensee may surrender a license by delivering the original license to the director along with a written notice of surrender. The written notice of surrender must include notice of where the records of the licensee will be stored and the name, address, telephone number, and other contact information of a responsible party who is authorized to provide access to the records. The surrender of a license does not reduce or eliminate the licensee's civil or criminal liability arising from acts or omissions occurring prior to the surrender of the license, including any administrative actions undertaken by the director or the director's designee to revoke or suspend a license, to assess fines, to order payment of restitution, or to exercise any other authority authorized under this chapter. [2003 c 287 § 9.]

19.230.080 Currency exchange license required. (1)

A person may not engage in the business of currency exchange or advertise, solicit, or hold itself out as able to engage in currency exchange for which the person receives

revenue equal to or greater than five percent of total revenues, unless the person is:

(a) Licensed to provide currency exchange under this chapter;

(b) Licensed for money transmission under this chapter; or

(c) An authorized delegate of a person licensed under this chapter.

(2) A license under this chapter is not transferable or assignable. [2003 c 287 § 10.]

19.230.090 Application for a currency exchange license. (1) A person applying for a currency exchange license under this chapter shall do so in a form and in a medium prescribed in rule by the director. The application must state or contain:

(a) The legal name, business addresses, and residential address, if applicable, of the applicant and any fictitious or trade name used by the applicant in conducting its business, and the legal name, residential and business addresses, date of birth, social security number, employment history for the five-year period preceding the submission of the application; and upon request of the director, fingerprints of the applicant's proposed responsible individual and documentation that the proposed responsible individual is a citizen of the United States or has obtained legal immigration status to work in the United States;

(b) For the ten-year period preceding the submission of the application, a list of any criminal convictions of the proposed responsible individual of the applicant, any material litigation in which the applicant has been involved, and any litigation involving the proposed responsible individual relating to the provision of money services;

(c) A description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in this state;

(d) A list of the applicant's proposed authorized delegates and the locations in this state where the applicant and its authorized delegates propose to engage in currency exchange;

(e) A list of other states in which the applicant engages in currency exchange or provides other money services and any license revocations, suspensions, restrictions, or other disciplinary action taken against the applicant in another state;

(f) A list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money services business involving the proposed responsible individual;

(g) Information concerning any bankruptcy or receivership proceedings involving or affecting the applicant or the proposed responsible individual;

(h) A sample form of contract for authorized delegates, if applicable;

(i) A description of the source of money and credit to be used by the applicant to provide currency exchange; and

(j) Any other information regarding the background, experience, character, financial responsibility, and general fitness of the applicant, the applicant's responsible individual, or authorized delegates that the director may require in rule.

(2) If an applicant is a corporation, limited liability company, partnership, or other entity, the applicant shall also provide:

(a) The date of the applicant's incorporation or formation and state or country of incorporation or formation;

(b) If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(c) A brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(d) The legal name, any fictitious or trade name, all business and residential addresses, date of birth, social security number, and employment history in the ten-year period preceding the submission of the application for each executive officer, board director, or person that has control of the applicant;

(e) If the applicant or its corporate parent is not a publicly traded entity, the director may request the fingerprints for each executive officer, board director, or person that has control of the applicant; and

(f) A list of any criminal convictions, material litigation, and any litigation related to the provision of money services, in which any executive officer, board director, or person in control of the applicant has been involved in the ten-year period preceding the submission of the application.

(3) A nonrefundable application fee and an initial license fee, as determined in rule by the director, must accompany an application for a currency exchange license under this chapter. The license fee must be refunded if the application is denied.

(4) The director may waive one or more requirements of subsection (1) or (2) of this section or permit an applicant to submit other information in lieu of the required information. [2003 c 287 § 11.]

19.230.100 Issuance of a currency exchange license—Surrender of license. (1) When an application for a currency exchange license is filed under this chapter, the director or the director's designee shall investigate the applicant's financial condition and responsibility, financial and business experience, competence, character, and general fitness. The director or the director's designee may conduct an on-site investigation of the applicant, the cost of which must be paid by the applicant as specified in RCW 19.230.320 or rules adopted under this chapter. The director shall issue a currency exchange license to an applicant under this chapter if the director or the director's designee finds that all of the following conditions have been fulfilled:

(a) The applicant has complied with RCW 19.230.090;

(b) The financial and business experience, competence, character, and general fitness of the applicant; and the competence, financial and business experience, character, and general fitness of the executive officers, proposed responsible individual, board directors, and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in the business of providing currency exchange; and

(c) Neither the applicant, nor any executive officer, nor person who exercises control over the applicant, nor the proposed responsible individual are listed on the specially design-

nated nationals and blocked persons list prepared by the United States department of treasury or department of state under Presidential Executive Order No. 13224.

(2) The director may for good cause extend the application review period.

(3) An applicant whose application is denied by the director under this chapter may appeal under chapter 34.05 RCW.

(4) A currency exchange license issued under this chapter is valid from the date of issuance and remains in effect with no fixed date of expiration unless otherwise suspended or revoked by the director, or unless the license expires for nonpayment of the annual license assessment and any late fee, if applicable.

(5) A currency exchange licensee may surrender a license by delivering the original license to the director along with a written notice of surrender. The written notice of surrender must include notice of where the records of the licensee will be stored and the name, address, telephone number, and other contact information of a responsible party who is authorized to provide access to the records. The surrender of a license does not reduce or eliminate the licensee's civil or criminal liability arising from acts or omissions occurring prior to the surrender of the license, including any administrative actions undertaken by the director or the director's designee to revoke or suspend a license, to assess fines, to order payment of restitution, or to exercise any other authority authorized under this chapter. [2003 c 287 § 12.]

19.230.110 Annual license assessment and annual report. (1) A licensee shall pay an annual license assessment as established in rule by the director no later than the annual license assessment due date or, if the annual license assessment due date is not a business day, on the next business day.

(2) A licensee shall submit an annual report with the annual license assessment, in a form and in a medium prescribed by the director in rule. The annual report must state or contain:

(a) If the licensee is a money transmitter, a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the licensee's most recent audited consolidated annual financial statement;

(b) A description of each material change, as defined in rule by the director, to information submitted by the licensee in its original license application which has not been previously reported to the director on any required report;

(c) If the licensee is a money transmitter, a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in RCW 19.230.200 and 19.230.210;

(d) If the licensee is a money transmitter, proof that the licensee continues to maintain adequate security as required by RCW 19.230.050; and

(e) A list of the locations in this state where the licensee or an authorized delegate of the licensee engages in or provides money services.

(3) If a licensee does not file an annual report or pay its annual license assessment by the annual license assessment

due date, the director or the director's designee shall send the licensee a notice of suspension and assess the licensee a late fee not to exceed twenty-five percent of the annual license assessment as established in rule by the director. The licensee's annual report and payment of both the annual license assessment and the late fee must arrive in the department's offices by 5:00 p.m. on the thirtieth day after the assessment due date or any extension of time granted by the director, unless that date is not a business day, in which case the licensee's annual report and payment of both the annual license assessment and the late fee must arrive in the department's offices by 5:00 p.m. on the next occurring business day. If the licensee's annual report and payment of both the annual license assessment and late fee do not arrive by such date, the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after the assessment due date, unless that date is not a business day, in which case the expiration of the licensee's license is effective at 5:00 p.m. on the next occurring business day. The director, or the director's designee, may reinstate the license if, within twenty days after its effective date, the licensee:

(a) Files the annual report and pays both the annual license assessment and the late fee; and

(b) The licensee did not engage in or provide money services during the period its license was expired. [2003 c 287 § 13.]

19.230.120 Relationship between licensee and authorized delegate. (1) In this section, "remit" means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

(2) A contract between a licensee and an authorized delegate must require the authorized delegate to operate in full compliance with this chapter and the rules adopted under this chapter.

(3) Neither the licensee nor an authorized delegate may authorize subdelegates.

(4) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

(5) If a license is suspended or revoked or a licensee surrenders its license, the director shall notify all authorized delegates of the licensee whose names are filed with the director of the suspension, revocation, or surrender and shall publish the name of the licensee. An authorized delegate shall immediately cease to provide money services as a delegate of the licensee upon receipt of notice, or after publication is made, that the licensee's license has been suspended, revoked, or surrendered.

(6) An authorized delegate may not provide money services other than those allowed the licensee under its license. In addition, an authorized delegate may not provide money services outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity in which the authorized delegate is authorized to engage under RCW 19.230.030 or 19.230.080. [2003 c 287 § 14.]

19.230.130 Authority to conduct examinations and investigations. (1) For the purpose of discovering violations

of this chapter or rules adopted under this chapter, discovering unsafe and unsound practices, or securing information lawfully required under this chapter, the director may at any time, either personally or by designee, investigate or examine the business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in the business of every licensee or its authorized delegates, and of every person who is engaged in the business of providing money services, whether the person acts or claims to act under or without the authority of this chapter. For these purposes, the director or designated representative shall have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons. The director or the director's designee may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of any investigation, examination, or hearing and may require such person to produce books, accounts, papers, documents, records, files, and any other information the director or designated person declares is relevant to the inquiry. The director may require the production of original books, accounts, papers, documents, records, files, and other information; may require that such original books, accounts, papers, documents, records, files, and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, documents, records, files, or other information. The director or designated person may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, documents, records, files, or other information.

(2) The licensee, applicant, or person subject to licensing under this chapter shall pay the cost of examinations and investigations as specified in RCW 19.230.320 or rules adopted under this chapter.

(3) Information obtained during an examination or investigation under this chapter may be disclosed only as provided in RCW 19.230.190. [2003 c 287 § 15.]

19.230.140 Joint examinations. (1) The director may conduct an on-site examination or investigation of the books, accounts, records, papers, documents, files, and other information used in the business of every licensee or its authorized delegates in conjunction with representatives of other state agencies or agencies of another state or of the federal government. The director may accept an examination report or an investigation report of an agency of this state or of another state or of the federal government.

(2) A joint examination or investigation, or an acceptance of an examination or investigation report, does not preclude the director from conducting an examination or investigation under this chapter. A joint report or a report accepted under this section is an official report of the director for all purposes. [2003 c 287 § 16.]

19.230.150 Reports. (1) A licensee shall file with the director within thirty business days any material changes in information provided in a licensee's application as prescribed in rule by the director. If this information indicates that the licensee is no longer in compliance with this chapter, the director may take any action authorized under this chapter to

ensure that the licensee operates in compliance with this chapter.

(2) A licensee shall file with the director within forty-five days after the end of each fiscal quarter a current list of all authorized delegates and locations in this state where the licensee, or an authorized delegate of the licensee, provides money services, including mobile locations. The licensee shall state the name and street address of each location and authorized delegate operating at the location.

(3) A licensee shall file a report with the director within one business day after the licensee has reason to know of the occurrence of any of the following events:

(a) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, under the United States Bankruptcy Code (11 U.S.C. Sec. 101-110) for bankruptcy or reorganization;

(b) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(c) The commencement of a proceeding to revoke, suspend, restrict, or condition its license, or otherwise discipline or sanction the licensee, in a state or country in which the licensee engages in business or is licensed;

(d) The cancellation or other impairment of the licensee's bond or other security;

(e) A charge or conviction of the licensee or of an executive officer, responsible individual, board director of the licensee, or person in control of the licensee, for a felony; or

(f) A charge or conviction of an authorized delegate for a felony. [2003 c 287 § 17.]

19.230.160 Change of control. (1) A licensee shall:

(a) Provide the director with written notice of a proposed change of control within fifteen days after learning of the proposed change of control and at least thirty days prior to the proposed change of control;

(b) Request approval of the change of control by submitting the information required in rule by the director; and

(c) Submit, with the notice, a nonrefundable fee as prescribed in rule by the director.

(2) After review of a request for approval under subsection (1) of this section, the director may require the licensee to provide additional information concerning the licensee's proposed persons in control. The additional information must be limited to the same types required of the licensee, or persons in control of the licensee, as part of its original license application.

(3) The director shall approve a request for change of control under subsection (1) of this section if, after investigation, the director determines that the person, or group of persons, requesting approval meets the criteria for licensing set forth in RCW 19.230.070 and 19.230.100 and that the public interest will not be jeopardized by the change of control.

(4) Subsection (1) of this section does not apply to a public offering of securities.

(5) Before filing a request for approval to acquire control of a licensee, or person in control of a licensee, a person may request in writing a determination from the director as to whether the person would be considered a person in control

of a licensee upon consummation of a proposed transaction. If the director determines that the person would not be a person in control of a licensee, the director shall respond in writing to that effect and the proposed person and transaction is not subject to the requirements of subsections (1) through (3) of this section.

(6) The director may exempt by rule any person from the requirements of subsection (1)(a) of this section, if it is in the public interest to do so. [2003 c 287 § 18.]

19.230.170 Records. (1) A licensee shall maintain the following records for determining its compliance with this chapter for at least five years:

(a) A general ledger posted at least monthly containing all assets, liabilities, capital, income, and expense accounts;
 (b) Bank statements and bank reconciliation records;
 (c) A list of the last known names and addresses of all of the licensee's authorized delegates;

(d) Copies of all currency transaction reports and suspicious activity reports filed in compliance with RCW 19.230.180; and

(e) Any other records required in rule by the director.

(2) The items specified in subsection (1) of this section may be maintained in any form of record that is readily accessible to the director or the director's designee upon request.

(3) Records may be maintained outside this state if they are made accessible to the director on seven business days' notice that is sent in writing.

(4) All records maintained by the licensee are open to inspection by the director or the director's designee. [2003 c 287 § 19.]

19.230.180 Money laundering reports. (1) Every licensee and its authorized delegates shall file with the director or the director's designee all reports required by federal currency reporting, recordkeeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C. Sec. 5311, 31 C.F.R. Sec. 103 (2000), and other federal and state laws pertaining to money laundering. Every licensee and its authorized delegates shall maintain copies of these reports in its records in compliance with RCW 19.230.170.

(2) The timely filing of a complete and accurate report required under subsection (1) of this section with the appropriate federal agency is compliance with the requirements of subsection (1) of this section, unless the director notifies the licensee that reports of this type are not being regularly and comprehensively transmitted by the federal agency. [2003 c 287 § 20.]

19.230.190 Confidentiality. (1) Except as otherwise provided in subsection (2) of this section, all information or reports obtained by the director from an applicant, licensee, or authorized delegate and all information contained in, or related to, examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the director, or financial statements, balance sheets, or authorized delegate information, are confidential and are not subject to disclosure under chapter 42.17 RCW.

(2) The director may disclose information not otherwise subject to disclosure under subsection (1) of this section to

representatives of state or federal agencies who agree in writing to maintain the confidentiality of the information; or if the director finds that the release is reasonably necessary for the protection of the public and in the interests of justice.

(3) This section does not prohibit the director from disclosing to the public a list of persons licensed under this chapter or the aggregated financial data concerning those licensees. [2003 c 287 § 21.]

19.230.200 Maintenance of permissible investments.

(1) A money transmitter licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all outstanding money transmission.

(2) The director, with respect to any money transmitter licensee, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money, time deposits, savings deposits, demand deposits, and certificates of deposit issued by a federally insured financial institution. The director may prescribe in rule, or by order allow, other types of investments that the director determines to have a safety substantially equivalent to other permissible investments. [2003 c 287 § 22.]

19.230.210 Types of permissible investments. (1)

Except to the extent otherwise limited by the director under RCW 19.230.200, the following investments are permissible for a money transmitter licensee under RCW 19.230.200:

(a) Cash, time deposits, savings deposits, demand deposits, a certificate of deposit, or senior debt obligation of an insured depository institution as defined in section 3 of the federal Deposit Insurance Act (12 U.S.C. Sec. 1813) or as defined under the federal Credit Union Act (12 U.S.C. Sec. 1781);

(b) Banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the federal reserve system and is eligible for purchase by a federal reserve bank;

(c) An investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

(d) An investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

(e) Receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts which are not past due or doubtful of collection, if the aggregate amount of receivables under this subsection (1)(e) does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not hold, at one time, receivables under this subsection (1)(e) in any one person aggregating more than ten percent of the licensee's total permissible investments; and

(f) A share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission under the

Investment Companies Act of 1940 (15 U.S.C. Sec. 80(a)(1) through (64), and whose portfolio is restricted by the management company's investment policy to investments specified in (a) through (d) of this subsection.

(2) The following investments are permissible under RCW 19.230.200, but only to the extent specified as follows:

(a) An interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this subsection (2)(a) does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not, at one time, hold investments under this subsection (2)(a) in any one person aggregating more than ten percent of the licensee's total permissible investments;

(b) A share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission under the Investment Companies Act of 1940 (15 U.S.C. Sec. 80(a)(1) through (64), and whose portfolio is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments under this subsection (2)(b) does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not, at one time, hold investments under this subsection (2)(b) in any one person aggregating more than ten percent of the licensee's total permissible investments;

(c) A demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange, if the aggregate of the amount of principal and interest outstanding under demand-borrowing agreements under this subsection (2)(c) does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not, at one time, hold principal and interest outstanding under demand-borrowing agreements under this subsection (2)(c) with any one person aggregating more than ten percent of the licensee's total permissible investments; and

(d) Any other investment the director designates, to the extent specified in rule by the director.

(3) The aggregate of investments under subsection (2) of this section may not exceed fifty percent of the total permissible investments of a licensee. [2003 c 287 § 23.]

19.230.220 Administrative proceedings. All administrative proceedings under this chapter must be conducted in accordance with the administrative procedure act, chapter 34.05 RCW. Any licensee or authorized delegate subject to a statement of charges and order of intent from the director shall be provided with an opportunity for a hearing as provided for in the administrative procedure act. Unless the person subject to the order appears in person or is represented by counsel at the hearing, the person has consented to issuance of the order. If after a hearing, the director finds by a preponderance of the evidence that grounds for sanctions under this chapter exist, then the director may impose any sanctions authorized by this chapter in a final order. As provided for in RCW 19.230.260, a temporary order to cease and desist is

effective upon service upon the licensee or authorized delegate, and remains effective pending a hearing to determine if the order shall become permanent. [2003 c 287 § 24.]

19.230.230 License suspension, revocation—Receivership. (1) The director may issue an order to suspend, revoke, or condition a license, place a licensee in receivership, revoke the designation of an authorized delegate, compel payment of restitution by a licensee to damaged parties, require affirmative actions as are necessary by a licensee to comply with this chapter or rules adopted under this chapter, or remove from office or prohibit from participation in the affairs of any authorized delegate or any licensee, or both, any responsible individual, executive officer, person in control, or employee of the licensee, if:

(a) The licensee violates this chapter or a rule adopted or an order issued under this chapter or is convicted of a violation of a state or federal money laundering or terrorism statute;

(b) The licensee does not cooperate with an examination, investigation, or subpoena lawfully issued by the director or the director's designee;

(c) The licensee engages in fraud, intentional misrepresentation, or gross negligence;

(d) An authorized delegate is convicted of a violation of a state or federal money laundering statute, or violates this chapter or a rule adopted or an order issued under this chapter as a result of the licensee's willful misconduct or deliberate avoidance of knowledge;

(e) The financial condition and responsibility, competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee, or responsible individual of the licensee or authorized delegate indicates that it is not in the public interest to permit the person to provide money services;

(f) The licensee engages in an unsafe or unsound practice, or an unfair and deceptive act or practice;

(g) The licensee is insolvent, fails to maintain the required net worth, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors;

(h) The licensee does not remove an authorized delegate after the director issues and serves upon the licensee a final order including a finding that the authorized delegate has violated this chapter; or

(i) The licensee, its responsible individual, or any of its executive officers or other persons in control of the licensee are listed or become listed on the specially designated nationals and blocked persons list prepared by the United States department of the treasury as a potential threat to commit terrorist acts or to finance terrorist acts.

(2) In determining whether a licensee or other person subject to this chapter is engaging in an unsafe or unsound practice, the director may consider the size and condition of the licensee's money transmission services, the magnitude of the loss or potential loss to consumers or others, the gravity of the violation of this chapter, any action against the licensee by another state or the federal government, and the previous conduct of the person involved.

(3) The director shall immediately suspend any certification of licensure issued under this chapter if the holder of the certificate has been certified pursuant to RCW 74.20A.320

by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for certification during the suspension, reissuance of the certificate of licensure shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order. [2003 c 287 § 25.]

19.230.240 Suspension and revocation of authorized delegates. (1) The director may issue an order to suspend, revoke, or condition the designation of an authorized delegate, impose civil penalties, require payment of restitution to damaged parties, require affirmative actions as are necessary to comply with this chapter or the rules adopted under this chapter, or remove from office or prohibit from participation in the affairs of the authorized delegate or licensee, or both, any executive officer, person in control, or employee of the authorized delegate if the director finds that:

(a) The authorized delegate violated this chapter or a rule adopted or an order issued under this chapter;

(b) The authorized delegate does not cooperate with an examination, investigation, or subpoena lawfully issued by the director or the director's designee;

(c) The authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;

(d) The authorized delegate is convicted of a violation of a state or federal money laundering or terrorism statute;

(e) The competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money services;

(f) The authorized delegate engaged in or is engaging in an unsafe or unsound practice, or unfair and deceptive act or practice; or

(g) The authorized delegate, or any of its executive officers or other persons in control of the authorized delegate, are listed or become listed on the specially designated nationals and blocked persons list prepared by the United States department of the treasury as a potential threat to commit terrorist acts or to finance terrorist acts.

(2) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the director may consider the size and condition of the authorized delegate's provision of money services, the magnitude of the loss or potential loss to consumers or others, the gravity of the violation of this chapter or a rule adopted or order issued under this chapter, any action against the authorized delegate taken by another state or the federal government, and the previous conduct of the authorized delegate. [2003 c 287 § 26.]

19.230.250 Unlicensed persons. (1) If the director has reason to believe that a person has violated or is violating RCW 19.230.030 or 19.230.080, the director or the director's designee may conduct an examination or investigation as authorized under RCW 19.230.130.

(2) If as a result of such investigation or examination, the director finds that a person has violated RCW 19.230.030 or 19.230.080, the director may issue a temporary cease and desist order as authorized under RCW 19.230.260.

(3) If as a result of such an investigation or examination, the director finds that a person has violated RCW 19.230.030 or 19.230.080, the director may issue an order to prohibit the person from continuing to engage in providing money services, to compel the person to pay restitution to damaged parties, to impose civil money penalties on the person, and to prohibit from participation in the affairs of any licensee or authorized delegate, or both, any executive officer, person in control, or employee of the person.

(4) The director may petition the superior court for the issuance of a temporary restraining order under the rules of civil procedure. [2003 c 287 § 27.]

19.230.260 Temporary orders to cease and desist. (1) If the director determines that a violation of this chapter or of a rule adopted or an order issued under this chapter by a licensee, authorized delegate, or other person subject to this chapter is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of the assets of the licensee, the director may issue a temporary order to cease and desist requiring the licensee, authorized delegate, or other person subject to this chapter to cease and desist from conducting business in this state or to cease and desist from the violation or undertake affirmative actions as are necessary to comply with this chapter, any rule adopted under this chapter, or order issued by the director under this chapter. The order is effective upon service upon the licensee, authorized delegate, or other person subject to this chapter.

(2) A temporary order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding under chapter 34.05 RCW. If, after a hearing, the director finds that by a preponderance of the evidence, all or any part of the order is supported by the facts, the director may make the temporary order to cease and desist permanent under chapter 34.05 RCW.

(3) A licensee, an authorized delegate, or other person subject to this chapter that is served with a temporary order to cease and desist may petition the superior court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding under chapter 34.05 RCW. [2003 c 287 § 28.]

19.230.270 Consent orders. The director may enter into a consent order at any time with a person to resolve a matter arising under this chapter or a rule adopted or order issued under this chapter. A consent order must be signed by the person to whom it is issued or by the person's authorized representative, and must indicate agreement with the terms contained in the order. [2003 c 287 § 29.]

19.230.280 Violations—Liability. (1) A licensee is liable for any conduct violating this chapter or rules adopted under this chapter committed by employees of the licensee.

(2) A licensee that commits willful misconduct in its supervision of its authorized delegate or willfully avoids knowledge of its authorized delegate's business activities may be subjected to administrative sanctions for any viola-

tions of this chapter or rules adopted under this chapter by the licensee's authorized delegates.

(3) The responsible individual is responsible under the license and may be subjected to administrative sanctions for any violations of this chapter or rules adopted under this chapter committed by the licensee or, if the responsible individual commits willful misconduct in supervising an authorized delegate or willfully avoids knowledge of an authorized delegate's business activities, violations committed by the licensee's authorized delegates. [2003 c 287 § 30.]

19.230.290 Civil penalties. The director may assess a civil penalty against a licensee, responsible individual, authorized delegate, or other person that violates this chapter or a rule adopted or an order issued under this chapter in an amount not to exceed one hundred dollars per day for each day the violation is outstanding, plus this state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorneys' fees. [2003 c 287 § 31.]

19.230.300 Criminal penalties. (1) A person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this chapter or that intentionally makes a false entry or omits a material entry in that record is guilty of a class C felony under chapter 9A.20 RCW.

(2) A person that knowingly engages in an activity for which a license is required under this chapter without being licensed under this chapter and who receives more than five hundred dollars in compensation within a thirty-day period from this activity is guilty of a gross misdemeanor under chapter 9A.20 RCW.

(3) A person that knowingly engages in an activity for which a license is required under this chapter without being licensed under this chapter and who receives no more than five hundred dollars in compensation within a thirty-day period from this activity is guilty of a misdemeanor under chapter 9A.20 RCW. [2003 c 287 § 32.]

19.230.310 Administration and rule-making powers. In accordance with chapter 34.05 RCW, the director may issue rules under this chapter that are clearly required to govern the activities of licensees and other persons subject to this chapter. [2003 c 287 § 33.]

19.230.320 Fees. (1) The director shall establish fees by rule sufficient to cover the costs of administering this chapter. The director may establish different fees for each type of license authorized under this chapter. These fees may include:

(a) An annual license assessment specified in rule by the director paid by each licensee on or before the annual license assessment due date;

(b) A late fee for late payment of the annual license assessment as specified in rule by the director;

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

(d) A nonrefundable application fee to cover the costs of processing license applications made to the director under this chapter;

(e) An initial license fee to cover the period from the date of licensure to the end of the calendar year in which the license is initially granted; and

(f) A transaction fee or set of transaction fees to cover the administrative costs associated with processing changes in control, changes of address, and other administrative changes as specified in rule by the director.

(2) The director shall ensure that when an examination or investigation, or any part of the examination or investigation, of any licensee applicant or person subject to licensing under this chapter, requires travel and services outside this state by the director or designee, the licensee applicant or person subject to licensing under this chapter that is the subject of the examination or investigation shall pay the actual travel expenses incurred by the director or designee conducting the examination or investigation.

(3) All moneys, fees, and penalties collected under this chapter shall be deposited into the financial services regulation account. [2003 c 287 § 34.]

19.230.330 Money transmitter delivery, receipts, and refunds.

(1) Every money transmitter licensee and its authorized delegates shall transmit the monetary equivalent of all money or equivalent value received from a customer for transmission, net of any fees, or issue instructions committing the money or its monetary equivalent, to the person designated by the customer within ten business days after receiving the money or equivalent value, unless otherwise ordered by the customer or unless the licensee or its authorized delegate has reason to believe that a crime has occurred, is occurring, or may occur as a result of transmitting the money. For purposes of this subsection, money is considered to have been transmitted when it is available to the person designated by the customer and a reasonable effort has been made to inform this designated person that the money is available, whether or not the designated person has taken possession of the money. As used in this subsection, "monetary equivalent," when used in connection with a money transmission in which the customer provides the licensee or its authorized delegate with the money of one government, and the designated recipient is to receive the money of another government, means the amount of money, in the currency of the government that the designated recipient is to receive, as converted at the retail exchange rate offered by the licensee or its authorized delegate to the customer in connection with the transaction.

(2) Every money transmitter licensee and its authorized delegates shall provide a receipt to the customer that clearly states the amount of money presented for transmission and the total of any fees charged by the licensee. If the rate of exchange for a money transmission to be paid in the currency of another country is fixed by the licensee for that transaction at the time the money transmission is initiated, then the receipt provided to the customer shall disclose the rate of exchange for that transaction, and the duration, if any, for the payment to be made at the fixed rate of exchange so specified. If the rate of exchange for a money transmission to be paid in the currency of another country is not fixed at the time

the money transmission is sent, the receipt provided to the customer shall disclose that the rate of exchange for that transaction will be set at the time the recipient of the money transmission picks up the funds in the foreign country. As used in this section, "fees" does not include revenue that a licensee or its authorized delegate generates, in connection with a money transmission, in the conversion of the money of one government into the money of another government.

(3) Every money transmitter licensee and its authorized delegates shall refund to the customer all moneys received for transmittal within ten days of receipt of a written request for a refund unless any of the following occurs:

(a) The moneys have been transmitted and delivered to the person designated by the customer prior to receipt of the written request for a refund;

(b) Instructions have been given committing an equivalent amount of money to the person designated by the customer prior to receipt of a written request for a refund;

(c) The licensee or its authorized delegate has reason to believe that a crime has occurred, is occurring, or may potentially occur as a result of transmitting the money as requested by the customer or refunding the money as requested by the customer; or

(d) The licensee is otherwise barred by law from making a refund. [2003 c 287 § 35.]

19.230.340 Prohibited practices. It is a violation of this chapter for any licensee, executive officer, responsible individual, or other person subject to this chapter in connection with the provision of money services to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any person, including but not limited to engaging in bait and switch advertising or sales practices;

(2) Directly or indirectly engage in any unfair or deceptive act or practice toward any person, including but not limited to any false or deceptive statement about fees or other terms of a money transmission or currency exchange;

(3) Directly or indirectly obtain property by fraud or misrepresentation;

(4) Knowingly make, publish, or disseminate any false, deceptive, or misleading information in the provision of money services;

(5) Knowingly receive or take possession for personal use of any property of any money services business, other than in payment for services rendered, and with intent to defraud, omit to make, or cause or direct to omit to make, a full and true entry thereof in the books and accounts of the business;

(6) Make or concur in making any false entry, or omit or concur in omitting any material entry, in the books or accounts of the business;

(7) Knowingly make or publish to the director or director's designee, or concur in making or publishing to the director or director's designee any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein; or

(8) Fail to make any report or statement lawfully required by the director or other public official. [2003 c 287 § 36.]

19.230.900 Short title. This chapter may be known and cited as the uniform money services act. [2003 c 287 § 1.]

19.230.901 Effective date—2003 c 287. This act takes effect October 1, 2003. [2003 c 287 § 37.]

19.230.902 Implementation. The director or the director's designee may take such steps as are necessary to ensure that chapter 287, Laws of 2003 is implemented on October 1, 2003. In particular, the director or the director's designee shall conduct outreach to small businesses and immigrant communities to enhance awareness of and compliance with state and federal laws governing money transmission and currency exchange, and to provide technical assistance in applying for a license under this chapter and understanding the requirements of this chapter. [2003 c 287 § 38.]

19.230.903 Uniformity of application and construction. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2003 c 287 § 39.]

19.230.904 Severability—2003 c 287. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2003 c 287 § 40.]

19.230.905 Captions not law. Captions used in this chapter are not any part of the law. [2003 c 287 § 41.]

Title 20

COMMISSION MERCHANTS— AGRICULTURAL PRODUCTS

Chapters

20.01 Agricultural products—Commission merchants, dealers, brokers, buyers, agents.

Chapter 20.01 RCW

AGRICULTURAL PRODUCTS—COMMISSION MERCHANTS, DEALERS, BROKERS, BUYERS, AGENTS

Sections

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20.01.490	Civil infractions—Monetary penalty—Failure to pay, misdemeanor. (<i>Effective July 1, 2004.</i>)
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20.01.010 Definitions. As used in this title the terms defined in this section have the meanings indicated unless the context clearly requires otherwise.

(1) "Director" means the director of agriculture or a duly authorized representative.

(2) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(3) "Agricultural product" means any unprocessed horticultural, vermicultural and its byproducts, viticultural, berry, poultry, poultry product, grain, bee, or other agricultural products, and includes mint or mint oil processed by or for the producer thereof and hay and straw baled or prepared for market in any manner or form and livestock.

(4) "Producer" means any person engaged in the business of growing or producing any agricultural product, whether as the owner of the products, or producing the products for others holding the title thereof.

(5) "Consignor" means any producer, person, or his agent who sells, ships, or delivers to any commission merchant, dealer, cash buyer, or agent, any agricultural product for processing, handling, sale, or resale.

(6) "Commission merchant" means any person who receives on consignment for sale or processing and sale from the consignor thereof any agricultural product for sale on commission on behalf of the consignor, or who accepts any farm product in trust from the consignor thereof for the purpose of resale, or who sells or offers for sale on commission any agricultural product, or who in any way handles for the account of or as an agent of the consignor thereof, any agricultural product.

(7) "Dealer" means any person other than a cash buyer, as defined in subsection (10) of this section, who solicits, contracts for, or obtains from the consignor thereof for reselling or processing, title, possession, or control of any agricultural product, or who buys or agrees to buy any agricultural product from the consignor thereof for sale or processing and includes any person, other than one who acts solely as a producer, who retains title in an agricultural product and delivers it to a producer for further production or increase. For the purposes of this chapter, the term dealer includes any person who purchases livestock on behalf of and for the account of another, or who purchases cattle in another state or country and imports these cattle into this state for resale.

(8) "Limited dealer" means any person who buys, agrees to buy, or pays for the production or increase of any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product and who operates under the alternative bonding provision in RCW 20.01.211.

(9) "Broker" means any person other than a commission merchant, dealer, or cash buyer who negotiates the purchase or sale of any agricultural product, but no broker may handle the agricultural products involved or proceeds of the sale.

(10) "Cash buyer" means any person other than a commission merchant, dealer, or broker, who obtains from the consignor thereof for the purpose of resale or processing, title, possession, or control of any agricultural product or who contracts for the title, possession, or control of any agricultural product, or who buys or agrees to buy for resale any

agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product, in coin or currency, lawful money of the United States. However, a cashier's check, certified check, credit card, or bankdraft may be used for the payment. For the purposes of this subsection, "agricultural product," does not include hay, grain, straw, or livestock.

(11) "Agent" means any person who, on behalf of any commission merchant, dealer, broker, or cash buyer, acts as liaison between a consignor and a principal, or receives, contracts for, or solicits any agricultural product from the consignor thereof or who negotiates the consignment or purchase of any agricultural product on behalf of any commission merchant, dealer, broker, or cash buyer and who transacts all or a portion of that business at any location other than at the principal place of business of his employer. With the exception of an agent for a commission merchant or dealer handling horticultural products, an agent may operate only in the name of one principal and only to the account of that principal.

(12) "Retail merchant" means any person operating from a bona fide or established place of business selling agricultural products twelve months of each year.

(13) "Fixed or established place of business" for the purpose of this chapter means any permanent warehouse, building, or structure, at which necessary and appropriate equipment and fixtures are maintained for properly handling those agricultural products generally dealt in, and at which supplies of the agricultural products being usually transported are stored, offered for sale, sold, delivered, and generally dealt with in quantities reasonably adequate for and usually carried for the requirements of such a business, and that is recognized as a permanent business at such place, and carried on as such in good faith and not for the purpose of evading this chapter, and where specifically designated personnel are available to handle transactions concerning those agricultural products generally dealt in, which personnel are available during designated and appropriate hours to that business, and shall not mean a residence, barn, garage, tent, temporary stand or other temporary quarters, any railway car, or permanent quarters occupied pursuant to any temporary arrangement.

(14) "Processor" means any person, firm, company, or other organization that purchases agricultural crops from a consignor and that cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner whatsoever for eventual resale.

(15) "Pooling contract" means any written agreement whereby a consignor delivers a horticultural product to a commission merchant under terms whereby the commission merchant may commingle the consignor's horticultural products for sale with others similarly agreeing, which must include all of the following:

(a) A delivery receipt for the consignor that indicates the variety of horticultural product delivered, the number of containers, or the weight and tare thereof;

(b) Horticultural products received for handling and sale in the fresh market shall be accounted for to the consignor with individual pack-out records that shall include variety, grade, size, and date of delivery. Individual daily packing summaries shall be available within forty-eight hours after

packing occurs. However, platform inspection shall be acceptable by mutual contract agreement on small deliveries to determine variety, grade, size, and date of delivery;

(c) Terms under which the commission merchant may use his judgment in regard to the sale of the pooled horticultural product;

(d) The charges to be paid by the consignor as filed with the state of Washington;

(e) A provision that the consignor shall be paid for his pool contribution when the pool is in the process of being marketed in direct proportion, not less than eighty percent of his interest less expenses directly incurred, prior liens, and other advances on the grower's crop unless otherwise mutually agreed upon between grower and commission merchant.

(16) "Date of sale" means the date agricultural products are delivered to the person buying the products.

(17) "Conditioner" means any person, firm, company, or other organization that receives turf, forage, or vegetable seeds from a consignor for drying or cleaning.

(18) "Seed bailment contract" means any contract meeting the requirements of chapter 15.48 RCW.

(19) "Proprietary seed" means any seed that is protected under the Federal Plant Variety Protection Act.

(20) "Licensed public weighmaster" means any person, licensed under the provisions of chapter 15.80 RCW, who weighs, measures, or counts any commodity or thing and issues therefor a signed certified statement, ticket, or memorandum of weight, measure, or count upon which the purchase or sale of any commodity or upon which the basic charge of payment for services rendered is based.

(21) "Certified weight" means any signed certified statement or memorandum of weight, measure or count issued by a licensed public weighmaster in accordance with the provisions of chapter 15.80 RCW.

(22) "Licensee" means any person or business licensed under this chapter as a commission merchant, dealer, limited dealer, broker, cash buyer, or agent. [2003 c 395 § 1; 1991 c 174 § 1; 1989 c 354 § 37; 1986 c 178 § 6; 1985 c 412 § 8; 1983 c 305 § 1; 1982 c 194 § 1; 1981 c 296 § 30; 1979 ex.s. c 115 § 1; 1977 ex.s. c 304 § 1; 1974 ex.s. c 102 § 2; 1971 ex.s. c 182 § 1; 1967 c 240 § 40; 1963 c 232 § 1; 1959 c 139 § 1.]

Severability—1989 c 354: See note following RCW 15.36.012.

Severability—1983 c 305: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 305 § 78.]

Severability—1981 c 296: See note following RCW 15.08.010.

20.01.130 Disposition of moneys. All fees and other moneys received by the department under this chapter shall be paid to the director and used solely for the purpose of carrying out this chapter and the rules adopted under this chapter. All civil fines received by the courts as the result of notices of infractions issued by the director shall be paid to the director, less any mandatory court costs and assessments. [2003 c 395 § 2; 1993 sp.s. c 24 § 929; 1986 c 178 § 8; 1973 c 142 § 1; 1971 ex.s. c 182 § 7; 1959 c 139 § 13.]

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.165.070.

[2003 RCW Supp—page 240]

20.01.140 Change in organization of firm to be reported. Any change in the organization of any firm, association, exchange, corporation, or partnership licensed under this chapter shall be reported to the director and the licensee's surety or sureties within thirty days. [2003 c 395 § 3; 1959 c 139 § 14.]

20.01.211 Alternative bonding provision for certain dealers. (1) In lieu of the bonding provision required by RCW 20.01.210, any dealer who buys, agrees to buy, or pays for the production or increase of any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product may file a bond in an amount equal to the dealer's maximum monthly purchases, divided by twelve, but the minimum bond under this section shall be no less than ten thousand dollars.

(2) Any dealer using the bonding provisions of this section shall file an affidavit with the director that sets forth the dealer's maximum monthly purchases from or payments to consignors. The affidavit shall be filed at the time of application and with each renewal.

(3) Any dealer bonded under this section who is found to be in violation of this chapter shall be required to comply with the bonding requirements of RCW 20.01.210 for a minimum of two years. [2003 c 395 § 4; 1983 c 305 § 5; 1977 ex.s. c 304 § 16.]

Severability—1983 c 305: See note following RCW 20.01.010.

20.01.240 Claims against commission merchant, dealer. (1) Any consignor who believes he or she has a valid claim against the bond of a commission merchant or dealer shall file a claim with the director.

(2) In the case of a claim against the bond of a commission merchant or dealer in hay or straw, default occurs when the licensee fails to make payment within thirty days of the date the licensee took possession of the hay or straw or at a date agreed to by both the consignor and commission merchant or dealer in written contract. In the case of a claim against a limited dealer in hay or straw, default occurs when the licensee fails to make payment upon taking possession of the hay or straw.

(3) Upon the filing of a claim under this subsection against any commission merchant or dealer handling any agricultural product, the director may, after investigation, proceed to ascertain the names and addresses of all consignor creditors of such commission merchant and dealer, together with the amounts due and owing to them by such commission merchant and dealer, and shall request all such consignor creditors to file a verified statement of their respective claims with the director. Such request shall be addressed to each known consignor creditor at his last known address.

(4) For claims against a bond that have been filed by consignors prior to the sixty-day deadline established in RCW 20.01.250, the director shall investigate the claims and, within thirty days of verifying the claims, demand payment for the valid claims by the licensee's surety. The director shall distribute the proceeds of the valid bond claims to the claimants on a pro rata basis within the limits of the claims and the availability of the bond proceeds. If a claim is filed after the sixty-day deadline established in RCW 20.01.250,

the director may investigate the claim and may demand payment for a valid claim. The director shall distribute the proceeds of any such payment made by the surety to the claimant on a first-to-file, first-to-be-paid basis within the limits of the claim and the availability of any bond proceeds remaining after the pro rata distribution. All distributions made by the director under this subsection are subject to RCW 20.01.260. [2003 c 395 § 5; 1986 c 178 § 12; 1959 c 139 § 24.]

20.01.320 Investigations, examinations, inspections—Search warrants—Subpoenas. The director on his or her own motion or upon the verified complaint of any interested party may investigate, examine, or inspect (1) any transaction involving solicitation, receipt, sale, or attempted sale of agricultural products by any person or persons acting or assuming to act as a commission merchant, dealer, broker, cash buyer, or agent; (2) the failure to make proper and true account of sales and settlement thereof as required under this chapter or rules adopted under this chapter; (3) the intentional making of false statements as to conditions and quantity of any agricultural products received or in storage; (4) the intentional making of false statements as to market conditions; (5) the failure to make payment for products within the time required by this chapter; (6) any and all other injurious transactions. In furtherance of such an investigation, examination, or inspection, the director or an authorized representative may examine that portion of the ledgers, books, accounts, memoranda and other documents, agricultural products, scales, measures, and other articles and things used in connection with the business of the person relating to the transactions involved. For the purpose of the investigation the director shall at all times have free and unimpeded access to all buildings, yards, warehouses, storage, and transportation facilities or any other place where agricultural products are kept, stored, handled, or transported. If the director is denied access, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to the premises and records. The court may upon the application issue the search warrant for the purposes requested. The director may also, for the purpose of the investigation, issue subpoenas to compel the attendance of witnesses, as provided in RCW 20.01.170, or the production of books or documents, anywhere in the state. [2003 c 395 § 6; 1959 c 139 § 32.]

20.01.410 Manifest of cargo—Bill of lading. (1) A copy of a manifest of cargo, on a form prescribed by the director, shall be carried on any vehicle transporting agricultural products purchased by a dealer or cash buyer, or consigned to a commission merchant from the consignor thereof when prescribed by the director. A bill of lading may be carried in lieu of a manifest of cargo for an agricultural product other than hay or straw.

(2) Except as provided in subsection (3) of this section, the commission merchant, dealer, or cash buyer of agricultural products shall issue a copy of the manifest or bill of lading to the consignor of the agricultural products and the original shall be retained by the licensee for a period of three years during which time it shall be surrendered upon request to the director. The manifest of cargo is valid only when signed by the licensee or his or her agent and the consignor or

his or her authorized representative of the agricultural products.

(3) The commission merchant or dealer of hay or straw shall issue a copy of a manifest to the consignor. The original copy shall be retained by the commission merchant or dealer for a period of three years during which time it shall be surrendered upon request to the director. The manifest of cargo is valid only when signed by the licensee or his or her agent and the consignor or his or her authorized representative of hay or straw.

(4) Manifest forms will be provided to licensees at the actual cost for the manifests plus necessary handling costs incurred by the department. [2003 c 395 § 7; 1971 ex.s. c 182 § 12; 1959 c 139 § 41.]

20.01.460 Prohibited acts—Penalties. (1) Any person who violates the provisions of this chapter or fails to comply with the rules adopted under this chapter is guilty of a gross misdemeanor, except as provided in subsections (2) through (4) of this section.

(2) Any commission merchant, dealer, or cash buyer, or any person assuming or attempting to act as a commission merchant, dealer, or cash buyer without a license is guilty of a class C felony who:

(a) Imposes false charges for handling or services in connection with agricultural products.

(b) Makes fictitious sales or is guilty of collusion to defraud the consignor.

(c) Intentionally makes false statement or statements as to the grade, conditions, markings, quality, or quantity of goods shipped or packed in any manner.

(d) With the intent to defraud the consignor, fails to comply with the requirements set forth under RCW 20.01.010(10), 20.01.390, or 20.01.430.

(3) Any person who violates the provisions of RCW 20.01.040, 20.01.080, 20.01.120, 20.01.125, 20.01.410, or 20.01.610 has committed a civil infraction.

(4) Unlawful issuance of a check or draft may be prosecuted under RCW 9A.56.060. [2003 c 395 § 8; 1989 c 354 § 43; 1988 c 254 § 19; 1986 c 178 § 13; 1982 c 20 § 4; 1959 c 139 § 46.]

Severability—1989 c 354: See note following RCW 15.36.012.

20.01.482 Civil infractions—Notice—Promise to appear or respond—Misdemeanors. (*Effective July 1, 2004.*) (1) The director shall have the authority to issue a notice of civil infraction if an infraction is committed in his or her presence or, if after investigation, the director has reasonable cause to believe an infraction has been committed.

(2) It is a misdemeanor for any person to refuse to properly identify himself or herself for the purpose of issuance of a notice of infraction or to refuse to sign the written promise to appear or respond to a notice of infraction.

(3) Any person willfully violating a written and signed promise to respond to a notice of infraction is guilty of a misdemeanor regardless of the disposition of the notice of infraction. [2003 c 53 § 161; 1986 c 178 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

20.01.490 Civil infractions—Monetary penalty—Failure to pay, misdemeanor. (*Effective until July 1, 2004.*) Any person found to have committed a civil infraction under this chapter shall be assessed a monetary penalty. No monetary penalty so assessed may exceed five thousand dollars. The director shall adopt a schedule of monetary penalties for each violation of this chapter classified as a civil infraction and shall submit the schedule to the proper courts. Whenever a monetary penalty is imposed by the court, the penalty is immediately due and payable. The court may, at its discretion, grant an extension of time, not to exceed thirty days, in which the penalty must be paid. Failure to pay any monetary penalties imposed under this chapter shall be punishable as a misdemeanor. [2003 c 395 § 9; 1986 c 178 § 5.]

20.01.490 Civil infractions—Monetary penalty—Failure to pay, misdemeanor. (*Effective July 1, 2004.*) (1) Any person found to have committed a civil infraction under this chapter shall be assessed a monetary penalty. No monetary penalty so assessed may exceed five thousand dollars. The director shall adopt a schedule of monetary penalties for each violation of this chapter classified as a civil infraction and shall submit the schedule to the proper courts. Whenever a monetary penalty is imposed by the court, the penalty is immediately due and payable. The court may, at its discretion, grant an extension of time, not to exceed thirty days, in which the penalty must be paid.

(2) Failure to pay any monetary penalties imposed under this chapter is a misdemeanor. [2003 c 395 § 9; 2003 c 53 § 162; 1986 c 178 § 5.]

Reviser's note: This section was amended by 2003 c 53 § 162 and by 2003 c 395 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

20.01.610 Authority to stop vehicle violating chapter—Failure to stop, civil infraction. The director or appointed officers may stop a vehicle transporting agricultural products upon the public roads of this state if there is reasonable cause to believe the carrier, seller, or buyer may be in violation of this chapter. Any operator of a vehicle failing or refusing to stop when directed to do so has committed a civil infraction.

The director and appointed officers shall work to ensure that vehicles carrying perishable agricultural products are detained no longer than is absolutely necessary for a prompt assessment of compliance with this chapter. If a vehicle carrying perishable agricultural products is found to be in violation of this chapter, the director or appointed officers shall promptly issue necessary notices of civil infraction, as provided in RCW 20.01.482 and 20.01.484, and shall allow the vehicle to continue toward its destination without further delay. [2003 c 395 § 10; 1986 c 178 § 14; 1983 c 305 § 8.]

Severability—1983 c 305: See note following RCW 20.01.010.

Title 21

SECURITIES AND INVESTMENTS

Chapters

21.20 Securities act of Washington.

21.30 Commodity transactions.

21.35 Uniform transfer on death security registration act.

Chapter 21.20 RCW

SECURITIES ACT OF WASHINGTON

Sections

- 21.20.110 Director may deny, suspend, revoke, restrict, condition, or limit any application or registration—Director may censure or fine registrant—Grounds—Procedures—Costs—Accounting.
- 21.20.390 Injunction, cease and desist order, restraining order, mandamus—Appointment of receiver or conservator for insolvent—Restitution or damages—Costs—Accounting.
- 21.20.395 Administrative action—Hearing—Judicial review—Judgment.
- 21.20.400 Penalty for violation of chapter—Limitation of actions (*as amended by 2003 c 288*).
- 21.20.400 Penalty for violation of chapter—Limitation of actions (*as amended by 2003 c 53*). (*Effective July 1, 2004.*)

21.20.110 Director may deny, suspend, revoke, restrict, condition, or limit any application or registration—Director may censure or fine registrant—Grounds—Procedures—Costs—Accounting. (1) The director may by order deny, suspend, revoke, restrict, condition, or limit any application or registration of any broker-dealer, salesperson, investment adviser representative, or investment adviser; or censure or fine the registrant or an officer, director, partner, or person performing similar functions for a registrant; if the director finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, or person performing similar functions:

(a) Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false, or misleading with respect to any material fact;

(b) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act, or any provision of chapter 21.30 RCW or any rule or order thereunder;

(c) Has been convicted, within the past ten years, of any misdemeanor involving a security, or a commodity contract or commodity option as defined in RCW 21.30.010, or any aspect of the securities, commodities, business investments, franchises, business opportunities, insurance, banking, or finance business, or any felony involving moral turpitude;

(d) Is permanently or temporarily enjoined or restrained by any court of competent jurisdiction in an action brought by the director, a state, or a federal government agency from engaging in or continuing any conduct or practice involving any aspect of the securities, commodities, business invest-

ments, franchises, business opportunities, insurance, banking, or finance business;

(e) Is the subject of an order entered after notice and opportunity for hearing:

(i) By the securities administrator of a state or by the Securities and Exchange Commission denying, revoking, barring, or suspending registration as a broker-dealer, salesperson, investment adviser, or investment adviser representative;

(ii) By the securities administrator of a state or by the Securities and Exchange Commission against a broker-dealer, salesperson, investment adviser, or an investment adviser representative;

(iii) By the Securities and Exchange Commission or self-regulatory organization suspending or expelling the registrant from membership in a self-regulatory organization; or

(iv) By a court adjudicating a United States Postal Service fraud;

The director may not commence a revocation or suspension proceeding more than one year after the date of the order relied on. The director may not enter an order on the basis of an order under another state securities act unless that order was based on facts that would constitute a ground for an order under this section;

(f) Is the subject of an order, adjudication, or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodities Futures Trading Commission, the Federal Trade Commission, or a securities or insurance regulator of any state that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodities Exchange Act, the securities, insurance, or commodities law of any state, or a federal or state law under which a business involving investments, franchises, business opportunities, insurance, banking, or finance is regulated;

(g) Has engaged in dishonest or unethical practices in the securities or commodities business;

(h) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature; but the director may not enter an order against an applicant or registrant under this subsection (1)(h) without a finding of insolvency as to the applicant or registrant;

(i) Has not complied with a condition imposed by the director under RCW 21.20.100, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business, except as otherwise provided in subsection (2) of this section;

(j) Has failed to supervise reasonably a salesperson or an investment adviser representative, or employee, if the salesperson, investment adviser representative, or employee was subject to the person's supervision and committed a violation of this chapter or a rule adopted or order issued under this chapter. For the purposes of this subsection, no person fails to supervise reasonably another person, if:

(i) There are established procedures, and a system for applying those procedures, that would reasonably be expected to prevent and detect, insofar as practicable, any violation by another person of this chapter, or a rule or order under this chapter; and

(ii) The supervising person has reasonably discharged the duties and obligations required by these procedures and system without reasonable cause to believe that another person was violating this chapter or rules or orders under this chapter;

(k) Has failed to pay the proper filing fee within thirty days after being notified by the director of a deficiency, but the director shall vacate an order under this subsection (1)(k) when the deficiency is corrected;

(l) Within the past ten years has been found, after notice and opportunity for a hearing to have:

(i) Violated the law of a foreign jurisdiction governing or regulating the business of securities, commodities, insurance, or banking;

(ii) Been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative; or

(iii) Been suspended or expelled from membership by a securities exchange or securities association operating under the authority of the securities regulator of a foreign jurisdiction;

(m) Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities or commodities laws of a state; or

(n) Refuses to allow or otherwise impedes the director from conducting an audit, examination, or inspection, or refuses access to any branch office or business location to conduct an audit, examination, or inspection.

(2) The director, by rule or order, may require that an examination, including an examination developed or approved by an organization of securities administrators, be taken by any class of or all applicants. The director, by rule or order, may waive the examination as to a person or class of persons if the administrator determines that the examination is not necessary or appropriate in the public interest or for the protection of investors.

(3) The director may issue a summary order pending final determination of a proceeding under this section upon a finding that it is in the public interest and necessary or appropriate for the protection of investors.

(4) The director may not impose a fine under this section except after notice and opportunity for hearing. The fine imposed under this section may not exceed ten thousand dollars for each act or omission that constitutes the basis for issuing the order. If a petition for judicial review has not been timely filed under RCW 34.05.542(2), a certified copy of the director's order requiring payment of the fine may be filed in the office of the clerk of the superior court in any county of this state. The clerk shall treat the order of the director in the same manner as a judgment of the superior court. The director's order so filed has the same effect as a judgment of the superior court and may be recorded, enforced, or satisfied in like manner.

(5) Withdrawal from registration as a broker-dealer, salesperson, investment adviser, or investment adviser representative becomes effective thirty days after receipt of an application to withdraw or within such shorter period as the administrator determines, unless a revocation or suspension proceeding is pending when the application is filed. If a pro-

ceeding is pending, withdrawal becomes effective upon such conditions as the director, by order, determines. If no proceeding is pending or commenced and withdrawal automatically becomes effective, the administrator may nevertheless commence a revocation or suspension proceeding under subsection (1)(b) of this section within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(6) A person who, directly or indirectly, controls a person not in compliance with any part of this section may also be sanctioned to the same extent as the noncomplying person, unless the controlling person acted in good faith and did not directly or indirectly induce the conduct constituting the violation or cause of action.

(7) In any action under subsection (1) of this section, the director may charge the costs, fees, and other expenses incurred by the director in the conduct of any administrative investigation, hearing, or court proceeding against any person found to be in violation of any provision of this section or any rule or order adopted under this section.

(8) In any action under subsection (1) of this section, the director may enter an order requiring an accounting, restitution, and disgorgement, including interest at the legal rate under RCW 4.56.110(3). The director may by rule or order provide for payments to investors, rates of interest, periods of accrual, and other matters the director deems appropriate to implement this subsection.

(9) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [2003 c 288 § 4; 2002 c 65 § 4; 1998 c 15 § 10; 1997 c 58 § 856; 1994 c 256 § 10; 1993 c 470 § 3; 1986 c 14 § 45; 1979 ex.s. c 68 § 7; 1975 1st ex.s. c 84 § 7; 1965 c 17 § 2; 1959 c 282 § 11.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Findings—Construction—1994 c 256: See RCW 43.320.007.

Severability—Effective date—1986 c 14: See RCW 21.30.900 and 21.30.901.

21.20.390 Injunction, cease and desist order, restraining order, mandamus—Appointment of receiver or conservator for insolvent—Restitution or damages—Costs—Accounting. Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the director may in his or her discretion:

(1) Issue an order directing the person to cease and desist from continuing the act or practice and to take appropriate affirmative action within a reasonable period of time, as pre-

scribed by the director, to correct conditions resulting from the act or practice including, without limitation, a requirement to provide restitution. Reasonable notice of and opportunity for a hearing shall be given. The director may issue a summary order pending the hearing which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within twenty days after the receipt of notice; or

(2) The director may without issuing a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order adopted under this chapter. The court may grant such ancillary relief, including a civil penalty, restitution, and disgorgement, as it deems appropriate. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The director may not be required to post a bond. If the director prevails, the director shall be entitled to a reasonable attorney's fee to be fixed by the court.

(3) Whenever it appears to the director that any person who has received a permit to issue, sell, or otherwise dispose of securities under this chapter, whether current or otherwise, has become insolvent, the director may petition a court of competent jurisdiction to appoint a receiver or conservator for the defendant or the defendant's assets. The director may not be required to post a bond.

(4) The director may bring an action for restitution or damages on behalf of the persons injured by a violation of this chapter, if the court finds that private civil action would be so burdensome or expensive as to be impractical.

(5) In any action under this section, the director may charge the costs, fees, and other expenses incurred by the director in the conduct of any administrative investigation, hearing, or court proceeding against any person found to be in violation of any provision of this section or any rule or order adopted under this section.

(6) In any action under subsection (1) of this section, the director may enter an order requiring an accounting, restitution, and disgorgement, including interest at the legal rate under RCW 4.56.110(3). The director may by rule or order provide for payments to investors, interest rates, periods of accrual, and other matters the director deems appropriate to implement this subsection. [2003 c 288 § 5; 1995 c 46 § 7; 1994 c 256 § 23; 1981 c 272 § 8; 1979 ex.s. c 68 § 27; 1975 1st ex.s. c 84 § 23; 1974 ex.s. c 77 § 10; 1959 c 282 § 39.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

21.20.395 Administrative action—Hearing—Judicial review—Judgment. (1) A person who, in an administrative action by the director, is found to have knowingly or recklessly violated any provision of this chapter, or any rule or order under this chapter, may be fined, after notice and opportunity for hearing, in an amount not to exceed ten thousand dollars for each violation.

(2) A person who, in an administrative action by the director, is found to have knowingly or recklessly violated an

administrative order issued under RCW 21.20.110 or 21.20.390 shall pay an administrative fine in an amount not to exceed twenty-five thousand dollars for each violation.

(3) The fines paid under subsections (1) and (2) of this section shall be deposited into the securities prosecution fund.

(4) If a petition for judicial review has not been timely filed under RCW 34.05.542(2), a certified copy of the director's order requiring payment of the fine may be filed in the office of the clerk of the superior court in any county of this state. The clerk shall treat the order of the director in the same manner as a judgment of the superior court. The director's order so filed has the same effect as a judgment of the superior court and may be recorded, enforced, or satisfied in like manner. [2003 c 288 § 6; 1998 c 15 § 18.]

21.20.400 Penalty for violation of chapter—Limitation of actions (as amended by 2003 c 288). (1) Any person who willfully violates any provision of this chapter except RCW 21.20.350, or who willfully violates any rule or order under this chapter, or who willfully violates RCW 21.20.350 knowing the statement made to be false or misleading in any material respect, ~~((shall upon conviction be fined not more than five thousand dollars or imprisoned not more than ten years, or both; but no))~~ is guilty of a class B felony punishable under RCW 9A.20.021(1)(b). However, a person may not be imprisoned for the violation of any rule or order if that person proves that he or she had no knowledge of the rule or order.

(2) Any person who knowingly alters, destroys, shreds, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding under this chapter, is guilty of a class B felony punishable under RCW 9A.20.021(1)(b) or punishable by a fine of not more than five hundred thousand dollars, or both. The fines paid under this subsection shall be deposited into the securities prosecution fund.

(3) No indictment or information may be returned under this chapter more than (a) five years after the ~~((alleged))~~ violation, or (b) three years after the actual discovery of the violation, whichever date of limitation is later. [2003 c 288 § 3; 1979 ex.s. c 68 § 28; 1965 c 17 § 5; 1959 c 282 § 40.]

21.20.400 Penalty for violation of chapter—Limitation of actions (as amended by 2003 c 53). (Effective July 1, 2004.) Any person who willfully violates any provision of this chapter except RCW 21.20.350, or who willfully violates any rule or order under this chapter, or who willfully violates RCW 21.20.350 knowing the statement made to be false or misleading in any material respect, is guilty of a class B felony and shall upon conviction be fined not more than five thousand dollars or imprisoned not more than ten years, or both; but no person may be imprisoned for the violation of any rule or order if that person proves that he or she had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation. [2003 c 53 § 163; 1979 ex.s. c 68 § 28; 1965 c 17 § 5; 1959 c 282 § 40.]

Reviser's note: RCW 21.20.400 was amended twice during the 2003 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 21.30 RCW COMMODITY TRANSACTIONS

Sections

21.30.140 Willful violations—Penalty—Limitation on actions. (Effective July 1, 2004.)

21.30.140 Willful violations—Penalty—Limitation on actions. (Effective July 1, 2004.) A person who willfully violates this chapter, or who willfully violates a rule or order under this chapter, is guilty of a class B felony and shall upon

conviction be fined not more than twenty thousand dollars or imprisoned not more than ten years, or both. However, no person may be imprisoned for the violation of a rule or order if the person proves that he or she had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation. [2003 c 53 § 164; 1986 c 14 § 14.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 21.35 RCW UNIFORM TRANSFER ON DEATH SECURITY REGISTRATION ACT

Sections

21.35.005 Definitions.

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

(1) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner, referred to as a "beneficiary."

(2) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

(3) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(4) "Person" means an individual, a corporation, an organization, or other legal entity.

(5) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(6) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(7) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(10) "Security account" means (a) a reinvestment account associated with a security; a securities account with a broker; a cash balance in a brokerage account; or cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; (b) an investment management or custody account with a trust company or a trust division of a bank with trust powers, including the securities in the

account; a cash balance in the account; and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death; or (c) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States. [2003 c 118 § 1; 1993 c 287 § 1.]

Title 22

WAREHOUSING AND DEPOSITS

Chapters

22.09 Agricultural commodities.

Chapter 22.09 RCW

AGRICULTURAL COMMODITIES

Sections

22.09.660 Emergency storage situation—Forwarding to other warehouses.

22.09.660 Emergency storage situation—Forwarding to other warehouses. Upon determining that an emergency storage situation appears to exist, the director may authorize the warehouseman to forward grain that is covered by negotiable receipts to other licensed warehouses for storage without canceling and reissuing the negotiable receipts pursuant to conditions established by rule. [2003 c 13 § 1; 1983 c 305 § 64.]

Severability—1983 c 305: See note following RCW 20.01.010.

Title 23

CORPORATIONS AND ASSOCIATIONS (PROFIT)

Business Corporation Act: See Title 23B RCW

Chapters

23.86 Cooperative associations.

Chapter 23.86 RCW

COOPERATIVE ASSOCIATIONS

Sections

23.86.080 Directors—Election and appointment.

23.86.080 Directors—Election and appointment. (1) Associations shall be managed by a board of not less than three directors (which may be referred to as "trustees"). The directors shall be elected by the members of the association at such time, in such manner, and for such term of office as the bylaws may prescribe, and shall hold office during the term for which they were elected and until their successors are elected and qualified.

[2003 RCW Supp—page 246]

(2) Except as provided in RCW 23.86.087, any vacancy occurring in the board of directors, and any directorship to be filled by reason of an increase in the number of directors, may be filled by the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of the predecessor in office. [2003 c 252 § 1; 1989 c 307 § 10; 1913 c 19 § 5; RRS § 3908. Formerly RCW 23.56.080.]

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

Title 23B

WASHINGTON BUSINESS CORPORATION ACT

Chapters

23B.01 General provisions.

23B.07 Shareholders.

23B.10 Amendment of articles of incorporation and bylaws.

23B.11 Merger and share exchange.

23B.12 Sale of assets.

23B.13 Dissenters' rights.

23B.14 Dissolution.

Chapter 23B.01 RCW

GENERAL PROVISIONS

Sections

23B.01.420 Notice—Common address—Address defined—Shareholder consent.

23B.01.420 Notice—Common address—Address defined—Shareholder consent. (1) A corporation has provided notice or any other record to shareholders of record who share a common address if all of the following requirements are met:

(a) The corporation delivers the notice or other record to the common address;

(b) The corporation addresses the notice or other record to the shareholders who share that address either as a group or to each of the shareholders individually; and

(c) Each shareholder consents in a record to delivery of a single copy of such a notice or other record to the shareholders' common address, and the corporation notifies each shareholder of the duration of that shareholder's consent, and explains the manner by which the shareholder can revoke the consent.

(2) For purposes of this section, "address" means a street address, a post office box number, a facsimile telephone number, a common address, location, or system for electronic transmissions, or another similar destination to which records are delivered.

(3) If a shareholder revokes consent to delivery of a single copy of any notice or other record to a common address, or notifies the corporation that the shareholder wishes to receive an individual copy of any notice or other record, the corporation shall begin sending individual copies to that

shareholder within thirty days after the corporation receives the revocation of consent or notice.

(4) Prior to the delivery of notice by electronic transmission to a common address, location, or system for electronic transmissions under this section, each shareholder consenting to receive notice under this section must also have consented to the receipt of notices by electronic transmission as provided in RCW 23B.01.410. [2003 c 35 § 1.]

Chapter 23B.07 RCW SHAREHOLDERS

Sections

23B.07.260 Action by single and multiple voting groups.

23B.07.260 Action by single and multiple voting groups. (1) If the articles of incorporation or this title provide for voting on a matter by all shares entitled to vote thereon, voting together as a single voting group and do not provide for separate voting by any other voting group or groups with respect to that matter, action on that matter is taken when voted upon by that single voting group as provided in RCW 23B.07.250.

(2) If the articles of incorporation or this title provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups as provided in RCW 23B.07.250. [2003 c 35 § 2; 1989 c 165 § 74.]

Chapter 23B.10 RCW

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

Sections

23B.10.020 Amendment of articles of incorporation by board of directors.

23B.10.030 Amendment of articles of incorporation by board of directors and shareholders.

23B.10.040 Voting on amendments to articles of incorporation by voting groups.

23B.10.020 Amendment of articles of incorporation by board of directors. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) If the corporation has only one class of shares outstanding, to provide, change, or eliminate any provision with respect to the par value of any class of shares;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;

(4) If the corporation has only one class of shares outstanding, solely to:

(a) Effect a forward split of, or change the number of authorized shares of that class in proportion to a forward split of, or stock dividend in, the corporation's outstanding shares; or

(b) Effect a reverse split of the corporation's outstanding shares and the number of authorized shares of that class in the same proportions;

(5) To change the corporate name; or

(6) To make any other change expressly permitted by this title to be made without shareholder action. [2003 c 35 § 3; 1989 c 165 § 121.]

23B.10.030 Amendment of articles of incorporation by board of directors and shareholders. (1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) The board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(b) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposed amendment on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed amendment.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the amendment to be adopted must be approved by two-thirds, or, in the case of a public company, a majority, of the voting group comprising all the votes entitled to be cast on the proposed amendment, and of each other voting group entitled under RCW 23B.10.040 or the articles of incorporation to vote separately on the proposed amendment. The articles of incorporation may require a greater vote than that provided for in this subsection. The articles of incorporation of a corporation other than a public company may require a lesser vote than that provided for in this subsection, or may require a lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposed amendment and of each other voting group entitled to vote separately on the proposed amendment. Separate voting by additional voting groups is required on a proposed amendment under the circumstances described in RCW 23B.10.040. [2003 c 35 § 4; 1989 c 165 § 122.]

23B.10.040 Voting on amendments to articles of incorporation by voting groups. (1) Except as otherwise required by subsection (3) of this section or otherwise permitted by subsection (4) of this section, the holders of the outstanding shares of a class or series are entitled to vote as a separate voting group on a proposed amendment if shareholder voting is otherwise required by this title and if the amendment would:

(a) Increase the aggregate number of authorized shares of the class or series;

(b) Effect an exchange or reclassification of all or part of the issued and outstanding shares of the class or series into shares of another class or series, thereby adversely affecting the holders of the shares so exchanged or reclassified;

(c) Change the rights, preferences, or limitations of all or part of the issued and outstanding shares of the class or series, thereby adversely affecting the holders of shares of the class or series;

(d) Change all or part of the issued and outstanding shares of the class or series into a different number of shares of the same class or series, thereby adversely affecting the holders of shares of the class or series;

(e) Create a new class or series of shares having rights or preferences with respect to distributions or to dissolution that are, or upon designation by the board of directors in accordance with RCW 23B.06.020 may be, prior, superior, or substantially equal to the shares of the class or series;

(f) Increase the rights or preferences with respect to distributions or to dissolution, or the number of authorized shares of any class or series that, after giving effect to the amendment, has rights or preferences with respect to distributions or to dissolution that are, or upon designation by the board of directors in accordance with RCW 23B.06.020 may be, prior, superior, or substantially equal to the shares of the class or series;

(g) Limit or deny an existing preemptive right of all or part of the shares of the class or series;

(h) Cancel or otherwise adversely affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class or series; or

(i) Effect a redemption or cancellation of all or part of the shares of the class or series in exchange for cash or any other form of consideration other than shares of the corporation.

(2) If a proposed amendment would affect only a series of a class of shares in one or more of the ways described in subsection (1) of this section, only the shares of that series are entitled to vote as a separate voting group on the proposed amendment. A voting group entitled to vote separately under this section may never comprise a group of holders smaller than the holders of a single class or series authorized and designated as a class or series in the articles of incorporation, unless otherwise provided in the articles of incorporation or unless the board of directors conditions its submission of the proposed amendment on a separate vote by one or more smaller voting groups.

(3) If a proposed amendment, that would otherwise entitle two or more classes or series of shares to vote as separate voting groups under this section, would affect those two or more classes or series in the same or a substantially similar way, then instead of voting as separate voting groups the shares of all similarly affected classes or series shall vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation or unless the board of directors conditions its submission of the proposed amendment on a separate vote by one or more classes or series.

(4) A class or series of shares is entitled to the voting group rights granted by this section although the articles of incorporation generally describe the shares of the class or

series as nonvoting shares. The articles of incorporation may, however, limit or deny the voting group rights granted by subsection (1)(a), (e), or (f) of this section as to any class or series of issued or unissued shares, by means of a provision that makes explicit reference to the limitation or denial of voting group rights that would otherwise apply under subsection (1)(a), (e), or (f) of this section. [2003 c 35 § 5; 1989 c 165 § 123.]

Chapter 23B.11 RCW

MERGER AND SHARE EXCHANGE

Sections

23B.11.030 Action on plan of merger or share exchange.

23B.11.035 Plan of merger or share exchange—Separate voting group.

23B.11.030 Action on plan of merger or share exchange. (1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (7) of this section, or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) The shareholders entitled to vote must approve the plan, except as provided in subsection (7) of this section.

(3) The board of directors may condition its submission of the proposed plan of merger or share exchange on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed plan of merger or share exchange.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy or summary of the plan.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of merger to be authorized must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan, unless shareholder action is not required under subsection (7) of this section. The articles of incorporation may require a greater or lesser vote than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of merger and of each other voting group entitled to vote sep-

arately on the plan. Separate voting by additional voting groups is required on a plan of merger under the circumstances described in RCW 23B.11.035.

(6) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of share exchange to be authorized must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan. The articles of incorporation may require a greater or lesser vote than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of share exchange and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of share exchange under the circumstances described in RCW 23B.11.035.

(7) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in RCW 23B.10.020, from its articles of incorporation before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of voting shares of the surviving corporation authorized by its articles of incorporation immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of participating shares authorized by its articles of incorporation immediately before the merger.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors. [2003 c 35 § 6; 1989 c 165 § 133.]

23B.11.035 Plan of merger or share exchange—Separate voting group. (1) Except as otherwise required by

subsection (3) of this section or otherwise permitted by subsection (4) of this section, the holders of the outstanding shares of a class or series are entitled to vote as a separate voting group on a proposed plan of merger or plan of share exchange if shareholder voting is otherwise required by this title and if, as a result of the proposed plan, holders of part or all of the class or series would hold or receive:

(a) Shares of any class or series of the surviving or acquiring corporation, or of any parent corporation of the surviving corporation, and either (i) that class or series has a greater number of authorized shares than the class or series held by the holders prior to the merger or share exchange, or (ii) the proposed plan effects a change in the number of shares held by the holders, or in the rights, preferences, or limitations of the shares they hold, or in the class or series of shares they hold, and such change adversely affects the holders;

(b) Shares of any class or series of the surviving or acquiring corporation, or of any parent corporation of the surviving corporation, and the holders who hold or receive shares of that class or series are adversely affected under the proposed plan, as compared to their circumstances prior to the proposed merger or share exchange, by the creation, existence, number of authorized shares, or rights or preferences with respect to distributions or to dissolution, of another class or series of shares of the surviving, acquiring, or parent corporation having rights or preferences with respect to distributions or to dissolution that are, or upon designation by the surviving, acquiring, or parent corporation's board of directors may be, prior, superior, or substantially equal to the shares of the class or series held or to be received by the holders in the proposed merger or share exchange; or

(c) Cash or any other form of consideration other than shares of the surviving or acquiring corporation or of any parent corporation of the surviving corporation, received upon redemption or cancellation of all or part of their shares pursuant to the proposed plan of merger or share exchange.

(2) If a proposed plan of merger or share exchange would affect only a series of a class of shares in one or more of the ways described in subsection (1) of this section, only the shares of that series are entitled to vote as a separate voting group on the proposed plan. A voting group entitled to vote separately under this section may never comprise a group of holders smaller than the holders of a single class or series authorized and designated as a class or series in the articles of incorporation, unless otherwise provided in the articles of incorporation or unless the board of directors conditions its submission of the proposed plan on a separate vote by one or more smaller voting groups.

(3) If a proposed plan of merger or share exchange, that would otherwise entitle two or more classes or series of shares to vote as separate voting groups under this section, would affect those two or more classes or series in the same or a substantially similar way, then instead of voting as separate voting groups, the shares of all similarly affected classes or series shall vote together as a single voting group on the proposed plan of merger or share exchange, unless otherwise provided in the articles of incorporation or unless the board of directors conditions its submission of the proposed plan on a separate vote by one or more classes or series. Holders of shares of two or more classes or series of shares who will,

under a proposed plan, receive the same type of consideration in the form of shares of the surviving or acquiring corporation or of any parent corporation of the surviving corporation, cash or other form of consideration, or the same combination thereof, but in differing amounts resulting solely from application of provisions in the corporation's articles of incorporation governing distribution of consideration received in a merger or share exchange, are affected in the same or a substantially similar way and are not, by reason of receiving the same types or differing amounts of consideration, entitled to vote as separate voting groups on the proposed plan, unless the articles of incorporation expressly require otherwise or the board of directors conditions its submission of the proposed plan on a separate vote by one or more classes or series.

(4) A class or series of shares is entitled to the voting group rights granted by this section although the articles of incorporation generally describe the shares of the class or series as nonvoting shares. The articles of incorporation may, however, limit or deny the voting group rights granted by this section as to any class or series of issued or unissued shares, by means of a provision that makes explicit reference to the limitation or denial of voting group rights that would otherwise apply under this section. [2003 c 35 § 7.]

Chapter 23B.12 RCW SALE OF ASSETS

Sections

23B.12.020 Sale of assets other than in the regular course of business.

23B.12.020 Sale of assets other than in the regular course of business. (1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction to be authorized:

(a) The board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) The shareholders entitled to vote must approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed transaction.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corpo-

ration and contain or be accompanied by a description of the transaction.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the transaction to be authorized must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the transaction, and of each other voting group entitled under the articles of incorporation to vote separately on the transaction. The articles of incorporation may require a greater or lesser vote than provided in this subsection, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than a majority of all the votes entitled to be cast on the transaction and of each other voting group entitled to vote separately on the transaction.

(6) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholder action, in a manner determined by the board of directors.

(7) A transaction that constitutes a distribution is governed by RCW 23B.06.400 and not by this section. [2003 c 35 § 8; 1989 c 165 § 139.]

Chapter 23B.13 RCW DISSENTERS' RIGHTS

Sections

23B.13.020 Right to dissent.

23B.13.020 Right to dissent. (1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party (i) if shareholder approval is required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, and the shareholder is entitled to vote on the merger, or (ii) if the corporation is a subsidiary that is merged with its parent under RCW 23B.11.040;

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation; or

(e) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW 25.10.900 through 25.10.955, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

(a) The proposed corporate action is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or

(c) The shareholder's demand for payment is withdrawn with the written consent of the corporation. [2003 c 35 § 9; 1991 c 269 § 37; 1989 c 165 § 141.]

Chapter 23B.14 RCW

DISSOLUTION

Sections

23B.14.020 Dissolution by board of directors and shareholders.

23B.14.020 Dissolution by board of directors and shareholders. (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal for dissolution on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed dissolution.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the proposal to dissolve must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the proposal, and of each other voting group entitled under the articles of incorporation to vote separately on the proposal. The articles of incorporation may require a greater or lesser vote than provided in this subsection, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposal and of each other voting group entitled to vote separately on the proposal. [2003 c 35 § 10; 1989 c 165 § 155.]

Title 24

CORPORATIONS AND ASSOCIATIONS (NONPROFIT)

Chapters

24.06 Nonprofit miscellaneous and mutual corporations act.

Chapter 24.06 RCW

NONPROFIT MISCELLANEOUS AND MUTUAL CORPORATIONS ACT

Sections

24.06.465 Penalties imposed upon corporation—Penalty established by secretary of state. (*Effective July 1, 2004.*)

24.06.465 Penalties imposed upon corporation—Penalty established by secretary of state. (*Effective July 1, 2004.*) (1) Each corporation, domestic or foreign, which fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a penalty as established and assessed by the secretary of state.

(2) Each corporation, domestic or foreign, which fails or refuses to answer truthfully and fully within the time prescribed by this chapter any interrogatories propounded by the secretary of state in accordance with the provisions of this chapter, is guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not to exceed five hundred dollars on each count. [2003 c 53 § 165; 1994 c 287 § 11; 1969 ex.s. c 120 § 93.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Title 26

DOMESTIC RELATIONS

Chapters

26.04 Marriage.

26.10 Nonparental actions for child custody.

26.44 Abuse of children.

26.50 Domestic violence prevention.

Chapter 26.04 RCW

MARRIAGE

Sections

26.04.210 Affidavits required for issuance of license—Penalties. (*Effective July 1, 2004.*)

26.04.230 Repealed. (*Effective July 1, 2004.*)

26.04.210 Affidavits required for issuance of license—Penalties. (*Effective July 1, 2004.*) (1) The county auditor, before a marriage license is issued, upon the payment of a license fee as fixed in RCW 36.18.010 shall require each applicant therefor to make and file in the auditor's office upon blanks to be provided by the county for that purpose, an affidavit showing that if an applicant is afflicted with any contagious sexually transmitted disease, the condition is known to both applicants, and that the applicants are the age of eighteen years or over. If the consent in writing is obtained of the

father, mother, or legal guardian of the person for whom the license is required, the license may be granted in cases where the female has attained the age of seventeen years or the male has attained the age of seventeen years. Such affidavit may be subscribed and sworn to before any person authorized to administer oaths.

(2) Anyone knowingly swearing falsely to any of the statements contained in the affidavits mentioned in this section is guilty of perjury under chapter 9A.72 RCW.

(3) The affidavit form shall be designed to require a statement that no contagious sexually transmitted disease is present or that the condition is known to both applicants, without requiring the applicants to state whether or not either or both of them are afflicted by such disease.

(4) Any person knowingly violating this section is guilty of a class C felony and shall be punished by a fine of not more than one thousand dollars, or by imprisonment in a state correctional facility for a period of not more than three years, or by both such fine and imprisonment. [2003 c 53 § 166; 1995 c 301 § 78; 1985 c 82 § 5; 1979 ex.s. c 128 § 2; 1973 1st ex.s. c 154 § 29; 1970 ex.s. c 17 § 5; 1963 c 230 § 4; 1959 c 149 § 3; 1909 ex.s. c 16 § 3; 1909 c 174 § 3; Code 1881 §§ 2391, 2392; 1867 p 104 § 1; 1866 p 83 §§ 13, 14; RRS § 8451.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

26.04.230 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 26.10 RCW

NONPARENTAL ACTIONS FOR CHILD CUSTODY

Sections

- | | |
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| 26.10.030 | Child custody proceeding—Commencement—Notice—Intervention. |
| 26.10.032 | Child custody motion—Affidavit required—Notice—Denial of motion—Show cause hearing. |
| 26.10.034 | Child custody petitions, orders, and decrees—Application of Indian child welfare act. |
| 26.10.135 | Custody orders—Background information to be consulted. |

26.10.030 Child custody proceeding—Commencement—Notice—Intervention. (1) Except as authorized for proceedings brought under chapter 13.34 RCW, or chapter 26.50 RCW in district or municipal courts, a child custody proceeding is commenced in the superior court by a person other than a parent, by filing a petition seeking custody of the child in the county where the child is permanently resident or where the child is found, but only if the child is not in the physical custody of one of its parents or if the petitioner alleges that neither parent is a suitable custodian. In proceedings in which the juvenile court has not exercised concurrent jurisdiction and prior to a child custody hearing, the court shall determine if the child is the subject of a pending dependency action.

(2) Notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties.

[2003 RCW Supp—page 252]

(3) The petitioner shall include in the petition the names of any adult members of the petitioner's household. [2003 c 105 § 3; 2000 c 135 § 3; 1998 c 130 § 4; 1987 c 460 § 27.]

26.10.032 Child custody motion—Affidavit required—Notice—Denial of motion—Show cause hearing.

(1) A party seeking a custody order shall submit, along with his or her motion, an affidavit declaring that the child is not in the physical custody of one of its parents or that neither parent is a suitable custodian and setting forth facts supporting the requested order. The party seeking custody shall give notice, along with a copy of the affidavit, to other parties to the proceedings, who may file opposing affidavits.

(2) The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order should not be granted. [2003 c 105 § 6.]

26.10.034 Child custody petitions, orders, and decrees—Application of Indian child welfare act.

(1) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian child as defined under the Indian child welfare act, the provisions of the act shall apply.

(2) Every order or decree entered in any proceeding under this chapter shall contain a finding that the Indian child welfare act does or does not apply. Where there is a finding that the Indian child welfare act does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the Indian child welfare act have been satisfied. [2003 c 105 § 7.]

26.10.135 Custody orders—Background information to be consulted.

(1) Before granting any order regarding the custody of a child under this chapter, the court shall consult the judicial information system, if available, to determine the existence of any information and proceedings that are relevant to the placement of the child.

(2) Before entering a final order, the court shall:

(a) Direct the department of social and health services to release information as provided under RCW 13.50.100; and

(b) Require the petitioner to provide the results of an examination of state and national criminal identification data provided by the Washington state patrol criminal identification system as described in chapter 43.43 RCW for the petitioner and adult members of the petitioner's household. [2003 c 105 § 1.]

Chapter 26.44 RCW ABUSE OF CHILDREN

Sections

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| 26.44.030 | Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Interviews of children—Records—Risk assessment process. |
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26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning

and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Interviews of children—Records—Risk assessment process. (1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(c) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(d) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child's welfare is

endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or

release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving reports of alleged abuse or neglect, the department or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

(11) Upon receiving a report of alleged child abuse and neglect, the department or investigating law enforcement agency shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(12) The department shall maintain investigation records and conduct timely and periodic reviews of all cases constituting abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(13) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

(14) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(15) The department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which: (a) The department believes there is a serious threat of substantial harm to the child; (b) the report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or (c) the department has, after investigation, a report of abuse or neglect that has been founded with regard to a member of the household within three years of receipt of the referral. [2003 c 207 § 4. Prior: 1999 c 267 § 20; 1999 c 176 § 30; 1998 c 328 § 5; 1997 c 386 § 25; 1996 c 278 § 2; 1995 c 311 § 17; prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

[2003 RCW Supp—page 254]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

Finding—Intent—1996 c 278: "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

Severability—1987 c 512: See RCW 18.19.901.

Legislative findings—1985 c 259: "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

Severability—1984 c 97: See RCW 74.34.900.

Severability—1982 c 129: See note following RCW 9A.04.080.

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

Chapter 26.50 RCW

DOMESTIC VIOLENCE PREVENTION

Sections

26.50.165 Judicial information system—Names of adult cohabitants in third-party custody actions.

26.50.165 Judicial information system—Names of adult cohabitants in third-party custody actions. In addition to the information required to be included in the judicial information system under RCW 26.50.160, the data base shall contain the names of any adult cohabitant of a petitioner to a third-party custody action under chapter 26.10 RCW. [2003 c 105 § 4.]

Title 28A

COMMON SCHOOL PROVISIONS

Chapters

28A.160 Student transportation.

28A.210 Health—Screening and requirements.

28A.225 Compulsory school attendance and admission.

28A.230 Compulsory course work and activities.

- 28A.300 Superintendent of public instruction.
- 28A.305 State board of education.
- 28A.315 Organization and reorganization of school districts.
- 28A.400 Employees.
- 28A.405 Certificated employees.
- 28A.410 Certification.
- 28A.500 Local effort assistance.
- 28A.630 Temporary provisions—Special projects.
- 28A.635 Offenses relating to school property and personnel.
- 28A.660 Alternative route teacher certification.

Chapter 28A.160 RCW
STUDENT TRANSPORTATION

Sections

- 28A.160.800 Biodiesel fuel pilot project—Findings. (*Expires September 1, 2005.*)
- 28A.160.802 Biodiesel fuel pilot project—Intent. (*Expires September 1, 2005.*)
- 28A.160.804 Biodiesel fuel pilot project—Report. (*Expires September 1, 2005.*)
- 28A.160.806 Biodiesel fuel pilot project—Definitions. (*Expires September 1, 2005.*)

28A.160.800 Biodiesel fuel pilot project—Findings. (*Expires September 1, 2005.*) The legislature recognizes that:

(1) The use of motor vehicles has a significant impact on the environment and public health of the state of Washington. Motor vehicles account for more than half of all air pollutants, almost sixty percent of total carbon dioxide emissions, and a significant portion of toxic contaminants in Washington state;

(2) Diesel exhaust, in particular, is likely to cause lung cancer in humans, chronic and acute bronchitis, asthma attacks, and respiratory illnesses. Children are particularly at risk. One out of every ten children in our state suffers from asthma. Over four hundred thousand students in the state risk their health breathing exhaust from riding diesel-powered buses to school every day;

(3) Although stringent standards established by the United States environmental protection agency for new diesel engine technology will take effect with the 2007 model year, a significant majority of diesel-powered school buses now in use in the state will continue to be used for the next thirteen or more years;

(4) Using biodiesel in place of, or blended with, petroleum diesel reduces emissions of carbon monoxide, hydrocarbon, particulates, and air toxics from new or existing diesel engines;

(5) Using ultra low sulfur diesel, along with after-market emissions control devices, significantly reduces fine-particle, hydrocarbon, and nitrogen oxide emissions from existing diesel engines;

(6) The United States environmental protection agency's new emission standards requiring the use of ultra low sulfur diesel take effect June 1, 2006, and ultra low sulfur diesel requires the addition of a lubricant to counteract premature wear of injection pumps;

(7) Biodiesel provides the needed lubricity to ultra low sulfur diesel, in addition to reducing harmful emissions;

(8) It is the intent of the legislature to study the effects of using ultra low sulfur diesel with biodiesel. [2003 c 64 § 1.]

Expiration date—2003 c 64 §§ 1-4: "Sections 1 through 4 of this act expire September 1, 2005." [2003 c 64 § 5.]

28A.160.802 Biodiesel fuel pilot project—Intent. (*Expires September 1, 2005.*) It is the intent of the legislature that implementation of this pilot project will not produce a significant financial burden on participating school districts or the state. The legislature calls upon the superintendent of public instruction, the office of community, trade, and economic development, and the department of ecology to explore alternative means of funding this pilot project including the use of state or federal grants but excluding the use of money from the state general fund. In the event of the inability of the participating school districts to fund this project, either from their own operating budget, grants, or other local funding or a combination thereof, the implementation of chapter 64, Laws of 2003 shall be dependent on securing funds that are not from the state general fund. [2003 c 64 § 4.]

Expiration date—2003 c 64 §§ 1-4: See note following RCW 28A.160.800.

28A.160.804 Biodiesel fuel pilot project—Report. (*Expires September 1, 2005.*) The superintendent of public instruction shall conduct a pilot project on the use of biodiesel with ultra low sulfur diesel in school buses powered by compression-ignition engines. The pilot project must begin in September of 2003.

(1) The superintendent of public instruction shall select two school districts to participate in the project. School districts located in a geographic area listed by the environmental protection agency as an area of concern for pollution emissions must receive first consideration for the project.

(2) The pilot project shall meet the following requirements:

(a) During the 2003 school year, at least one of the participating school districts shall have at least twenty-five percent of the school bus fleet, or a total of not less than ten buses, fueled with ultra low sulfur diesel. Emissions testing must be conducted before using ultra low sulfur diesel, and again after ultra low sulfur diesel has been in use for at least six months.

(b) During the 2004 school year, not less than seventy percent, or a total of not less than seven, of the buses fueled with ultra low sulfur diesel during the 2003 school year must be fueled with a blend of eighty percent ultra low sulfur diesel, by volume, and twenty percent biodiesel, by volume. Emissions testing must be conducted not less than six months after adding biodiesel to the ultra low sulfur diesel.

(c) A maximum of one of the participating school districts may, for the duration of the project, use a blend of twenty percent biodiesel, by volume, with eighty percent highway diesel, by volume, in at least seventy-five percent of the school bus fleet, or a total of not less than ten buses. Emissions testing must be conducted before use of the biodiesel blend, again not less than six months after the biodiesel blend has been in use, and again at the conclusion of the project.

(d) Issues related to the maintenance, including but not limited to fuel economy, changes in fuel filters, and other maintenance issues related to the use of ultra low sulfur diesel and biodiesel must be recorded.

(3) The superintendent of public instruction shall submit a report of findings to the legislature by September 1, 2005. [2003 c 64 § 2.]

Expiration date—2003 c 64 §§ 1-4: See note following RCW 28A.160.800.

28A.160.806 Biodiesel fuel pilot project—Definitions. (Expires September 1, 2005.) The definitions in this section apply throughout RCW 28A.160.800 and 28A.160.804 unless the context clearly requires otherwise.

(1) "Biodiesel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

(2) "Ultra low sulfur diesel" means petroleum diesel in which the sulfur content is not more than thirty parts per million.

(3) "Highway diesel" means petroleum diesel in which the sulfur content is not more than five hundred parts per million. [2003 c 64 § 3.]

Expiration date—2003 c 64 §§ 1-4: See note following RCW 28A.160.800.

Chapter 28A.210 RCW

HEALTH—SCREENING AND REQUIREMENTS

Sections

- 28A.210.255 Provision of health services in public and private schools—Employee job description.
28A.210.280 Catheterization of public and private school students.

28A.210.255 Provision of health services in public and private schools—Employee job description. Any employee of a public school district or private school that performs health services, such as catheterization, must have a job description that lists all of the health services that the employee may be required to perform for students. [2003 c 172 § 2.]

28A.210.280 Catheterization of public and private school students. (1) Public school districts and private schools that offer classes for any of grades kindergarten through twelve must provide for clean, intermittent bladder catheterization of students, or assisted self-catheterization of students pursuant to RCW 18.79.290. The catheterization must be provided in substantial compliance with:

(a) Rules adopted by the state nursing care quality assurance commission and the instructions of a registered nurse or advanced registered nurse practitioner issued under such rules; and

(b) Written policies of the school district or private school which shall be adopted in order to implement this section and shall be developed in accordance with such requirements of chapters 41.56 and 41.59 RCW as may be applicable.

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(2) School district employees, except those licensed under chapter 18.79 RCW, who have not agreed in writing to perform clean, intermittent bladder catheterization as a specific part of their job description, may file a written letter of refusal to perform clean, intermittent bladder catheterization of students. This written letter of refusal may not serve as grounds for discharge, nonrenewal, or other action adversely affecting the employee's contract status.

(3) Any public school district or private school that provides clean, intermittent bladder catheterization shall document the provision of training given to employees who perform these services. These records shall be made available for review at any audit. [2003 c 172 § 1; 1994 sp.s. c 9 § 721; 1988 c 48 § 2. Formerly RCW 28A.31.160.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Chapter 28A.225 RCW

COMPULSORY SCHOOL ATTENDANCE AND ADMISSION

Sections

- 28A.225.170 Admission to schools—Children on United States reservations—Idaho residents with Washington addresses.
28A.225.225 Applications from nonresident students or students receiving home-based instruction to attend district school—School employees' children—Acceptance and rejection standards—Notification.
28A.225.270 Intradistrict enrollment options policies.

28A.225.170 Admission to schools—Children on United States reservations—Idaho residents with Washington addresses. (1) Any child who is of school age and otherwise eligible residing within the boundaries of any military, naval, lighthouse, or other United States reservation, national park, or national forest or residing upon rented or leased undeeded lands within any Indian reservation within the state of Washington, shall be admitted to the public school, or schools, of any contiguous district without payment of tuition: PROVIDED, That the United States authorities in charge of such reservation or park shall cooperate fully with state, county, and school district authorities in the enforcement of the laws of this state relating to the compulsory attendance of children of school age, and all laws relating to and regulating school attendance.

(2) Any child who is of school age and otherwise eligible, residing in a home that is located in Idaho but that has a Washington address for the purposes of the United States postal service, shall be admitted, without payment of tuition, to the nearest Washington school district and shall be considered a resident student for state apportionment and all other purposes. [2003 c 411 § 1; 1969 ex.s. c 223 § 28A.58.210. Prior: 1945 c 141 § 10; 1933 c 28 § 10; 1925 ex.s. c 93 § 1; Rem. Supp. 1945 § 4680-1. Formerly RCW 28A.58.210, 28.58.210, 28.27.140.]

28A.225.225 Applications from nonresident students or students receiving home-based instruction to attend district school—School employees' children—Acceptance and rejection standards—Notification. (1) Except for students who reside out-of-state, a district shall accept applications from nonresident students who are the children of full-

time certificated and classified school employees, and those children shall be permitted to enroll:

(a) At the school to which the employee is assigned; or

(b) At a school forming the district's K through 12 continuum which includes the school to which the employee is assigned.

(2) A district may reject applications under this section if:

(a) The student's disciplinary records indicate a history of convictions for offenses or crimes, violent or disruptive behavior, or gang membership;

(b) The student has been expelled or suspended from a public school for more than ten consecutive days. Any policy allowing for readmission of expelled or suspended students under this subsection (2)(b) must apply uniformly to both resident and nonresident applicants; or

(c) Enrollment of a child under this section would displace a child who is a resident of the district, except that if a child is admitted under subsection (1) of this section, that child shall be permitted to remain enrolled at that school, or in that district's kindergarten through twelfth grade continuum, until he or she has completed his or her schooling.

(3) Except as provided in subsection (1) of this section, all districts accepting applications from nonresident students or from students receiving home-based instruction for admission to the district's schools shall consider equally all applications received. Each school district shall adopt a policy establishing rational, fair, and equitable standards for acceptance and rejection of applications by June 30, 1990. The policy may include rejection of a nonresident student if:

(a) Acceptance of a nonresident student would result in the district experiencing a financial hardship;

(b) The student's disciplinary records indicate a history of convictions for offenses or crimes, violent or disruptive behavior, or gang membership; or

(c) The student has been expelled or suspended from a public school for more than ten consecutive days. Any policy allowing for readmission of expelled or suspended students under this subsection (3)(c) must apply uniformly to both resident and nonresident applicants.

For purposes of subsections (2)(a) and (3)(b) of this section, "gang" means a group which: (i) Consists of three or more persons; (ii) has identifiable leadership; and (iii) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

(4) The district shall provide to applicants written notification of the approval or denial of the application in a timely manner. If the application is rejected, the notification shall include the reason or reasons for denial and the right to appeal under RCW 28A.225.230(3). [2003 c 36 § 1; 1999 c 198 § 2; 1997 c 265 § 3; 1995 c 52 § 3; 1994 c 293 § 1; 1990 1st ex.s. c 9 § 203.]

Severability—1997 c 265: See note following RCW 13.40.160.

Captions, headings not law—1990 1st ex.s. c 9: "Part headings and section headings do not constitute any part of the law." [1990 1st ex.s. c 9 § 501.]

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.225.270 Intradistrict enrollment options policies. (1) Each school district in the state shall adopt and

implement a policy allowing intradistrict enrollment options no later than June 30, 1990. Each district shall establish its own policy establishing standards on how the intradistrict enrollment options will be implemented.

(2) A district shall permit the children of full-time certificated and classified school employees to enroll at:

(a) The school to which the employee is assigned; or

(b) A school forming the district's K through 12 continuum which includes the school to which the employee is assigned.

(3) For the purposes of this section, "full-time employees" means employees who are employed for the full number of hours and days for their job description. [2003 c 36 § 2; 1990 1st ex.s. c 9 § 205.]

Captions, headings not law—1990 1st ex.s. c 9: See note following RCW 28A.225.225.

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

Chapter 28A.230 RCW

COMPULSORY COURSE WORK AND ACTIVITIES

Sections

28A.230.010	Course content requirements—Duties of school district boards of directors.
28A.230.120	High school diplomas—Issuance—Option to receive final transcripts—Notice.
28A.230.130	Program to help students meet minimum entrance requirements at baccalaureate-granting institutions or to pursue career or other opportunities—Exceptions.

28A.230.010 Course content requirements—Duties of school district boards of directors. School district boards of directors shall identify and offer courses with content that meet or exceed: (1) The basic education skills identified in RCW 28A.150.210; (2) the graduation requirements under RCW 28A.230.090; (3) the courses required to meet the minimum college entrance requirements under RCW 28A.230.130; and (4) the course options for career development under RCW 28A.230.130. Such courses may be applied or theoretical, academic, or vocational. [2003 c 49 § 1; 1990 c 33 § 237; 1984 c 278 § 2. Formerly RCW 28A.05.005.]

Severability—1984 c 278: See note following RCW 28A.185.010.

28A.230.120 High school diplomas—Issuance—Option to receive final transcripts—Notice. (1) School districts shall issue diplomas to students signifying graduation from high school upon the students' satisfactory completion of all local and state graduation requirements. Districts shall grant students the option of receiving a final transcript in addition to the regular diploma.

(2) School districts or schools of attendance shall establish policies and procedures to notify senior students of the transcript option and shall direct students to indicate their decisions in a timely manner. School districts shall make appropriate provisions to assure that students who choose to receive a copy of their final transcript shall receive such transcript after graduation.

(3)(a) A school district may issue a high school diploma to a person who:

(i) Is an honorably discharged member of the armed forces of the United States;

(ii) Was scheduled to graduate from high school in the years 1940 through 1955; and

(iii) Left high school before graduation to serve in World War II or the Korean conflict.

(b) A school district may issue a diploma to or on behalf of a person otherwise eligible under (a) of this subsection notwithstanding the fact that the person holds a high school equivalency certification or is deceased.

(c) The superintendent of public instruction shall adopt a form for a diploma application to be used by a veteran or a person acting on behalf of a deceased veteran under this subsection (3). The superintendent of public instruction shall specify what constitutes acceptable evidence of eligibility for a diploma. [2003 c 234 § 1; 2002 c 35 § 1; 1984 c 178 § 2. Formerly RCW 28A.58.108.]

Effective date—2003 c 234: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 234 § 2.]

High school transcripts: RCW 28A.305.220.

28A.230.130 Program to help students meet minimum entrance requirements at baccalaureate-granting institutions or to pursue career or other opportunities—

Exceptions. (1) All public high schools of the state shall provide a program, directly or in cooperation with a community college or another school district, for students whose educational plans include application for entrance to a baccalaureate-granting institution after being granted a high school diploma. The program shall help these students to meet at least the minimum entrance requirements under RCW 28B.10.050.

(2) All public high schools of the state shall provide a program, directly or in cooperation with a community or technical college, a skills center, an apprenticeship committee, or another school district, for students who plan to pursue career or work opportunities other than entrance to a baccalaureate-granting institution after being granted a high school diploma. These programs may:

(a) Help students demonstrate the application of essential academic learning requirements to the world of work, occupation-specific skills, knowledge of more than one career in a chosen pathway, and employability and leadership skills; and

(b) Help students demonstrate the knowledge and skill needed to prepare for industry certification, and/or have the opportunity to articulate to postsecondary education and training programs.

(3) The state board of education, upon request from local school districts, may grant waivers from the requirements to provide the program described in subsections (1) and (2) of this section for reasons relating to school district size and the availability of staff authorized to teach subjects which must be provided. In considering waiver requests related to programs in subsection (2) of this section, the state board of education shall consider the extent to which the school district has offered such programs before the 2003-04 school year. [2003 c 49 § 2; 1991 c 116 § 9; 1988 c 172 § 2; 1984 c 278 § 16. Formerly RCW 28A.05.070.]

Effective date—1984 c 278: "Sections 16, 18, and 19 of this act shall take effect July 1, 1986." [1984 c 278 § 23.]

[2003 RCW Supp—page 258]

Severability—1984 c 278: See note following RCW 28A.185.010.

Chapter 28A.300 RCW

SUPERINTENDENT OF PUBLIC INSTRUCTION

Sections

28A.300.440 Natural science, wildlife, and environmental education grant program.

28A.300.445 Washington natural science, wildlife, and environmental education partnership account.

28A.300.440 Natural science, wildlife, and environmental education grant program. (1) The natural science, wildlife, and environmental education grant program is hereby created, subject to the availability of funds in the natural science, wildlife, and environmental education partnership account. The program is created to promote proven and innovative natural science, wildlife, and environmental education programs that are fully aligned with the state's essential academic learning requirements, and includes but is not limited to instruction about renewable resources, responsible use of resources, and conservation.

(2) The superintendent of public instruction shall establish and publish funding criteria for environmental, natural science, wildlife, forestry, and agricultural education grants. The office of [the] superintendent of public instruction shall involve a cross-section of stakeholder groups to develop socially, economically, and environmentally balanced funding criteria. These criteria shall be based on compliance with the essential academic learning requirements and use methods that encourage critical thinking. The criteria must also include environmental, natural science, wildlife, forestry, and agricultural education programs with one or more of the following features:

(a) Interdisciplinary approaches to environmental, natural science, wildlife, forestry, and agricultural issues;

(b) Programs that target underserved, disadvantaged, and multicultural populations;

(c) Programs that reach out to schools across the state that would otherwise not have access to specialized environmental, natural science, wildlife, forestry, and agricultural education programs;

(d) Proven programs offered by innovative community partnerships designed to improve student learning and strengthen local communities.

(3) Eligible uses of grants include, but are not limited to:

(a) Continuing in-service and preservice training for educators with materials specifically developed to enable educators to teach essential academic learning requirements in a compelling and effective manner;

(b) Proven, innovative programs that align the basic subject areas of the common school curriculum in chapter 28A.230 RCW with the essential academic learning requirements; the basic subject areas should be integrated by using environmental education, natural science, wildlife, forestry, agricultural, and natural environment curricula to meet the needs of various learning styles; and

(c) Support and equipment needed for the implementation of the programs in this section.

(4) Grants may only be disbursed to nonprofit organizations exempt from income tax under section 501(c) of the

federal internal revenue code that can provide matching funds or in-kind services.

(5) Grants may not be used for any partisan or political activities. [2003 c 22 § 3.]

Intent—2003 c 22: "(1) Effective, natural science, wildlife, and environmental education programs provide the foundation for the development of literate children and adults, setting the stage for lifelong learning. Furthermore, integrating the basic subject areas of the common school curriculum in chapter 28A.230 RCW through natural science, wildlife, and environmental education offers many opportunities for achieving excellence in our schools. Well-designed programs, aligned with the state's essential academic learning requirements, contribute to the state's educational reform goals.

(2) Washington is fortunate to have institutions and programs that currently provide quality natural science, wildlife, and environmental education and teacher training that is already aligned with the state's essential academic learning requirements.

(3) The legislature intends to further the development of natural science, wildlife, and environmental education by establishing a competitive grant program, funded through state moneys to the extent those moneys are appropriated, or made available through other sources, for proven natural science, wildlife, and environmental education programs that are fully aligned with the state's essential academic learning requirements." [2003 c 22 § 1.]

28A.300.445 Washington natural science, wildlife, and environmental education partnership account. The Washington natural science, wildlife, and environmental education partnership account is hereby created in the custody of the state treasurer to provide natural science, wildlife, and environmental education opportunities for teachers and students to help achieve the highest quality of excellence in education through compliance with the essential academic learning requirements. Revenues to the account shall consist of appropriations made by the legislature or other sources. Grants and their administration shall be paid from the account. Only the superintendent of public instruction or the superintendent's designee may authorize expenditures from the account. The fund is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2003 c 22 § 2.]

Intent—2003 c 22: See note following RCW 28A.300.440.

Chapter 28A.305 RCW STATE BOARD OF EDUCATION

Sections

28A.305.210 Assistance of educational service district boards and superintendents—Scope.

28A.305.210 Assistance of educational service district boards and superintendents—Scope. (1) The state board of education, by rule or regulation, may require the assistance of educational service district boards and/or superintendents in the performance of any duty, authority, or power imposed upon or granted to the state board of education by law, upon such terms and conditions as the state board of education shall establish. Such authority to assist the state board of education shall be limited to the service function of information collection and dissemination and the attestation to the accuracy and completeness of submitted information.

(2) During the 2003-05 biennium, educational service districts may, at the request of the state board of education, receive and screen applications for school accreditation, conduct school accreditation site visits pursuant to state board of

education rules, and submit to the state board of education postsite visit recommendations for school accreditation. The educational service districts may assess a cooperative service fee to recover actual plus reasonable indirect costs for the purposes of this subsection. [2003 1st sp.s. c 25 § 911; 1975 1st ex.s. c 275 § 51; 1971 ex.s. c 282 § 30. Formerly RCW 28A.04.145.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

Chapter 28A.315 RCW ORGANIZATION AND REORGANIZATION OF SCHOOL DISTRICTS

Sections

28A.315.195 Transfer of territory by petition—Requirements—Rules—Costs.

28A.315.205 Transfer of territory by petition—Regional committee responsibilities—Rules—Appeals.

28A.315.195 Transfer of territory by petition—Requirements—Rules—Costs. (1) A proposed change in school district organization by transfer of territory from one school district to another may be initiated by a petition in writing presented to the educational service district superintendent:

(a) Signed by at least fifty percent plus one of the active registered voters residing in the territory proposed to be transferred; or

(b) Signed by a majority of the members of the board of directors of one of the districts affected by a proposed transfer of territory.

(2) The petition shall state the name and number of each district affected, describe the boundaries of the territory proposed to be transferred, and state the reasons for desiring the change and the number of children of school age, if any, residing in the territory.

(3) The educational service district superintendent shall not complete any transfer of territory under this section that involves ten percent or more of the common school student population of the entire district from which the transfer is proposed, unless the educational service district superintendent has first called and held a special election of the voters of the entire school district from which the transfer of territory is proposed. The purpose of the election is to afford those voters an opportunity to approve or reject the proposed transfer. A simple majority shall determine approval or rejection.

(4) The state board may establish rules limiting the frequency of petitions that may be filed pertaining to territory included in whole or in part in a previous petition.

(5) Upon receipt of the petition, the educational service district superintendent shall notify in writing the affected districts that:

(a) Each school district board of directors, whether or not initiating a proposed transfer of territory, is required to enter into negotiations with the affected district or districts;

(b) In the case of a citizen-initiated petition, the affected districts must negotiate on the entire proposed transfer of territory;

(c) The districts have ninety calendar days in which to agree to the proposed transfer of territory;

(d) The districts may request and shall be granted by the educational service district superintendent one thirty-day extension to try to reach agreement; and

(e) Any district involved in the negotiations may at any time during the ninety-day period notify the educational service district superintendent in writing that agreement will not be possible.

(6) If the negotiating school boards cannot come to agreement about the proposed transfer of territory, the educational service district superintendent, if requested by the affected districts, shall appoint a mediator. The mediator has thirty days to work with the affected school districts to see if an agreement can be reached on the proposed transfer of territory.

(7) If the affected school districts cannot come to agreement about the proposed transfer of territory, and the districts do not request the services of a mediator or the mediator was unable to bring the districts to agreement, either district may file with the educational service district superintendent a written request for a hearing by the regional committee.

(8) If the affected school districts cannot come to agreement about the proposed transfer of territory initiated by citizen petition, and the districts do not request the services of a mediator or the mediator was unable to bring the districts to agreement, the district in which the citizens who filed the petition reside shall file with the educational service district superintendent a written request for a hearing by the regional committee, unless a majority of the citizen petitioners request otherwise.

(9) Upon receipt of a notice under subsection (7) or (8) of this section, the educational service district superintendent shall notify the chair of the regional committee in writing within ten days.

(10) Costs incurred by school districts under this section shall be reimbursed by the state from such funds as are appropriated for this purpose. [2003 c 413 § 2; 1999 c 315 § 401.]

28A.315.205 Transfer of territory by petition—Regional committee responsibilities—Rules—Appeals.

(1) The chair of the regional committee shall schedule a hearing on the proposed transfer of territory at a location in the educational service district within sixty calendar days of being notified under RCW 28A.315.195 (7) or (8).

(2) Within thirty calendar days of the hearing under subsection (1) of this section, or final hearing if more than one is held by the committee, the committee shall issue its written findings and decision to approve or disapprove the proposed transfer of territory. The educational service district superintendent shall transmit a copy of the committee's decision to the superintendents of the affected school districts within ten calendar days.

(3) In carrying out the purposes of RCW 28A.315.015 and in making decisions as authorized under RCW 28A.315.095(1), the regional committee shall base its judgment upon whether and to the extent the proposed change in school district organization complies with RCW 28A.315.015(2) and rules adopted by the state board under chapter 34.05 RCW.

(4) State board rules under subsection (3) of this section shall provide for giving consideration to all of the following:

(a) Student educational opportunities as measured by the percentage of students performing at each level of the state-wide mandated assessments and data regarding student attendance, graduation, and dropout rates;

(b) The safety and welfare of pupils. For the purposes of this subsection, "safety" means freedom or protection from danger, injury, or damage and "welfare" means a positive condition or influence regarding health, character, and well-being;

(c) The history and relationship of the property affected to the students and communities affected, including, for example, inclusion within a single school district, for school attendance and corresponding tax support purposes, of entire master planned communities that were or are to be developed pursuant to an integrated commercial and residential development plan with over one thousand dwelling units;

(d) Whether or not geographic accessibility warrants a favorable consideration of a recommended change in school district organization, including remoteness or isolation of places of residence and time required to travel to and from school; and

(e) All funding sources of the affected districts, equalization among school districts of the tax burden for general fund and capital purposes through a reduction in disparities in per pupil valuation when all funding sources are considered, improvement in the economies in the administration and operation of schools, and the extent the proposed change would potentially reduce or increase the individual and aggregate transportation costs of the affected school districts.

(5)(a)(i) A petitioner or school district may appeal a decision by the regional committee to the state board based on the claim that the regional committee failed to follow the applicable statutory and regulatory procedures or acted in an arbitrary and capricious manner. Any such appeal shall be based on the record and the appeal must be filed within thirty days of the final decision of the regional committee.

(ii) If the state board finds that all applicable procedures were not followed or that the regional committee acted in an arbitrary and capricious manner, it shall refer the matter back to the regional committee with an explanation of the board's findings. The regional committee shall rehear the proposal.

(iii) If the state board finds that all applicable procedures were followed or that the regional committee did not act in an arbitrary and capricious manner, depending on the appeal, the educational service district shall be notified and directed to implement the changes.

(b) Any school district or citizen petitioner affected by a final decision of the regional committee may seek judicial review of the committee's decision in accordance with RCW 34.05.570. [2003 c 413 § 1; 1999 c 315 § 402.]

Chapter 28A.400 RCW

EMPLOYEES

Sections

28A.400.205 Cost-of-living increases for employees.

28A.400.206 Cost-of-living increases—Duty of state.

28A.400.205 Cost-of-living increases for employees.

(1) School district employees shall be provided an annual salary cost-of-living increase in accordance with this section.

(a) The cost-of-living increase shall be calculated by applying the rate of the yearly increase in the cost-of-living index to any state-funded salary base used in state funding formulas for teachers and other school district employees. Beginning with the 2001-02 school year, and for each subsequent school year, except for the 2003-04 and 2004-05 school years, each school district shall be provided a cost-of-living allocation sufficient to grant this cost-of-living increase.

(b) A school district shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the district's salary schedules, collective bargaining agreements, and compensation policies. No later than the end of the school year, each school district shall certify to the superintendent of public instruction that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) Any funded cost-of-living increase shall be included in the salary base used to determine cost-of-living increases for school employees in subsequent years. For teachers and other certificated instructional staff, the rate of the annual cost-of-living increase funded for certificated instructional staff shall be applied to the base salary used with the state-wide salary allocation schedule established under RCW 28A.150.410 and to any other salary models used to recognize school district personnel costs.

(2) For the purposes of this section, "cost-of-living index" means, for any school year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section. [2003 1st sp.s. c 20 § 1; 2001 c 4 § 2 (Initiative Measure No. 732, approved November 7, 2000).]

Severability—2001 c 4 (Initiative Measure No. 732): "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 4 § 5 (Initiative Measure No. 732, approved November 7, 2000).]

28A.400.206 Cost-of-living increases—Duty of state.

The Washington Constitution establishes "the paramount duty of the state to make ample provision for the education of all children." Providing quality education for all children in Washington requires well-qualified and experienced teachers and other school employees. However, salaries for educators have not kept up with the increased cost-of-living in the state. The failure to keep up with inflation threatens Washington's ability to compete with other states to attract first-rate teachers to Washington classrooms and to keep well-qualified educators from leaving for other professions. The state must provide a fair and reasonable cost-of-living increase, as provided in chapter 20, Laws of 2003 1st sp. sess., to help ensure that the state attracts and keeps the best teachers and school employees for the children of Washington. [2003 1st sp.s. c

20 § 2; 2001 c 4 § 1 (Initiative Measure No. 732, approved November 7, 2000).]

Severability—2001 c 4 (Initiative Measure No. 732): See note following RCW 28A.400.205.

**Chapter 28A.405 RCW
CERTIFICATED EMPLOYEES**

Sections

- 28A.405.040 Disqualification for failure to emphasize patriotism—Penalty. (*Effective July 1, 2004.*)
- 28A.405.050 Repealed. (*Effective July 1, 2004.*)

28A.405.040 Disqualification for failure to emphasize patriotism—Penalty. (*Effective July 1, 2004.*) (1) No person, whose certificate or permit authorizing him or her to teach in the common schools of this state has been revoked due to his or her failure to endeavor to impress on the minds of his or her pupils the principles of patriotism, or to train them up to the true comprehension of the rights, duty and dignity of American citizenship, shall be permitted to teach in any common school in this state.

(2) Any person teaching in any school in violation of this section, and any school director knowingly permitting any person to teach in any school in violation of this section is guilty of a misdemeanor. [2003 c 53 § 167; 1990 c 33 § 384; 1969 ex.s. c 223 § 28A.67.030. Prior: 1919 c 38 § 2; RRS § 4846. Formerly RCW 28A.67.030, 28.67.030.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

28A.405.050 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 28A.410 RCW
CERTIFICATION**

Sections

- 28A.410.200 Washington professional educator standards board—Creation—Membership—Executive director.

28A.410.200 Washington professional educator standards board—Creation—Membership—Executive director. (1)(a) The Washington professional educator standards board is created, consisting of twenty members to be appointed by the governor to four-year terms and the superintendent of public instruction, who shall be an ex officio, non-voting member.

(b) As the four-year terms of the first appointees expire or vacancies to the board occur for the first time, the governor shall appoint or reappoint the members of the board to one-year to four-year staggered terms. Once the one-year to three-year terms expire, all subsequent terms shall be for four years, with the terms expiring on June 30th of the applicable year. The terms shall be staggered in such a way that, where possible, the terms of members representing a specific group do not expire simultaneously.

(c) No person may serve as a member of the board for more than two consecutive full four-year terms.

(d) The governor shall annually appoint the chair of the board from among the teachers and principals on the board.

No board member may serve as chair for more than two consecutive years.

(2) Seven of the members shall be public school teachers, one shall be a private school teacher, three shall represent higher education educator preparation programs, four shall be school administrators, two shall be educational staff associates, one shall be a classified employee who assists in public school student instruction, one shall be a parent, and one shall be a member of the public.

(3) Public school teachers appointed to the board must:

(a) Have at least three years of teaching experience in a Washington public school;

(b) Be currently certificated and actively employed in a teaching position; and

(c) Include one teacher currently teaching at the elementary school level, one at the middle school level, one at the high school level, and one vocationally certificated.

(4) Private school teachers appointed to the board must:

(a) Have at least three years of teaching experience in a Washington approved private school; and

(b) Be currently certificated and actively employed in a teaching position in an approved private school.

(5) Appointees from higher education educator preparation programs must include two representatives from institutions of higher education as defined in RCW 28B.10.016 and one representative from an institution of higher education as defined in RCW 28B.07.020(4).

(6) School administrators appointed to the board must:

(a) Have at least three years of administrative experience in a Washington public school district;

(b) Be currently certificated and actively employed in a school administrator position; and

(c) Include two public school principals, one Washington approved private school principal, and one superintendent.

(7) Educational staff associates appointed to the board must:

(a) Have at least three years of educational staff associate experience in a Washington public school district; and

(b) Be currently certificated and actively employed in an educational staff associate position.

(8) Public school classified employees appointed to the board must:

(a) Have at least three years of experience in assisting in the instruction of students in a Washington public school; and

(b) Be currently employed in a position that requires the employee to assist in the instruction of students.

(9) Each major caucus of the house of representatives and the senate shall submit a list of at least one public school teacher. In making the public school teacher appointments, the governor shall select one nominee from each list provided by each caucus. The governor shall appoint the remaining members of the board from a list of qualified nominees submitted to the governor by organizations representative of the constituencies of the board, from applications from other qualified individuals, or from both nominees and applicants.

(10) All appointments to the board made by the governor shall be subject to confirmation by the senate.

(11) The governor shall appoint the members of the initial board no later than June 1, 2000.

(12) In appointing board members, the governor shall consider the diversity of the population of the state.

(13) Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060.

(14) The governor may remove a member of the board for neglect of duty, misconduct, malfeasance or misfeasance in office, or for incompetency or unprofessional conduct as defined in chapter 18.130 RCW. In such a case, the governor shall file with the secretary of state a statement of the causes for and the order of removal from office, and the secretary of state shall send a certified copy of the statement of causes and order of removal to the last known post office address of the member.

(15) If a vacancy occurs on the board, the governor shall appoint a replacement member from the nominees as specified in subsection (9) of this section to fill the remainder of the unexpired term. When filling a vacancy of a member nominated by a major caucus of the legislature, the governor shall select the new member from a list of at least one name submitted by the same caucus that provided the list from which the retiring member was appointed.

(16) Members of the board shall hire an executive director and an administrative assistant to reside in the office of the superintendent of public instruction for administrative purposes only. [2003 1st sp.s. c 22 § 1; 2002 c 92 § 1; 2000 c 39 § 102.]

Findings—2000 c 39: "The legislature finds and declares:

(1) Creation of a public body whose focus is educator quality would be likely to bring greater focus and attention to the profession;

(2) Professional educator standards boards are consumer protection boards, establishing assessment policies to ensure the public that its new practitioners have the knowledge to be competent;

(3) The highest possible standards for all educators are essential in ensuring attainment of high academic standards by all students;

(4) Teacher assessment for certification can guard against admission to the teaching profession of persons who have not demonstrated that they are knowledgeable in the subjects they will be assigned to teach; and

(5) Teacher assessment for certification should be implemented as an additional element to the system of teacher preparation and certification." [2000 c 39 § 101.]

Part headings and section captions not law—2000 c 39: "Part headings and section captions used in this act are not any part of the law." [2000 c 39 § 301.]

Chapter 28A.500 RCW

LOCAL EFFORT ASSISTANCE

Sections

28A.500.030 Allocation of state matching funds—Determination.

28A.500.030 Allocation of state matching funds—Determination. Allocation of state matching funds to eligible districts for local effort assistance shall be determined as follows:

(1) Funds raised by the district through maintenance and operation levies shall be matched with state funds using the following ratio of state funds to levy funds:

(a) The difference between the district's twelve percent levy rate and the statewide average twelve percent levy rate; to

(b) The statewide average twelve percent levy rate.

(2) The maximum amount of state matching funds for districts eligible for local effort assistance shall be the district's twelve percent levy amount, multiplied by the following percentage:

(a) The difference between the district's twelve percent levy rate and the statewide average twelve percent levy rate; divided by

(b) The district's twelve percent levy rate.

(3) Calendar year 2003 allocations and maximum eligibility under this chapter shall be multiplied by 0.99.

(4) From January 1, 2004, to June 30, 2005, allocations and maximum eligibility under this chapter shall be multiplied by 0.937. [2003 1st sp.s. c 25 § 912; 2002 c 317 § 4; 1999 c 317 § 3.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Effective date—2002 c 317: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 2, 2002]." [2002 c 317 § 6.]

Chapter 28A.630 RCW

TEMPORARY PROVISIONS—SPECIAL PROJECTS

Sections

28A.630.015 Special services pilot program. (*Expires June 30, 2007.*)

28A.630.015 Special services pilot program. (*Expires June 30, 2007.*) (1) The special services pilot program is created. The purpose of the program is to encourage participating school districts to provide early intensive reading and language assistance to students who are struggling academically. The goal of such assistance is to effectively address reading and language difficulties resulting in a substantially greater proportion of students meeting the progressively increasing performance standards for both the aggregate and disaggregated subgroups under federal law.

(2) A maximum of two school districts may participate. Interested districts shall apply no later than May 15, 2003, to the superintendent of public instruction to participate in the pilot program established by this section. The superintendent shall make a decision no later than June 15, 2003, regarding which two school districts may participate in the program.

(3) The pilot program is intended to be four years, to begin in the 2003-04 school year and conclude in the 2006-07 school year, unless the program is extended by the legislature.

(4) School districts participating in the pilot program shall receive state special education funding in accordance with state special education funding formulas and a separate pilot program appropriation from sources other than special education funds. The separate appropriation shall be calculated as follows:

(a) The school district's estimated state special education funding for the current year based on the school district's average percentage of students age three through twenty-one who were eligible for special education services in the 2001-02 and 2002-03 school years as reported to the office of the superintendent of public instruction;

(b) Less the school district's actual state special education funding based on the district's current percentage of stu-

dents age three through twenty-one eligible for special education services as reported to the superintendent of public instruction.

(5) Participation in the pilot program shall not increase or decrease a district's ability to access the safety net for high cost students by virtue of the district's participation in this pilot program. Districts participating in this pilot program shall have access to the special education safety net using a modified application approach for the office of the superintendent of public instruction Worksheet A - demonstration of financial need. The superintendent shall create a modified application to include all special education revenues received by the district, all pilot program funding, and include expenditures for students with individual education plans and expenditures for students generating pilot program revenue. Districts participating in this pilot project that seek safety net funding shall convincingly demonstrate to the committee that any change in demonstrated need on the Worksheet A is not attributable to their participation in this pilot project.

(6) School districts participating in the program must agree to:

(a) Implement a tiered set of research-based instructional interventions addressing individual student needs that address reading and language deficits;

(b) Use multiple diagnostic instruments to identify the literacy needs of each student;

(c) Assure parents are informed of diagnosed student needs, and have input into designed interventions;

(d) Actively engage parents as partners in the learning process;

(e) Comply with state special education requirements; and

(f) Participate in an evaluation of the program as determined by the superintendent of public instruction. This may include contributing funds and staff expertise for the design and implementation of the evaluation. Districts shall annually review and report progress, including objective measures or indicators that show the progress towards achieving the purpose and goal of the program, to the office of the superintendent of public instruction.

(7) By December 15, 2006, the superintendent of public instruction shall submit a report to the governor and legislature that summarizes the effectiveness of the pilot program. The report shall also include a recommendation as to whether or not the pilot program should be continued, expanded, or otherwise modified.

(8) This section expires June 30, 2007. [2003 c 133 § 2.]

Findings—2003 c 133: "Research has shown that early, intensive assistance can significantly improve reading and language skills for children who are struggling academically. This early research-based assistance has been successful in reducing the number of children who require specialized programs. However, by being effective in reducing the number of students eligible for these programs, school district funding is reduced." [2003 c 133 § 1.]

Effective date—2003 c 133: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 133 § 3.]

Chapter 28A.635 RCW

OFFENSES RELATING TO SCHOOL PROPERTY
AND PERSONNEL

Sections

- 28A.635.050 Certain corrupt practices of school officials—Penalty. (*Effective July 1, 2004.*)
- 28A.635.090 Interference by force or violence—Penalty. (*Effective July 1, 2004.*)
- 28A.635.100 Intimidating any administrator, teacher, classified employee, or student by threat of force or violence unlawful—Penalty. (*Effective July 1, 2004.*)
- 28A.635.120 Repealed. (*Effective July 1, 2004.*)

28A.635.050 Certain corrupt practices of school officials—Penalty. (*Effective July 1, 2004.*) (1) Except as otherwise provided in chapter 42.23 RCW, it shall be unlawful for any member of the state board of education, the superintendent of public instruction or any employee of the superintendent's office, any educational service district superintendent, any school district superintendent or principal, or any director of any school district, to request or receive, directly or indirectly, anything of value for or on account of his or her influence with respect to any act or proceeding of the state board of education, the office of the superintendent of public instruction, any office of educational service district superintendent or any school district, or any of these, when such act or proceeding shall inure to the benefit of those offering or giving the thing of value.

(2) Any willful violation of this section is a misdemeanor. [2003 c 53 § 168; 1990 c 33 § 537; 1975 1st ex.s. c 275 § 143; 1969 ex.s. c 176 § 150; 1969 ex.s. c 223 § 28A.87.090. Prior: 1917 c 126 § 1; RRS § 5050. Formerly RCW 28A.87.090, 28.87.090.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.635.090 Interference by force or violence—Penalty. (*Effective July 1, 2004.*) (1) It shall be unlawful for any person, singly or in concert with others, to interfere by force or violence with any administrator, teacher, classified employee, person under contract with the school or school district, or student of any common school who is in the peaceful discharge or conduct of his or her duties or studies. Any such interference by force or violence committed by a student shall be grounds for immediate suspension or expulsion of the student.

(2) A person violating this section is guilty of a gross misdemeanor and shall be fined not more than five hundred dollars, or imprisoned in jail not more than six months, or both such fine and imprisonment. [2003 c 53 § 169; 1996 c 321 § 3; 1990 c 33 § 540; 1988 c 2 § 1; 1971 c 45 § 3. Formerly RCW 28A.87.230.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

28A.635.100 Intimidating any administrator, teacher, classified employee, or student by threat of force or violence unlawful—Penalty. (*Effective July 1, 2004.*) (1) It shall be unlawful for any person, singly or in concert with others, to intimidate by threat of force or violence any

administrator, teacher, classified employee, or student of any common school who is in the peaceful discharge or conduct of his or her duties or studies.

(2) A person violating this section is guilty of a gross misdemeanor and shall be fined not more than five hundred dollars, or imprisoned in jail not more than six months, or both such fine and imprisonment. [2003 c 53 § 170; 1990 c 33 § 541; 1988 c 2 § 2; 1971 c 45 § 4. Formerly RCW 28A.87.231.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

28A.635.120 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 28A.660 RCW
ALTERNATIVE ROUTE
TEACHER CERTIFICATION

Sections

- 28A.660.020 Proposals—Funding. (*Expires June 30, 2005.*)
- 28A.660.030 Partnership grants—Selection—Administration. (*Expires June 30, 2005.*)
- 28A.660.050 Conditional scholarship program. (*Expires June 30, 2005.*)

28A.660.020 Proposals—Funding. (*Expires June 30, 2005.*) (1) Each district or consortia of school districts applying for the alternative route certification program shall submit a proposal to the Washington professional educator standards board specifying:

(a) The route or routes the partnership program intends to offer and a detailed description of how the routes will be structured and operated by the partnership;

(b) The number of candidates that will be enrolled per route;

(c) An identification, indication of commitment, and description of the role of approved teacher preparation programs that are partnering with the district or consortia of districts;

(d) An assurance of district provision of adequate training for mentor teachers either through participation in a state mentor training academy or district-provided training that meets state-established mentor-training standards specific to the mentoring of alternative route candidates;

(e) An assurance that significant time will be provided for mentor teachers to spend with the alternative route teacher candidates throughout the internship. Partnerships must provide each candidate with intensive classroom mentoring until such time as the candidate demonstrates the competency necessary to manage the classroom with less intensive supervision and guidance from a mentor;

(f) A description of the rigorous screening process for applicants to alternative route programs, including entry requirements specific to each route, as provided in RCW 28A.660.040; and

(g) The design and use of a teacher development plan for each candidate. The plan shall specify the alternative route coursework and training required of each candidate and shall be developed by comparing the candidate's prior experience and coursework with the state's new performance-based standards for residency certification and adjusting any require-

ments accordingly. The plan may include the following components:

(i) A minimum of one-half of a school year, and an additional significant amount of time if necessary, of intensive mentorship, starting with full-time mentoring and progressing to increasingly less intensive monitoring and assistance as the intern demonstrates the skills necessary to take over the classroom with less intensive support. For route one and two candidates, before the supervision is diminished, the mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the higher education teacher preparation program must both agree that the teacher candidate is ready to manage the classroom with less intensive supervision. For route three candidates, the mentor of the teacher candidate shall make the decision;

(ii) Identification of performance indicators based on the knowledge and skills standards required for residency certification by the state board of education;

(iii) Identification of benchmarks that will indicate when the standard is met for all performance indicators;

(iv) A description of strategies for assessing candidate performance on the benchmarks;

(v) Identification of one or more tools to be used to assess a candidate's performance once the candidate has been in the classroom for about one-half of a school year; and

(vi) A description of the criteria that would result in residency certification after about one-half of a school year but before the end of the program.

(2) To the extent funds are appropriated for this purpose, districts may apply for program funds to pay stipends to trained mentor teachers of interns during the mentored internship. The per intern amount of mentor stipend shall not exceed five hundred dollars. [2003 c 410 § 1; 2001 c 158 § 3.]

28A.660.030 Partnership grants—Selection—Administration. (*Expires June 30, 2005.*) (1) The professional educator standards board, with support from the office of the superintendent of public instruction, shall select school districts and consortia of school districts to receive partnership grants from funds appropriated by the legislature for this purpose. Factors to be considered in selecting proposals include, but are not limited to:

(a) The degree to which the district, or consortia of districts in partnership, are currently experiencing teacher shortages;

(b) The degree to which the proposal addresses criteria specified in RCW 28A.660.020 and is in keeping with specifications of program routes in RCW 28A.660.040;

(c) The cost-effectiveness of the proposed program; and

(d) Any demonstrated district and in-kind contributions to the program.

(2) Selection of proposals shall also take into consideration the need to ensure an adequate number of candidates for each type of route in order to evaluate their success.

(3) Funds appropriated for the partnership grant program in this chapter shall be administered by the office of the superintendent of public instruction. [2003 c 410 § 2; 2001 c 158 § 4.]

28A.660.050 Conditional scholarship program. (*Expires June 30, 2005.*) The alternative route conditional scholarship program is created under the following guidelines:

(1) The program shall be administered by the higher education coordinating board. In administering the program, the higher education coordinating board has the following powers and duties:

(a) To adopt necessary rules and develop guidelines to administer the program;

(b) To collect and manage repayments from participants who do not meet their service obligations; and

(c) To accept grants and donations from public and private sources for the program.

(2) Participation in the alternative route conditional scholarship program is limited to interns of the partnership grant programs under RCW 28A.660.040. The Washington professional educator standards board shall select interns to receive conditional scholarships.

(3) In order to receive conditional scholarship awards, recipients shall be accepted and maintain enrollment in alternative certification routes through the partnership grant program, as provided in RCW 28A.660.040. Recipients must continue to make satisfactory progress towards completion of the alternative route certification program and receipt of a residency teaching certificate.

(4) For the purpose of this chapter, a conditional scholarship is a loan that is forgiven in whole or in part in exchange for service as a certificated teacher employed in a Washington state K-12 public school. The state shall forgive one year of loan obligation for every two years a recipient teaches in a public school. Recipients that fail to continue a course of study leading to residency teacher certification or cease to teach in a public school in the state of Washington in their endorsement area are required to repay the remaining loan principal with interest.

(5) Recipients who fail to fulfill the required teaching obligation are required to repay the remaining loan principal with interest and any other applicable fees. The higher education coordinating board shall adopt rules to define the terms for repayment, including applicable interest rates, fees, and deferments.

(6) To the extent funds are appropriated for this specific purpose, the annual amount of the scholarship is the annual cost of tuition for the alternative route certification program in which the recipient is enrolled, not to exceed eight thousand dollars. The board may adjust the annual award by the average rate of resident undergraduate tuition and fee increases at the state universities as defined in RCW 28B.10.016.

(7) The higher education coordinating board may deposit all appropriations, collections, and any other funds received for the program in this chapter in *the student loan account authorized in RCW 28B.102.060. [2003 c 410 § 3; 2001 c 158 § 6.]

***Reviser's note:** RCW 28B.102.060 requires that funds received under RCW 28B.102.060 be deposited with the higher education coordinating board, but does not authorize the student loan account.

Title 28B
HIGHER EDUCATION

Chapters

- 28B.07** Washington higher education facilities authority.
- 28B.10** Colleges and universities generally.
- 28B.14H** Washington's future bond issue.
- 28B.15** College and university fees.
- 28B.20** University of Washington.
- 28B.50** Community and technical colleges.
- 28B.80** Higher education coordinating board.
- 28B.85** Degree-granting institutions.
- 28B.101** Educational opportunity grant program—Placebound students.
- 28B.115** Health professional conditional scholarship program.
- 28B.119** Washington promise scholarship program.
- 28B.125** Health personnel resources.
- 28B.133** Gaining independence for students with dependents program.

Chapter 28B.07 RCW

**WASHINGTON HIGHER EDUCATION
FACILITIES AUTHORITY**

Sections

- 28B.07.050** Special obligation bonds—Issuance—Personal liability—Debt limit.

28B.07.050 Special obligation bonds—Issuance—Personal liability—Debt limit. (1) The authority may, from time to time, issue its special obligation bonds in order to carry out the purposes of this chapter and to enable the authority to exercise any of the powers granted to it in this chapter. The bonds shall be issued pursuant to a bond resolution or trust indenture and shall be payable solely out of the special fund or funds created by the authority in the bond resolution or trust indenture. The special fund or funds shall be funded in whole or in part from moneys paid by one or more participants for whose benefit such bonds were issued and from the sources, if any, described in RCW 28B.07.040(9) or from the proceeds of bonds issued by the authority for the purpose of refunding any outstanding bonds of the authority.

(2) The bonds may be secured by:

- (a) A first lien against any unexpended proceeds of the bonds;
- (b) A first lien against moneys in the special fund or funds created by the authority for their payment;
- (c) A first or subordinate lien against the revenue and receipts of the participant or participants which revenue is derived in whole or in part from the project financed by the authority;
- (d) A first or subordinate security interest against any real or personal property, tangible or intangible, of the participant or participants, including, but not limited to, the project financed by the authority;
- (e) Any other real or personal property, tangible or intangible; or
- (f) Any combination of (a) through (e) of this subsection.
- Any security interest created against the unexpended bond proceeds and against the special funds created by the

authority shall be immediately valid and binding against the moneys and any securities in which the moneys may be invested without authority or trustee possession, and the security interest shall be prior to any party having any competing claim against the moneys or securities, without filing or recording under Article 9A of the Uniform Commercial Code, Title 62A RCW, and regardless of whether the party has notice of the security interest.

(3) The bonds may be issued as serial bonds or as term bonds or any such combination. The bonds shall bear such date or dates; mature at such time or times; bear interest at such rate or rates, either fixed or variable; be payable at such time or times; be in such denominations; be in such form, either coupon or registered, or both; carry such registration privileges; be made transferable, exchangeable, and interchangeable; be payable in lawful money of the United States of America at such place or places; be subject to such terms of redemption; and be sold at public or private sale, in such manner, at such time, and at such price as the authority shall determine. The bonds shall be executed by the manual or facsimile signatures of the chairperson and the authority's duly-elected secretary or its executive director, and by the trustee if the authority determines to use a trustee. At least one signature shall be manually subscribed. Coupon bonds shall have attached interest coupons bearing the facsimile signatures of the chairperson and the secretary or the executive director.

(4) Any bond resolution, trust indenture, or agreement with a participant relating to bonds issued by the authority or the financing or refinancing made available by the authority may contain provisions, which may be made a part of the contract with the holders or owners of the bonds to be issued, pertaining to the following, among other matters: (a) The security interests granted by the participant to secure repayment of any amounts financed and the performance by the participant of its other obligations in the financing; (b) the security interests granted to the holders or owners of the bonds to secure repayment of the bonds; (c) rentals, fees, and other amounts to be charged, and the sums to be raised in each year through such charges, and the use, investment, and disposition of the sums; (d) the segregation of reserves or sinking funds, and the regulation, investment, and disposition thereof; (e) limitations on the uses of the project; (f) limitations on the purposes to which, or the investments in which, the proceeds of the sale of any issue of bonds may be applied; (g) terms pertaining to the issuance of additional parity bonds; (h) terms pertaining to the incurrence of parity debt; (i) the refunding of outstanding bonds; (j) procedures, if any, by which the terms of any contract with bondholders may be amended or abrogated; (k) acts or failures to act which constitute a default by the participant or the authority in their respective obligations and the rights and remedies in the event of a default; (l) the securing of bonds by a pooling of leases whereby the authority may assign its rights, as lessor, and pledge rents under two or more leases with two or more participants, as lessees; (m) terms governing performance by the trustee of its obligation; or (n) such other additional covenants, agreements, and provisions as are deemed necessary, useful, or convenient by the authority for the security of the holders of the bonds.

(5) Bonds may be issued by the authority to refund other outstanding authority bonds, at or prior to the maturity thereof, and to pay any redemption premium with respect thereto. Bonds issued for such refunding purposes may be combined with bonds issued for the financing or refinancing of new projects. Pending the application of the proceeds of the refunding bonds to the redemption of the bonds to be redeemed, the authority may enter into an agreement or agreements with a corporate trustee under RCW 28B.07.080 with respect to the interim investment of the proceeds and the application of the proceeds and the earnings on the proceeds to the payment of the principal of and interest on, and the redemption of the bonds to be redeemed.

(6) All bonds and any interest coupons appertaining to the bonds shall be negotiable instruments under Title 62A RCW.

(7) Neither the members of the authority, nor its employees or agents, nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance of the bonds.

(8) The authority may purchase its bonds with any of its funds available for the purchase. The authority may hold, pledge, cancel, or resell the bonds subject to and in accordance with agreements with bondholders.

(9) At no time shall the total outstanding bonded indebtedness of the authority exceed one billion dollars. [2003 c 84 § 1; 1983 c 169 § 5.]

Chapter 28B.10 RCW

COLLEGES AND UNIVERSITIES GENERALLY

Sections

28B.10.022	Authority to enter into financing contracts—Notice.
28B.10.115	Major lines common to University of Washington and Washington State University.
28B.10.570	Interfering by force or violence with any administrator, faculty member or student unlawful—Penalty. (<i>Effective July 1, 2004.</i>)
28B.10.571	Intimidating any administrator, faculty member or student by threat of force or violence unlawful—Penalty. (<i>Effective July 1, 2004.</i>)
28B.10.572	Certain unlawful acts—Disciplinary authority exception. (<i>Effective July 1, 2004.</i>)
28B.10.573	Repealed. (<i>Effective July 1, 2004.</i>)
28B.10.695	Timely completion of degree and certificate programs—Adoption of policies.
28B.10.801	State student financial aid program—State need grant program—Findings—Intent.

28B.10.022 Authority to enter into financing contracts—Notice. (1) The boards of regents of the state universities and the boards of trustees of the regional universities, The Evergreen State College, and the state board for community and technical colleges, are severally authorized to enter into financing contracts as provided in chapter 39.94 RCW. Except as provided in subsection (2) of this section, financing contracts shall be subject to the approval of the state finance committee.

(2) The board of regents of a state university may enter into financing contracts which are payable solely from and secured by all or any component of the fees and revenues of the university derived from its ownership and operation of its facilities not subject to appropriation by the legislature and not constituting "general state revenues," as defined in Arti-

cle VIII, section 1 of the state Constitution, without the prior approval of the state finance committee.

(3) Except for financing contracts for facilities or equipment described under chapter 28B.140 RCW, the board of regents shall notify the state finance committee at least sixty days prior to entering into such contract and provide information relating to such contract as requested by the state finance committee. [2003 c 6 § 1; 2002 c 151 § 5; 1989 c 356 § 6.]

28B.10.115 Major lines common to University of Washington and Washington State University. The courses of instruction of both the University of Washington and Washington State University shall embrace as major lines, pharmacy, architecture, civil engineering, mechanical engineering, chemical engineering, and forest management as distinguished from forest products and logging engineering which are exclusive to the University of Washington. These major lines shall be offered and taught at said institutions only. [2003 c 82 § 1; 1985 c 218 § 1; 1969 ex.s. c 223 § 28B.10.115. Prior: 1963 c 23 § 2; 1961 c 71 § 2; prior: (i) 1917 c 10 § 8; RRS § 4539. (ii) 1917 c 10 § 4; RRS § 4535. Formerly RCW 28.76.080.]

28B.10.570 Interfering by force or violence with any administrator, faculty member or student unlawful—Penalty. (*Effective July 1, 2004.*) (1) It shall be unlawful for any person, singly or in concert with others, to interfere by force or violence with any administrator, faculty member or student of any university, college or community college who is in the peaceful discharge or conduct of his or her duties or studies.

(2) A person violating this section is guilty of a gross misdemeanor and shall be fined not more than five hundred dollars, or imprisoned in jail not more than six months, or both such fine and imprisonment. [2003 c 53 § 171; 1971 c 45 § 1; 1970 ex.s. c 98 § 1. Formerly RCW 28.76.600.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1971 c 45: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected." [1971 c 45 § 8.]

Severability—1970 ex.s. c 98: "If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this act so adjudged to be invalid or unconstitutional." [1970 ex.s. c 98 § 5.]

Disturbing school, school activities or meetings—Penalty—Disposition of fines: RCW 28A.635.030.

28B.10.571 Intimidating any administrator, faculty member or student by threat of force or violence unlawful—Penalty. (*Effective July 1, 2004.*) (1) It shall be unlawful for any person, singly or in concert with others, to intimidate by threat of force or violence any administrator, faculty member or student of any university, college or community college who is in the peaceful discharge or conduct of his or her duties or studies.

(2) A person violating this section is guilty of a gross misdemeanor and shall be fined not more than five hundred dollars, or imprisoned in jail not more than six months, or

both such fine and imprisonment. [2003 c 53 § 172; 1971 c 45 § 2; 1970 ex.s. c 98 § 2. Formerly RCW 28.76.601.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1971 c 45: See note following RCW 28B.10.570.

Severability—1970 ex.s. c 98: See note following RCW 28B.10.570.

28B.10.572 Certain unlawful acts—Disciplinary authority exception. (Effective July 1, 2004.) The crimes defined in RCW 28B.10.570 and 28B.10.571 shall not apply to school administrators or teachers who are engaged in the reasonable exercise of their disciplinary authority. [2003 c 53 § 173; 1970 ex.s. c 98 § 3. Formerly RCW 28.76.602.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1970 ex.s. c 98: See note following RCW 28B.10.570.

28B.10.573 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.10.695 Timely completion of degree and certificate programs—Adoption of policies. (1) Each four-year institution of higher education and the state board for community and technical colleges shall develop policies that ensure undergraduate students enrolled in degree or certificate programs complete their programs in a timely manner in order to make the most efficient use of instructional resources and provide capacity within the institution for additional students.

(2) Policies adopted under this section shall address, but not be limited to, undergraduate students in the following circumstances:

(a) Students who accumulate more than one hundred twenty-five percent of the number of credits required to complete their respective baccalaureate or associate degree or certificate programs;

(b) Students who drop more than twenty-five percent of their course load before the grading period for the quarter or semester, which prevents efficient use of instructional resources; and

(c) Students who remain on academic probation for more than one quarter or semester.

(3) Policies adopted under this section may include assessment by the institution of a surcharge in addition to regular tuition and fees to be paid by a student for continued enrollment. [2003 c 407 § 1.]

28B.10.801 State student financial aid program—State need grant program—Findings—Intent. (1) The legislature finds that the higher education coordinating board, in consultation with the higher education community, has completed a review of the state need grant program. It is the intent of the legislature to endorse the board's proposed changes to the state need grant program, including:

(a) Reaffirmation that the primary purpose of the state need grant program is to assist low-income, needy, and disadvantaged Washington residents attending institutions of higher education;

(b) A goal that the base state need grant amount over time be increased to be equivalent to the rate of tuition charged to resident undergraduate students attending Washington state public colleges and universities;

(c) State need grant recipients be required to contribute a portion of the total cost of their education through self-help;

(d) State need grant recipients be required to document their need for dependent care assistance after taking into account other public funds provided for like purposes; and

(e) Institutional aid administrators be allowed to determine whether a student eligible for a state need grant in a given academic year may remain eligible for the ensuing year if the student's family income increases by no more than a marginal amount except for funds provided through the educational assistance grant program for students with dependents.

(2) The legislature further finds that the higher education coordinating board, under its authority to implement the proposed changes in subsection (1) of this section, should do so in a timely manner.

(3) The legislature also finds that:

(a) In most circumstances, need grant eligibility should not extend beyond five years or one hundred twenty-five percent of the published length of the program in which the student is enrolled or the credit or clock-hour equivalent; and

(b) State financial aid programs should continue to adhere to the principle that funding follows resident students to their choice of institution of higher education. [2003 c 19 § 11; 1999 c 345 § 1.]

Finding—Intent—Short title—Captions not law—2003 c 19: See RCW 28B.133.005, 28B.133.900, and 28B.133.901.

Chapter 28B.14H RCW

WASHINGTON'S FUTURE BOND ISSUE

Sections

28B.14H.005	Intent.
28B.14H.010	Definitions.
28B.14H.020	Washington's future bonds authorized.
28B.14H.030	Bond issuance—Intent.
28B.14H.040	Terms and covenants.
28B.14H.050	Proceeds.
28B.14H.060	Projects for the 2005-07 and 2007-09 biennium—Intent.
28B.14H.070	Payment procedures.
28B.14H.080	Bonds—Legal investment for public funds.
28B.14H.090	Additional methods of paying debt service authorized.
28B.14H.100	Chapter supplemental.
28B.14H.110	Creation of the Gardner-Evans higher education construction account.
28B.14H.900	Severability—2003 1st sp.s. c 18.
28B.14H.901	Short title.
28B.14H.902	Captions not law.

28B.14H.005 Intent. The state's institutions of higher education are a vital component of the future economic prosperity of our state. In order to ensure that Washington continues to be able to provide a highly qualified work force that can attract businesses and support the economic vitality of the state, it is the intent of chapter 18, Laws of 2003 1st sp. sess. to provide new money for capital projects to help fulfill higher education needs across the state.

This new source of funding for the critical capital needs of the state's institutions of higher education furthers the mission of higher education and is intended to enhance the abilities of those institutions, over the next six years, to fulfill

their critical roles in maintaining and stimulating the state's economy.

It is the intent of the legislature that this new source of funding not displace funding levels for the capital and operating budgets of the institutions of higher education. It is instead intended that the new funding will allow the institutions, over the next three biennia, to use the current level of capital funding to provide for many of those urgent preservation, replacement, and maintenance needs that have been deferred. This approach is designed to maintain or improve the current infrastructure of our institutions of higher education, and simultaneously to provide new instruction and research capacity to serve the increasing number of traditional college-aged students and those adults returning to college to update skills or retrain so that they can meet the demands of Washington's changing work force. This new source of funding may also be used for major preservation projects that renovate, replace, or modernize facilities to enhance capacity/access by maintaining or improving the usefulness of existing space for important instruction and research programs. [2003 1st sp.s. c 18 § 2.]

28B.14H.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bonds" means bonds, notes, commercial paper, certificates of indebtedness, or other evidences of indebtedness of the state issued under this chapter.

(2) "Institutions of higher education" means the University of Washington and Washington State University, Western Washington University at Bellingham, Central Washington University at Ellensburg, Eastern Washington University at Cheney, The Evergreen State College, and the community colleges and technical colleges as defined by RCW 28B.50.030.

(3) "Washington's future bonds" means all or any portion of the general obligation bonds authorized in RCW 28B.14H.020. [2003 1st sp.s. c 18 § 3.]

28B.14H.020 Washington's future bonds authorized.

(1) For the purpose of providing needed capital improvements consisting of the predesign, design, acquisition, construction, modification, renovation, expansion, equipping, and other improvement of state buildings and facilities for the institutions of higher education, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of seven hundred seventy-two million five hundred thousand dollars, or so much thereof as may be required, to finance all or a part of the cost of these projects and all costs incidental thereto. The bonds issued under the authority of this section shall be known as Washington's future bonds.

(2) Bonds authorized in this section shall be sold in the manner, at the time or times, in amounts, and at such prices as the state finance committee shall determine.

(3) No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. [2003 1st sp.s. c 18 § 4.]

28B.14H.030 Bond issuance—Intent. It is the intent of the legislature that the proceeds of new bonds authorized in this chapter will be appropriated in phases over three biennia, beginning with the 2003-2005 biennium, to provide additional funding for capital projects and facilities of the institutions of higher education above historical levels of funding.

This chapter is not intended to limit the legislature's ability to appropriate bond proceeds if the full amount authorized in this chapter has not been appropriated after three biennia, and the authorization to issue bonds contained in this chapter does not expire until the full authorization has been appropriated and issued. [2003 1st sp.s. c 18 § 5.]

28B.14H.040 Terms and covenants. (1) The state finance committee is authorized to prescribe the form, terms, conditions, and covenants of the bonds provided for in this chapter, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance.

(2) Bonds issued under this chapter shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due. [2003 1st sp.s. c 18 § 6.]

28B.14H.050 Proceeds. (1) The proceeds from the sale of the bonds authorized in RCW 28B.14H.020 shall be deposited in the Gardner-Evans higher education construction account created in RCW 28B.14H.110.

(2) The proceeds shall be used exclusively for the purposes in RCW 28B.14H.020 and for the payment of the expenses incurred in connection with the sale and issuance of the bonds. [2003 1st sp.s. c 18 § 7.]

28B.14H.060 Projects for the 2005-07 and 2007-09 biennia—Intent. The legislature intends to use the proceeds from the sale of bonds issued under this chapter for the following projects during the 2005-07 and 2007-09 biennia:

- (1) For the University of Washington:
 - (a) Life sciences I building;
 - (b) Bothell branch campus phase 2B;
- (2) For Washington State University:
 - (a) Spokane Riverpoint campus - academic center building;
 - (b) Pullman campus - Holland Library renovation;
 - (c) Pullman campus - biotechnology/life sciences 1;
 - (d) TriCities campus - bioproducts and sciences building; and
 - (e) Intercollegiate College of Nursing, Spokane - nursing building at Riverpoint;
- (3) For Eastern Washington University: Hargreaves Hall;
- (4) For Central Washington University: Hogue technology;
- (5) For The Evergreen State College:
 - (a) Daniel J. Evans building;
 - (b) Communications building and theater expansion;
- (6) For Western Washington University:
 - (a) Academic instructional center;
 - (b) Parks Hall;
 - (c) Performing Arts Center renovation;

(7) For the community and technical college system:

(a) Green River Community College science building;

(b) Walla Walla Community College basic skills/computer lab;

(c) Pierce College Puyallup, communication arts and allied health; or

(8) For other projects that maintain or increase access to institutions of higher education. [2003 1st sp.s. c 18 § 8.]

28B.14H.070 Payment procedures. (1) The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in this chapter.

(2) The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in this chapter.

(3) On each date on which any interest or principal and interest payment is due on bonds issued under this chapter, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date.

(4) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2003 1st sp.s. c 18 § 9.]

28B.14H.080 Bonds—Legal investment for public funds. The bonds authorized by this chapter shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [2003 1st sp.s. c 18 § 10.]

28B.14H.090 Additional methods of paying debt service authorized. The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized under this chapter, and RCW 28B.14H.070 shall not be deemed to provide an exclusive method for payment. [2003 1st sp.s. c 18 § 11.]

28B.14H.100 Chapter supplemental. This chapter provides a complete, additional, and alternative method for accomplishing the purposes of this chapter and is supplemental and additional to powers conferred by other laws. The issuance of bonds under this chapter shall not be deemed to be the only method to fund projects under this chapter. [2003 1st sp.s. c 18 § 12.]

28B.14H.110 Creation of the Gardner-Evans higher education construction account. The Gardner-Evans higher education construction account is created in the state treasury. Proceeds from the bonds issued under RCW 28B.14H.020 shall be deposited in the account. The account shall be used for purposes of RCW 28B.14H.020. Moneys in the account may be spent only after appropriation. [2003 1st sp.s. c 18 § 13.]

28B.14H.900 Severability—2003 1st sp.s. c 18. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2003 1st sp.s. c 18 § 15.]

28B.14H.901 Short title. This act shall be known as the building Washington's future act. [2003 1st sp.s. c 18 § 1.]

28B.14H.902 Captions not law. Captions used in this act are not any part of the law. [2003 1st sp.s. c 18 § 14.]

Chapter 28B.15 RCW

COLLEGE AND UNIVERSITY FEES

Sections

28B.15.012	Classification as resident or nonresident student—Definitions.
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28B.15.600	Refunds or cancellation of fees—Four-year institutions of higher education.

28B.15.012 Classification as resident or nonresident student—Definitions. Whenever used in chapter 28B.15 RCW:

(1) The term "institution" shall mean a public university, college, or community college within the state of Washington.

(2) The term "resident student" shall mean:

(a) A financially independent student who has had a domicile in the state of Washington for the period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution and has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(b) A dependent student, if one or both of the student's parents or legal guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution;

(c) A student classified as a resident based upon domicile by an institution on or before May 31, 1982, who was enrolled at a state institution during any term of the 1982-1983 academic year, so long as such student's enrollment (excepting summer sessions) at an institution in this state is continuous;

(d) Any student who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state, whose parents or legal guardians have been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school, and who enrolls in a public institution of higher edu-

cation within six months of leaving high school, for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year;

(e) Any person who has completed the full senior year of high school and obtained a high school diploma, both at a Washington public high school or private high school approved under chapter 28A.195 RCW, or a person who has received the equivalent of a diploma; who has lived in Washington for at least three years immediately prior to receiving the diploma or its equivalent; who has continuously lived in the state of Washington after receiving the diploma or its equivalent and until such time as the individual is admitted to an institution of higher education under subsection (1) of this section; and who provides to the institution an affidavit indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so and a willingness to engage in any other activities necessary to acquire citizenship, including but not limited to citizenship or civics review courses;

(f) A student who is on active military duty stationed in the state or who is a member of the Washington national guard;

(g) A student who is the spouse or a dependent of a person who is on active military duty stationed in the state;

(h) A student who resides in the state of Washington and is the spouse or a dependent of a person who is a member of the Washington national guard;

(i) A student of an out-of-state institution of higher education who is attending a Washington state institution of higher education pursuant to a home tuition agreement as described in RCW 28B.15.725; or

(j) A student who meets the requirements of RCW 28B.15.0131: PROVIDED, That a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for primarily educational purposes, and for tuition and fee paying purposes only such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state unless such student proves that the student has in fact established a bona fide domicile in this state primarily for purposes other than educational.

(3) The term "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of RCW 28B.15.012 and 28B.15.013. Except for students qualifying under subsection (2)(e) or (i) of this section, a nonresident student shall include:

(a) A student attending an institution with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one year after the completion of such semester or quarter.

(b) A person who is not a citizen of the United States of America who does not have permanent or temporary resident status or does not hold "Refugee-Parolee" or "Conditional Entrant" status with the United States immigration and naturalization service or is not otherwise permanently residing in the United States under color of law and who does not also meet and comply with all the applicable requirements in RCW 28B.15.012 and 28B.15.013.

(4) The term "domicile" shall denote a person's true, fixed and permanent home and place of habitation. It is the place where the student intends to remain, and to which the

student expects to return when the student leaves without intending to establish a new domicile elsewhere. The burden of proof that a student, parent or guardian has established a domicile in the state of Washington primarily for purposes other than educational lies with the student.

(5) The term "dependent" shall mean a person who is not financially independent. Factors to be considered in determining whether a person is financially independent shall be set forth in rules and regulations adopted by the higher education coordinating board and shall include, but not be limited to, the state and federal income tax returns of the person and/or the student's parents or legal guardian filed for the calendar year prior to the year in which application is made and such other evidence as the board may require. [2003 c 95 § 1; 2002 c 186 § 2. Prior: (2002 c 186 § 1 expired June 30, 2002); 2000 c 160 § 1; 2000 c 117 § 2; 2000 c 117 § 1; 1999 c 320 § 5; 1997 c 433 § 2; 1994 c 188 § 2; 1993 sp.s. c 18 § 4; prior: 1987 c 137 § 1; 1987 c 96 § 1; 1985 c 370 § 62; 1983 c 285 § 1; 1982 1st ex.s. c 37 § 1; 1972 ex.s. c 149 § 1; 1971 ex.s. c 273 § 2.]

Intent—2003 c 95: "It is the intent of the legislature to ensure that students who receive a diploma from a Washington state high school or receive the equivalent of a diploma in Washington state and who have lived in Washington for at least three years prior to receiving their diploma or its equivalent are eligible for in-state tuition rates when they enroll in a public institution of higher education in Washington state." [2003 c 95 § 2.]

Effective date—2003 c 95: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 95 § 4.]

Expiration date—2002 c 186 § 1: "Section 1 of this act expires June 30, 2002." [2002 c 186 § 4.]

Effective date—2002 c 186 § 2: "Section 2 of this act takes effect June 30, 2002." [2002 c 186 § 5.]

Effective date—2000 c 117 § 2: "Section 2 of this act takes effect June 30, 2002." [2000 c 117 § 5.]

Expiration date—2000 c 117 § 1: "Section 1 of this act expires June 30, 2002." [2000 c 117 § 4.]

Intent—Severability—1997 c 433: See notes following RCW 28B.15.725.

Effective date—1993 sp.s. c 18: See note following RCW 28B.10.265.

Severability—Effective dates—1985 c 370: See RCW 28B.80.911 and 28B.80.912.

Effective date—1982 1st ex.s. c 37: "Sections 13 and 14 of this amendatory act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately. All other sections of this amendatory act shall take effect on June 1, 1982." [1982 1st ex.s. c 37 § 24.]

Severability—1982 1st ex.s. c 37: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 37 § 23.]

Severability—1971 ex.s. c 273: See note following RCW 28B.15.011.

28B.15.0139 Resident tuition rates—Border county higher education opportunity project. For the purposes of determining resident tuition rates, "resident student" includes a resident of Oregon, residing in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county, who meets the following conditions:

(1) The student is eligible to pay resident tuition rates under Oregon laws and has been domiciled in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow,

Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county for at least ninety days immediately before enrollment at a community college located in Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, or Walla Walla county, Washington; or

(2) The student is enrolled in courses located at the Tri-Cities or Vancouver branch of Washington State University for eight credits or less. [2003 c 159 § 4; 2002 c 130 § 3; 2000 c 160 § 2; 1999 c 320 § 4.]

28B.15.031 "Operating fees"—Defined—Disposition. The term "operating fees" as used in this chapter shall include the fees, other than building fees, charged all students registering at the state's colleges and universities but shall not include fees for short courses, self-supporting degree credit programs and courses, marine station work, experimental station work, correspondence or extension courses, and individual instruction and student deposits or rentals, disciplinary and library fines, which colleges and universities shall have the right to impose, laboratory, gymnasium, health, technology and student activity fees, or fees, charges, rentals, and other income derived from any or all revenue producing lands, buildings and facilities of the colleges or universities heretofore or hereafter acquired, constructed or installed, including but not limited to income from rooms, dormitories, dining rooms, hospitals, infirmaries, housing or student activity buildings, vehicular parking facilities, land, or the appurtenances thereon, or such other special fees as may be established by any college or university board of trustees or regents from time to time. All moneys received as operating fees at any institution of higher education shall be deposited in a local account containing only operating fees revenue and related interest: PROVIDED, That a minimum of three and one-half percent of operating fees shall be retained by the institutions for the purposes of RCW 28B.15.820. Local operating fee accounts shall not be subject to appropriation by the legislature or allotment procedures under chapter 43.88 RCW. [2003 c 232 § 2; 1996 c 142 § 2; 1995 1st sp.s. c 9 § 2. Prior: 1993 sp.s. c 18 § 6; 1993 c 379 § 201; 1987 c 15 § 2; prior: 1985 c 390 § 13; 1985 c 356 § 2; 1982 1st ex.s. c 37 § 12; 1981 c 257 § 1; 1979 c 151 § 14; 1977 ex.s. c 331 § 3; 1971 ex.s. c 279 § 2.]

Finding—Intent—2003 c 232: "The legislature finds that, as a partner in financing public higher education with students and parents who pay tuition and fees, periodic increases in state funding, state financial aid, and tuition must be authorized to provide high quality higher education for the citizens of Washington. It is the intent of the legislature to address higher education through a cooperative bipartisan effort that includes the legislative and executive branches of government, parents, students, educators, as well as business, labor, and community leaders. The legislature recognizes the importance of keeping the public commitment to public higher education and will continue searching for policies that halt the trend for the growth in tuition revenue to outpace the revenue provided by the state. The legislature believes that a well-educated citizenry is essential to both the private and the public good. The economic and civic health of the state require both an educated citizenry and a well-trained work force. The six-year time limitation authorizing the governing boards to establish tuition rates for all students other than undergraduate resident students will give the legislature, the governor, and the higher education institutions an opportunity to determine whether this policy achieves the goal of maintaining quality and access for all who are eligible for and can benefit from a higher education. Using data from six years of this tuition policy, the state will be able to identify options for long-term funding of higher education including not only tuition but general fund and financial aid sources." [2003 c 232 § 1.]

Severability—1996 c 142: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 142 § 4.]

Effective date—1996 c 142: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 142 § 5.]

Intent—Purpose—1995 1st sp.s. c 9: "It is the intent of the legislature to address higher education funding through a cooperative bipartisan effort that includes the legislative and executive branches of government, parents, students, educators, and concerned citizens. This effort will begin in 1995, with the results providing the basis for discussion during the 1996 legislative session for future decisions and final legislative action in 1997.

The purpose of this act is to provide tuition increases for public institutions of higher education as a transition measure until final action is taken in 1997." [1995 1st sp.s. c 9 § 1.]

Effective date—1995 1st sp.s. c 9: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [June 14, 1995]." [1995 1st sp.s. c 9 § 14.]

Appropriation—1993 sp.s. c 18: "All moneys in the accounts established under *RCW 28B.15.824 on July 1, 1993, are hereby appropriated to the respective institutions of higher education for deposit in the institution's local account established under RCW 28B.15.031." [1993 sp.s. c 18 § 15.]

***Reviser's note:** RCW 28B.15.824 was repealed by 1993 c 379 § 206 and by 1993 sp.s. c 18 § 14, effective July 1, 1993.

Effective date—1993 sp.s. c 18: See note following RCW 28B.10.265.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Effective date—1987 c 15: See note following RCW 28B.15.411.

Effective date—Severability—1982 1st ex.s. c 37: See notes following RCW 28B.15.012.

Severability—1981 c 257: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 257 § 13.]

Effective date—1977 ex.s. c 331: "The effective date of this 1977 amendatory act shall be September 1, 1977." [1977 ex.s. c 331 § 5.]

Severability—1977 ex.s. c 331: "If any provision of this 1977 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 331 § 4.]

Severability—1971 ex.s. c 279: See note following RCW 28B.15.005.

28B.15.066 General fund appropriations to institutions of higher education. It is the intent of the legislature that:

In making appropriations from the state's general fund to institutions of higher education, each appropriation shall conform to the following:

(1) The appropriation shall not be reduced by the amount of operating fees revenue estimated to be collected from students enrolled at the state-funded enrollment level specified in the omnibus biennial operating appropriations act;

(2) The appropriation shall not be reduced by the amount of operating fees revenue collected from students enrolled above the state-funded level specified in the omnibus biennial operating appropriations act; and

(3) The general fund state appropriation shall not be reduced by the amount of operating fees revenue collected as a result of waiving less operating fees revenue than the amounts authorized under RCW 28B.15.910. State general fund appropriations shall not be provided for revenue foregone as a result of or for waivers granted under RCW

28B.15.915. [2003 c 232 § 3; 2000 c 152 § 2; 1999 c 309 § 932; 1995 1st sp.s. c 9 § 3; 1993 c 379 § 205.]

Finding—Intent—2003 c 232: See note following RCW 28B.15.031.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Intent—Purpose—Effective date—1995 1st sp.s. c 9: See notes following RCW 28B.15.031.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

28B.15.067 Tuition fees—Established. (1) Tuition fees shall be established under the provisions of this chapter.

(2) Beginning with the 2003-04 academic year and ending with the 2008-09 academic year, reductions or increases in full-time tuition fees for resident undergraduates shall be as provided in the omnibus appropriations act.

(3) Beginning with the 2003-04 academic year and ending with the 2008-09 academic year, the governing boards of the state universities, the regional universities, The Evergreen State College, and the state board for community and technical colleges may reduce or increase full-time tuition fees for all students other than resident undergraduates, including summer school students and students in other self-supporting degree programs. Percentage increases in full-time tuition fees may exceed the fiscal growth factor. Reductions or increases may be made for all or portions of an institution's programs, campuses, courses, or students.

(4) Academic year tuition for full-time students at the state's institutions of higher education beginning with 2009-10, other than summer term, shall be as charged during the 2008-09 academic year unless different rates are adopted by the legislature.

(5) The tuition fees established under this chapter shall not apply to high school students enrolling in participating institutions of higher education under RCW 28A.600.300 through 28A.600.400.

(6) For the academic years 2003-04 through 2008-09, the University of Washington shall use an amount equivalent to ten percent of all revenues received as a result of law school tuition increases beginning in academic year 2000-01 through academic year 2008-09 to assist needy low and middle income resident law students.

(7) For the academic years 2003-04 through 2008-09, institutions of higher education shall use an amount equivalent to ten percent of all revenues received as a result of graduate academic school tuition increases beginning in academic year 2003-04 through academic year 2008-09 to assist needy low and middle-income resident graduate academic students. [2003 c 232 § 4; 1997 c 403 § 1; 1996 c 212 § 1; 1995 1st sp.s. c 9 § 4; 1992 c 231 § 4; 1990 1st ex.s. c 9 § 413; 1986 c 42 § 1; 1985 c 390 § 15; 1982 1st ex.s. c 37 § 15; 1981 c 257 § 2.]

Finding—Intent—2003 c 232: See note following RCW 28B.15.031.

Severability—1996 c 212: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 212 § 2.]

Intent—Purpose—Effective date—1995 1st sp.s. c 9: See notes following RCW 28B.15.031.

Effective date—1992 c 231: See note following RCW 28B.10.016.

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

Effective date—Severability—1982 1st ex.s. c 37: See notes following RCW 28B.15.012.

Severability—1981 c 257: See note following RCW 28B.15.031.

28B.15.069 Building fees—Services and activities fees—Other fees. (1) The building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the higher education coordinating board and be based on the actual percentage the building fee is of total tuition for each tuition category in the 1994-95 academic year, rounded up to the nearest half percent.

(2) The governing boards of each institution of higher education, except for the technical colleges, shall charge to and collect from each student a services and activities fee. A governing board may increase the existing fee annually, consistent with budgeting procedures set forth in RCW 28B.15.045, by a percentage not to exceed the annual percentage increase in student tuition fees for resident undergraduate students: PROVIDED, That such percentage increase shall not apply to that portion of the services and activities fee previously committed to the repayment of bonded debt. These rate adjustments may exceed the fiscal growth factor. For the 2003-04 academic year, the services and activities fee shall be based upon the resident undergraduate services and activities fee in 2002-03. The services and activities fee committee provided for in RCW 28B.15.045 may initiate a request to the governing board for a fee increase.

(3) Tuition and services and activities fees consistent with subsection (2) of this section shall be set by the state board for community and technical colleges for community college summer school students unless the community college charges fees in accordance with RCW 28B.15.515.

(4) Subject to the limitations of RCW 28B.15.910, each governing board of a community college may charge such fees for ungraded courses, noncredit courses, community services courses, and self-supporting courses as it, in its discretion, may determine, consistent with the rules of the state board for community and technical colleges. [2003 c 232 § 5; 1997 c 403 § 2; 1995 1st sp.s. c 9 § 5.]

Finding—Intent—2003 c 232: See note following RCW 28B.15.031.

Intent—Purpose—Effective date—1995 1st sp.s. c 9: See notes following RCW 28B.15.031.

28B.15.100 Tuition and fees set by individual institutions—Limitations—Tuition and fees for certain part-time, additional time, and out-of-state students. (1) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges shall charge to and collect from each of the students registering at the particular institution for any quarter or semester such tuition fees and services and activities fees, and other fees as such board shall in its discretion determine.

The total of all fees shall be rounded to the nearest whole dollar amount: PROVIDED, That such tuition fees shall be established in accordance with RCW 28B.15.067.

(2) Part-time students shall be charged tuition and services and activities fees proportionate to full-time student rates established for residents and nonresidents: PROVIDED, That except for students registered at community colleges, students registered for fewer than two credit hours

shall be charged tuition and services and activities fees at the rate established for two credit hours: PROVIDED FURTHER, That, subject to the limitations of RCW 28B.15.910, residents of Idaho or Oregon who are enrolled in community college district number twenty for six or fewer credits during any quarter or semester may be exempted from payment of all or a portion of the nonresident tuition fees differential upon a declaration by the higher education coordinating board that it finds Washington residents from the community college district are afforded substantially equivalent treatment by such other states.

(3) Full-time students registered for more than eighteen credit hours shall be charged an additional operating fee for each credit hour in excess of eighteen hours at the applicable established per credit hour tuition fee rate for part-time students: PROVIDED, That, subject to the limitations of RCW 28B.15.910, the governing boards of the state universities and the community colleges may exempt all or a portion of the additional charge, for students who are registered exclusively in first professional programs in medicine, dental medicine, veterinary medicine, doctor of pharmacy, or law, or who are registered exclusively in required courses in vocational preparatory programs. [2003 c 232 § 6; 1999 c 321 § 2; 1998 c 75 § 1; 1995 1st sp.s. c 9 § 8; 1993 sp.s. c 18 § 7; 1992 c 231 § 6. Prior: 1985 c 390 § 18; 1985 c 370 § 67; 1982 1st ex.s. c 37 § 11; 1981 c 257 § 5; 1977 ex.s. c 322 § 2; 1977 ex.s. c 169 § 36; 1971 ex.s. c 279 § 5; 1969 ex.s. c 223 § 28B.15.100; prior: (i) 1967 ex.s. c 8 § 31, part. Formerly RCW 28.85.310, part. (ii) 1963 c 181 § 1, part; 1961 ex.s. c 10 § 1, part; 1959 c 186 § 1, part; 1947 c 243 § 1, part; 1945 c 187 § 1, part; 1933 c 169 § 1, part; 1931 c 48 § 1, part; 1921 c 139 § 1, part; 1919 c 63 § 1, part; 1915 c 66 § 2, part; RRS § 4546, part. Formerly RCW 28.77.030, part. (iii) 1963 c 180 § 1, part; 1961 ex.s. c 11 § 1, part; 1949 c 73 § 1, part; 1931 c 49 § 1, part; 1921 c 164 § 1, part; Rem. Supp. 1949 § 4569, part. Formerly RCW 28.80.030, part. (iv) 1967 c 47 § 10, part; 1965 ex.s. c 147 § 1, part; 1963 c 143 § 1, part; 1961 ex.s. c 13 § 3, part. Formerly RCW 28.81.080, part.]

Finding—Intent—2003 c 232: See note following RCW 28B.15.031.

Intent—1999 c 321: "The legislature recognizes that certain tuition policies may have an adverse impact on the unique role of community colleges.

Therefore, it is the intent of the legislature to eliminate impediments to the ability of community colleges to meet the diverse needs of students and business interests." [1999 c 321 § 1.]

Intent—Purpose—Effective date—1995 1st sp.s. c 9: See notes following RCW 28B.15.031.

Effective date—1993 sp.s. c 18: See note following RCW 28B.10.265.

Effective date—1992 c 231: See note following RCW 28B.10.016.

Severability—Effective dates—1985 c 370: See RCW 28B.80.911 and 28B.80.912.

Effective date—Severability—1982 1st ex.s. c 37: See notes following RCW 28B.15.012.

Severability—1981 c 257: See note following RCW 28B.15.031.

Severability—1977 ex.s. c 322: See note following RCW 28B.15.065.

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

Severability—1971 ex.s. c 279: See note following RCW 28B.15.005.

28B.15.558 Waiver of tuition and fees for state employees, veterans of the Korean conflict, and Washington national guard members. (1) The governing boards of

the state universities, the regional universities, The Evergreen State College, and the community colleges may waive all or a portion of the tuition and services and activities fees for state employees as defined under subsection (2) of this section, veterans of the Korean conflict, and members of the Washington national guard. The enrollment of these persons is pursuant to the following conditions:

(a) Such persons shall register for and be enrolled in courses on a space available basis and no new course sections shall be created as a result of the registration;

(b) Enrollment information on persons registered pursuant to this section shall be maintained separately from other enrollment information and shall not be included in official enrollment reports, nor shall such persons be considered in any enrollment statistics that would affect budgetary determinations; and

(c) Persons registering on a space available basis shall be charged a registration fee of not less than five dollars.

(2) For the purposes of this section, "state employees" means persons employed half-time or more in one or more of the following employee classifications:

(a) Permanent employees in classified service under chapter 41.06 RCW;

(b) Permanent employees governed by chapter 41.56 RCW pursuant to the exercise of the option under *RCW 41.56.201;

(c) Permanent classified employees and exempt paraprofessional employees of technical colleges; and

(d) Faculty, counselors, librarians, and exempt professional and administrative employees at institutions of higher education as defined in RCW 28B.10.016.

(3) For the purposes of this section, "veterans of the Korean conflict" means persons who served on active duty in the armed forces of the United States during any portion of the period beginning June 27, 1950, and ending January 31, 1955.

(4) In awarding waivers, an institution of higher education may award waivers to eligible persons employed by the institution before considering waivers for eligible persons who are not employed by the institution.

(5) If an institution of higher education exercises the authority granted under this section, it shall include all eligible state employees, veterans of the Korean conflict, and members of the Washington national guard in the pool of persons eligible to participate in the program.

(6) In establishing eligibility to receive waivers, institutions of higher education may not discriminate between full-time employees and employees who are employed half-time or more. [2003 c 160 § 2; 1997 c 211 § 1; 1996 c 305 § 3; 1992 c 231 § 20; 1990 c 88 § 1.]

***Reviser's note:** RCW 41.56.201 was repealed by 2002 c 354 § 403, effective July 1, 2005.

Finding—Intent—2003 c 160: "The legislature finds that military and naval veterans who have served their country in wars on foreign soil have risked their own lives to defend both the lives of all Americans and the freedom that define[s] and distinguish[es] our nation. It is the intent of the legislature to honor veterans of the Korean conflict for the public service they have provided to their country." [2003 c 160 § 1.]

Effective date—1996 c 305 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1996]." [1996 c 305 § 4.]

Severability—1996 c 305: See note following RCW 28B.85.020.

Effective date—1992 c 231: See note following RCW 28B.10.016.

28B.15.600 Refunds or cancellation of fees—Four-year institutions of higher education. (1) The governing boards of the state universities, the regional universities, and The Evergreen State College may refund or cancel in full the tuition and services and activities fees if the student withdraws from a university or college course or program prior to the sixth day of instruction of the quarter or semester for which the fees have been paid or are due. If the student withdraws on or after the sixth day of instruction, the governing boards may refund or cancel up to one-half of the fees, provided such withdrawal occurs within the first thirty calendar days following the beginning of instruction. However, if a different policy is required by federal law in order for the institution of higher education to maintain eligibility for federal funding of programs, the governing board may adopt a refund policy that meets the minimum requirements of the federal law, and the policy may treat all students attending the institution in the same manner. Additionally, if federal law provides that students who receive federal financial aid must return a larger amount to the federal government than that refunded by the institution, the governing board may adopt a refund policy that uses the formula used to calculate the amount returned to the federal government, and the policy may treat all students attending the institution in the same manner.

(2) The governing boards of the respective universities and college may adopt rules for the refund of tuition and fees for courses or programs that begin after the start of the regular quarter or semester.

(3) The governing boards may extend the refund or cancellation period for students who withdraw for medical reasons or who are called into the military service of the United States and may refund other fees pursuant to such rules as they may prescribe. [2003 c 319 § 1; 1995 c 36 § 1; 1993 sp.s. c 18 § 22; 1991 c 164 § 5; 1985 c 390 § 32; 1983 c 256 § 1; 1977 ex.s. c 169 § 40; 1973 1st ex.s. c 46 § 2; 1971 ex.s. c 279 § 15; 1969 ex.s. c 223 § 28B.15.600. Prior: 1963 c 89 § 1. Formerly RCW 28.76.430.]

Effective date—1995 c 36: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 13, 1995]." [1995 c 36 § 3.]

Effective date—1993 sp.s. c 18: See note following RCW 28B.10.265.

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

Severability—1973 1st ex.s. c 46: See note following RCW 28B.10.704.

Severability—1971 ex.s. c 279: See note following RCW 28B.15.005.

Chapter 28B.20 RCW

UNIVERSITY OF WASHINGTON

Sections

28B.20.285	Washington technology center—Created—Purpose.
28B.20.289	Washington technology center—Administration—Board of directors.
28B.20.320	Marine biological preserve—Established and described—Unlawful gathering of marine biological materials—Penalty. (Effective July 1, 2004.)
28B.20.322	Repealed. (Effective July 1, 2004.)

28B.20.324 Repealed. (Effective July 1, 2004.)

28B.20.285 Washington technology center—Created—Purpose. A Washington technology center is created to be a collaborative effort between the state's universities, private industry, and government. The technology center shall be headquartered at the University of Washington. The mission of the technology center shall be to perform and commercialize research on a statewide basis that benefits the intermediate and long-term economic vitality of the state of Washington, and to develop and strengthen university-industry relationships through the conduct of research that is primarily of interest to Washington-based companies or state economic development programs. The technology center shall:

(1) Perform and/or facilitate research supportive of state science and technology objectives, particularly as they relate to state industries;

(2) Provide leading edge collaborative research and technology transfer opportunities primarily to state industries;

(3) Provide substantial opportunities for training undergraduate and graduate students through direct involvement in research and industry interactions;

(4) Emphasize and develop nonstate support of the technology center's research activities;

(5) Administer the investing in innovation grants program; and

(6) Provide a forum for effective interaction between the state's technology-based industries and its academic research institutions through promotion of faculty collaboration with industry, particularly within the state. [2003 c 403 § 10; 1992 c 142 § 3; 1983 1st ex.s. c 72 § 11.]

Intent—2003 c 403: See RCW 70.210.010.

Effective date—Short title—1983 1st ex.s. c 72: See RCW 28B.65.905 and 28B.65.900.

28B.20.289 Washington technology center—Administration—Board of directors. (1) The technology center shall be administered by the board of directors of the technology center.

(2) The board shall consist of the following members: Fourteen members from among individuals who are associated with or employed by technology-based industries and have broad business experience and an understanding of high technology; eight members from the state's universities with graduate science and engineering programs; the executive director of the Spokane Intercollegiate Research and Technology Institute or his or her designated representative; the provost of the University of Washington or his or her designated representative; the provost of the Washington State University or his or her designated representative; and the director of the department of community, trade, and economic development or his or her designated representative. The term of office for each board member, excluding the executive director of the Spokane Intercollegiate Research and Technology Institute, the provost of the University of Washington, the provost of the Washington State University, and the director of the department of community, trade, and economic development, shall be three years. The executive director of the technology center shall be an ex officio, non-voting member of the board. The board shall meet at least

quarterly. Board members shall be appointed by the governor based on the recommendations of the existing board of the technology center, and the research universities. The governor shall stagger the terms of the first group of appointees to ensure the long term continuity of the board.

(3) The duties of the board include:

(a) Developing the general operating policies for the technology center;

(b) Appointing the executive director of the technology center;

(c) Approving the annual operating budget of the technology center;

(d) Establishing priorities for the selection and funding of research projects that guarantee the greatest potential return on the state's investment;

(e) Approving and allocating funding for research projects conducted by the technology center, based on the recommendations of the advisory committees for each of the research centers;

(f) In cooperation with the department of community, trade, and economic development, developing a biennial work plan and five-year strategic plan for the technology center that are consistent with the statewide technology development and commercialization goals;

(g) Coordinating with the University of Washington, Washington State University, and other participating institutions of higher education in the development of training, research, and development programs to be conducted at the technology center that shall be targeted to meet industrial needs;

(h) Assisting the department of community, trade, and economic development in the department's efforts to develop state science and technology public policies and coordinate publicly funded programs;

(i) Performing the duties required under chapter 70.210 RCW relating to the investing in innovation grants program;

(j) Reviewing annual progress reports on funded research projects that are prepared by the advisory committees for each of the research centers;

(k) Providing an annual report to the governor and the legislature detailing the activities and performance of the technology center; and

(l) Submitting annually to the department of community, trade, and economic development an updated strategic plan and a statement of performance measured against the mission, roles, and contractual obligations of the technology center. [2003 c 403 § 11; 1995 c 399 § 26; 1992 c 142 § 4.]

Intent—2003 c 403: See RCW 70.210.010.

28B.20.320 Marine biological preserve—Established and described—Unlawful gathering of marine biological materials—Penalty. (Effective July 1, 2004.) (1) There is hereby created an area of preserve of marine biological materials useful for scientific purposes, except when gathered for human food, and except, also, the plant nereocystis, commonly called "kelp." Such area of preserve shall consist of the salt waters and the beds and shores of the islands constituting San Juan county and of Cypress Island in Skagit county.

(2) No person shall gather such marine biological materials from the area of preserve, except upon permission first

granted by the director of the Friday Harbor Laboratories of the University of Washington.

(3) A person gathering such marine biological materials contrary to the terms of this section is guilty of a misdemeanor. [2003 c 53 § 174; 1969 ex.s. c 223 § 28B.20.320. Prior: 1923 c 74 § 1; RRS § 8436-1. Formerly RCW 28.77.230.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

28B.20.322 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.20.324 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 28B.50 RCW

COMMUNITY AND TECHNICAL COLLEGES

(Formerly: Community colleges)

Sections

28B.50.030	Definitions.
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28B.50.837	Exceptional faculty awards—Established—Community and technical college faculty awards trust fund.
28B.50.839	Exceptional faculty awards—Guidelines—Matching funds—Donations—Disbursements.
28B.50.890	Apprentices—Associate degree pathway.

28B.50.030 Definitions. As used in this chapter, unless the context requires otherwise, the term:

(1) "System" shall mean the state system of community and technical colleges, which shall be a system of higher education.

(2) "Board" shall mean the work force training and education coordinating board.

(3) "College board" shall mean the state board for community and technical colleges created by this chapter.

(4) "Director" shall mean the administrative director for the state system of community and technical colleges.

(5) "District" shall mean any one of the community and technical college districts created by this chapter.

(6) "Board of trustees" shall mean the local community and technical college board of trustees established for each college district within the state.

(7) "Occupational education" shall mean that education or training that will prepare a student for employment that does not require a baccalaureate degree.

(8) "K-12 system" shall mean the public school program including kindergarten through the twelfth grade.

(9) "Common school board" shall mean a public school district board of directors.

(10) "Community college" shall include those higher education institutions that conduct education programs under RCW 28B.50.020.

(11) "Technical college" shall include those higher education institutions with the sole mission of conducting occupational education, basic skills, literacy programs, and offer-

ing on short notice, when appropriate, programs that meet specific industry needs. The programs of technical colleges shall include, but not be limited to, continuous enrollment, competency-based instruction, industry-experienced faculty, curriculum integrating vocational and basic skills education, and curriculum approved by representatives of employers and labor. For purposes of this chapter, technical colleges shall include Lake Washington Vocational-Technical Institute, Renton Vocational-Technical Institute, Bates Vocational-Technical Institute, Clover Park Vocational Institute, and Bellingham Vocational-Technical Institute.

(12) "Adult education" shall mean all education or instruction, including academic, vocational education or training, basic skills and literacy training, and "occupational education" provided by public educational institutions, including common school districts for persons who are eighteen years of age and over or who hold a high school diploma or certificate. However, "adult education" shall not include academic education or instruction for persons under twenty-one years of age who do not hold a high school degree or diploma and who are attending a public high school for the sole purpose of obtaining a high school diploma or certificate, nor shall "adult education" include education or instruction provided by any four year public institution of higher education.

(13) "Dislocated forest product worker" shall mean a forest products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business' services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(14) "Forest products worker" shall mean a worker in the forest products industries affected by the reduction of forest fiber enhancement, transportation, or production. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries assigned the major group standard industrial classification codes "24" and "26" and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment. The commissioner may adopt rules further interpreting these definitions. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(3).

(15) "Dislocated salmon fishing worker" means a finfish products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(16) "Salmon fishing worker" means a worker in the finfish industry affected by 1994 or future salmon disasters. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries involved in the commercial and recreational harvesting of finfish including buying and processing finfish. The commissioner may adopt rules further interpreting these definitions.

(17) "Rural natural resources impact area" means:

(a) A nonmetropolitan county, as defined by the 1990 decennial census, that meets three of the five criteria set forth in subsection (18) of this section;

(b) A nonmetropolitan county with a population of less than forty thousand in the 1990 decennial census, that meets two of the five criteria as set forth in subsection (18) of this section; or

(c) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets three of the five criteria set forth in subsection (18) of this section.

(18) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area of which any part is ten miles or more from an urbanized area is considered nonurbanized. A zip code totally surrounded by zip codes qualifying as nonurbanized under this definition is also considered nonurbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter. [2003 2nd sp.s. c 4 § 33; 1997 c 367 § 13; 1995 c 226 § 17; 1992 c 21 § 5. Prior: 1991 c 315 § 15; 1991 c 238 § 22; 1985 c 461 § 14; 1982 1st ex.s. c 53 § 24; 1973 c 62 § 12; 1969 ex.s. c 261 § 18; 1969 ex.s. c 223 § 28B.50.030; prior: 1967 ex.s. c 8 § 3.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Severability—Conflict with federal requirements—Effective date—1997 c 367: See notes following RCW 43.160.020.

Severability—Conflict with federal requirements—Effective date—1995 c 226: See notes following RCW 43.160.020.

Intent—1991 c 315: "The legislature finds that:

(1) The economic health and well-being of timber-dependent communities is of substantial public concern. The significant reduction in annual timber harvest levels likely will result in reduced economic activity and persistent unemployment and underemployment over time, which would be a serious threat to the safety, health, and welfare of residents of the timber

impact areas, decreasing the value of private investments and jeopardizing the sources of public revenue.

(2) Timber impact areas are most often located in areas that are experiencing little or no economic growth, creating an even greater risk to the health, safety, and welfare of these communities. The ability to remedy problems caused by the substantial reduction in harvest activity is beyond the power and control of the regulatory process and influence of the state, and the ordinary operations of private enterprise without additional governmental assistance are insufficient to adequately remedy the resulting problems of poverty and unemployment.

(3) To address these concerns, it is the intent of the legislature to increase training and retraining services accessible to timber impact areas, and provide for coordination of noneconomic development services in timber impact areas as economic development efforts will not succeed unless social, housing, health, and other needs are addressed." [1991 c 315 § 1.]

Severability—Conflict with federal requirements—Effective date—1991 c 315: See RCW 50.70.900 through 50.70.902.

Severability—1985 c 461: See note following RCW 41.06.020.

Severability—1982 1st ex.s. c 53: See note following RCW 41.06.020.

Savings—Severability—1973 c 62: See notes following RCW 28B.10.510.

Severability—1969 ex.s. c 261: See note following RCW 28B.50.020.

28B.50.090 College board—Powers and duties. The college board shall have general supervision and control over the state system of community and technical colleges. In addition to the other powers and duties imposed upon the college board by this chapter, the college board shall be charged with the following powers, duties and responsibilities:

(1) Review the budgets prepared by the boards of trustees, prepare a single budget for the support of the state system of community and technical colleges and adult education, and submit this budget to the governor as provided in RCW 43.88.090;

(2) Establish guidelines for the disbursement of funds; and receive and disburse such funds for adult education and maintenance and operation and capital support of the college districts in conformance with the state and district budgets, and in conformance with chapter 43.88 RCW;

(3) Ensure, through the full use of its authority:

(a) That each college district shall offer thoroughly comprehensive educational, training and service programs to meet the needs of both the communities and students served by combining high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; and community services of an educational, cultural, and recreational nature; and adult education, including basic skills and general, family, and work force literacy programs and services. However, technical colleges, and college districts containing only technical colleges, shall maintain programs solely for occupational education, basic skills, and literacy purposes. For as long as a need exists, technical colleges may continue those programs, activities, and services they offered during the twelve-month period preceding May 17, 1991;

(b) That each college district shall maintain an open-door policy, to the end that no student will be denied admission because of the location of the student's residence or because of the student's educational background or ability; that, insofar as is practical in the judgment of the college board, curriculum offerings will be provided to meet the educational and training needs of the community generally and the students thereof; and that all students, regardless of their differing courses of study, will be considered, known and recognized

equally as members of the student body: PROVIDED, That the administrative officers of a community or technical college may deny admission to a prospective student or attendance to an enrolled student if, in their judgment, the student would not be competent to profit from the curriculum offerings of the college, or would, by his or her presence or conduct, create a disruptive atmosphere within the college not consistent with the purposes of the institution. This subsection (3)(b) shall not apply to competency, conduct, or presence associated with a disability in a person twenty-one years of age or younger attending a technical college;

(4) Prepare a comprehensive master plan for the development of community and technical college education and training in the state; and assist the office of financial management in the preparation of enrollment projections to support plans for providing adequate college facilities in all areas of the state. The master plan shall include implementation of the vision, goals, priorities, and strategies in the statewide strategic master plan for higher education under RCW 28B.80.345 based on the community and technical college system's role and mission. The master plan shall also contain measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities;

(5) Define and administer criteria and guidelines for the establishment of new community and technical colleges or campuses within the existing districts;

(6) Establish criteria and procedures for modifying district boundary lines consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended and in accordance therewith make such changes as it deems advisable;

(7) Establish minimum standards to govern the operation of the community and technical colleges with respect to:

(a) Qualifications and credentials of instructional and key administrative personnel, except as otherwise provided in the state plan for vocational education,

(b) Internal budgeting, accounting, auditing, and financial procedures as necessary to supplement the general requirements prescribed pursuant to chapter 43.88 RCW,

(c) The content of the curriculums and other educational and training programs, and the requirement for degrees and certificates awarded by the colleges,

(d) Standard admission policies,

(e) Eligibility of courses to receive state fund support;

(8) Establish and administer criteria and procedures for all capital construction including the establishment, installation, and expansion of facilities within the various college districts;

(9) Encourage innovation in the development of new educational and training programs and instructional methods; coordinate research efforts to this end; and disseminate the findings thereof;

(10) Exercise any other powers, duties and responsibilities necessary to carry out the purposes of this chapter;

(11) Authorize the various community and technical colleges to offer programs and courses in other districts when it determines that such action is consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended;

(12) Notwithstanding any other law or statute regarding the sale of state property, sell or exchange and convey any or all interest in any community and technical college real and personal property, except such property as is received by a

college district in accordance with RCW 28B.50.140(8), when it determines that such property is surplus or that such a sale or exchange is in the best interests of the community and technical college system;

(13) In order that the treasurer for the state board for community and technical colleges appointed in accordance with RCW 28B.50.085 may make vendor payments, the state treasurer will honor warrants drawn by the state board providing for an initial advance on July 1, 1982, of the current biennium and on July 1 of each succeeding biennium from the state general fund in an amount equal to twenty-four percent of the average monthly allotment for such budgeted biennium expenditures for the state board for community and technical colleges as certified by the office of financial management; and at the conclusion of such initial month and for each succeeding month of any biennium, the state treasurer will reimburse expenditures incurred and reported monthly by the state board treasurer in accordance with chapter 43.88 RCW: PROVIDED, That the reimbursement to the state board for actual expenditures incurred in the final month of each biennium shall be less the initial advance made in such biennium;

(14) Notwithstanding the provisions of subsection (12) of this section, may receive such gifts, grants, conveyances, devises, and bequests of real or personal property from private sources as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community and technical college programs and may sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof;

(15) The college board shall have the power of eminent domain;

(16) Provide general supervision over the state's technical colleges. The president of each technical college shall report directly to the director of the state board for community and technical colleges, or the director's designee, until local control is assumed by a new or existing board of trustees as appropriate, except that a college president shall have authority over program decisions of his or her college until the establishment of a board of trustees for that college. The directors of the vocational-technical institutes on March 1, 1991, shall be designated as the presidents of the new technical colleges. [2003 c 130 § 6; 1991 c 238 § 33; 1982 c 50 § 1; 1981 c 246 § 2; 1979 c 151 § 20; 1977 ex.s. c 282 § 4; 1973 c 62 § 16; 1969 ex.s. c 261 § 21; 1969 ex.s. c 223 § 28B.50.090. Prior: 1967 ex.s. c 8 § 9.]

Findings—Intent—2003 c 130: See note following RCW 28B.80.330.

Severability—1981 c 246: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 246 § 6.]

Severability—1977 ex.s. c 282: See note following RCW 28B.50.870.

Savings—Severability—1973 c 62: See notes following RCW 28B.10.510.

Severability—1969 ex.s. c 261: See note following RCW 28B.50.020.

Construction, reconstruction, equipping facilities—Financing: RCW 28B.50.340.

Development of budget: RCW 43.88.090.

Eminent domain: Title 8 RCW.

State budgeting, accounting, and reporting system: Chapter 43.88 RCW.

28B.50.465 Cost-of-living increases—Academic employees. (1) Academic employees of community and technical college districts shall be provided an annual salary cost-of-living increase in accordance with this section. For purposes of this section, "academic employee" has the same meaning as defined in RCW 28B.52.020.

(a) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year, except as provided in (d) of this subsection, each college district shall receive a cost-of-living allocation sufficient to increase academic employee salaries, including mandatory salary-related benefits, by the rate of the yearly increase in the cost-of-living index.

(b) A college district shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the district's salary schedules, collective bargaining agreements, and other compensation policies. No later than the end of the fiscal year, each college district shall certify to the college board that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) The college board shall include any funded cost-of-living increase in the salary base used to determine cost-of-living increases for academic employees in subsequent years.

(d) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year except for the 2003-04 and 2004-05 fiscal years, the state shall fully fund the cost-of-living increase set forth in this section.

(2) For the purposes of this section, "cost-of-living index" means, for any fiscal year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section. [2003 1st sp.s. c 20 § 3; 2001 c 4 § 3 (Initiative Measure No. 732, approved November 7, 2000).]

Severability—2001 c 4 (Initiative Measure No. 732): See note following RCW 28A.400.205.

28B.50.468 Cost-of-living increases—Classified employees. (1) Classified employees of technical colleges shall be provided an annual salary cost-of-living increase in accordance with this section. For purposes of this section, "technical college" has the same meaning as defined in RCW 28B.50.030. This section applies to only those classified employees under the jurisdiction of chapter 41.56 RCW.

(a) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year, except as provided in (d) of this subsection, each technical college board of trustees shall receive a cost-of-living allocation sufficient to increase classified employee salaries, including mandatory salary-related benefits, by the rate of the yearly increase in the cost-of-living index.

(b) A technical college board of trustees shall distribute its cost-of-living allocation for salaries and salary-related

benefits in accordance with the technical college's salary schedules, collective bargaining agreements, and other compensation policies. No later than the end of the fiscal year, each technical college shall certify to the college board that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) The college board shall include any funded cost-of-living increase in the salary base used to determine cost-of-living increases for technical college classified employees in subsequent years.

(d) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year except for the 2003-2004 and 2004-2005 fiscal years, the state shall fully fund the cost-of-living increase set forth in this section.

(2) For the purposes of this section, "cost-of-living index" means, for any fiscal year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section. [2003 1st sp.s. c 20 § 4; 2001 c 4 § 4 (Initiative Measure No. 732, approved November 7, 2000).]

Severability—2001 c 4 (Initiative Measure No. 732): See note following RCW 28A.400.205.

28B.50.837 Exceptional faculty awards—Established—Community and technical college faculty awards trust fund. (1) The Washington community and technical college exceptional faculty awards program is established. The program shall be administered by the college board. The college faculty awards trust fund hereby created shall be administered by the state treasurer.

(2) Funds appropriated by the legislature for the community and technical college exceptional faculty awards program shall be deposited in the college faculty awards trust fund. At the request of the college board, the treasurer shall release the state matching funds to the local endowment fund of the college or its foundation. No appropriation is necessary for the expenditure of moneys from the fund. Expenditures from the fund may be used solely for the exceptional faculty awards program. [2003 c 129 § 2; 2002 c 371 § 902; 1993 c 87 § 1; 1991 sp.s. c 13 §§ 108, 109; 1991 c 238 § 63; 1990 c 29 § 2.]

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

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

Severability—1990 c 29: See note following RCW 28B.50.835.

28B.50.839 Exceptional faculty awards—Guidelines—Matching funds—Donations—Disbursements. (1) In consultation with eligible community and technical colleges, the college board shall set priorities and guidelines for the program.

(2) All community and technical colleges and their foundations shall be eligible for matching trust funds. When they can match the state funds with equal cash donations from pri-

vate sources, institutions and foundations may apply to the college board for grants from the fund in ten thousand dollar increments up to a maximum set by the college board. These donations shall be made specifically to the exceptional faculty awards program and deposited by the institution or foundation in a local endowment fund or a foundation's fund. Otherwise unrestricted gifts may be deposited in the endowment fund by the institution or foundation.

(3) Once sufficient private donations are received by the institution or foundation, the institution shall inform the college board and request state matching funds. The college board shall evaluate the request for state matching funds based on program priorities and guidelines. The college board may ask the state treasurer to release the state matching funds to a local endowment fund established by the institution or a foundation's fund established by a foundation for each faculty award created.

(4) A college, by action of its board of trustees, may transfer those exceptional faculty award funds accumulated in its local endowment fund between July 1, 1991, and July 25, 1993, to its foundation's local endowment fund established as provided in subsection (2) of this section. [2003 c 129 § 1; 1994 c 234 § 3; 1993 c 87 § 2; 1991 c 238 § 64; 1990 c 29 § 3.]

Severability—1990 c 29: See note following RCW 28B.50.835.

28B.50.890 Apprentices—Associate degree pathway.

(1) At the request of an apprenticeship committee pursuant to RCW 49.04.150, the community or technical college or colleges providing apprentice-related and supplemental instruction for an apprenticeship program shall develop an associate degree pathway for the apprentices in that program, if the necessary resources are available.

(2) In developing a degree program, the community or technical college or colleges shall ensure, to the extent possible, that related and supplemental instruction is credited toward the associate degree and that related and supplemental instruction and other degree requirements are not redundant.

(3) If multiple community or technical colleges provide related and supplemental instruction for a single apprenticeship committee, the colleges shall work together to the maximum extent possible to create consistent requirements for the pathway. [2003 c 128 § 3.]

Findings—2003 c 128: See note following RCW 49.04.150.

Chapter 28B.80 RCW

HIGHER EDUCATION COORDINATING BOARD (Formerly: Council for postsecondary education in the state of Washington)

Sections

- 28B.80.330 Duties.
- 28B.80.335 Prioritized capital project lists for higher education institutions.
- 28B.80.340 Program responsibilities.
- 28B.80.345 Statewide strategic master plan for higher education.
- 28B.80.610 Higher education institutional responsibilities.
- 28B.80.805 Border county higher education opportunity project—Findings—Intent.
- 28B.80.806 Border county higher education opportunity project—Created.
- 28B.80.807 Border county higher education opportunity project—Administration.
- 28B.80.810 Transfer standards pilot project. (*Expires June 30, 2006.*)

28B.80.330 Duties. The board shall perform the following planning duties in consultation with the four-year institutions including the council of presidents, the community and technical college system, and when appropriate the work force training and education coordinating board, the superintendent of public instruction, and the independent higher educational institutions:

(1) Review, evaluate, and make recommendations on operating and capital budget requests from four-year institutions and the community and technical college system, based on how the budget requests align with and implement the statewide strategic master plan for higher education under RCW 28B.80.345;

(a) By December of each odd-numbered year, the board shall distribute guidelines which outline the board's fiscal priorities to the institutions and the state board for community and technical colleges. The institutions and the state board for community and technical colleges shall submit an outline of their proposed budgets, identifying major components, to the board no later than August 1st of each even-numbered year. The board shall submit recommendations on the proposed budgets and on the board's budget priorities to the office of financial management before November 1st of each even-numbered year, and to the legislature by January 1st of each odd-numbered year;

(b) Institutions and the state board for community and technical colleges shall submit any supplemental budget requests and revisions to the board at the same time they are submitted to the office of financial management. The board shall submit recommendations on the proposed supplemental budget requests to the office of financial management by November 1st and to the legislature by January 1st;

(2) Recommend legislation affecting higher education;

(3) Prepare recommendations on merging or closing institutions; and

(4) Develop criteria for identifying the need for new baccalaureate institutions. [2003 c 130 § 3; 1997 c 369 § 10; 1996 c 174 § 1; 1993 c 363 § 6; 1985 c 370 § 4.]

Findings—Intent—2003 c 130: "(1) The legislature finds that:

(a) At the time the higher education coordinating board was created in 1985, the legislature wanted a board with a comprehensive mission that included planning, budget and program review authority, and program administration;

(b) Since its creation, the board has achieved numerous accomplishments, including proposals leading to creation of the branch campus system, and has made access and affordability of higher education a consistent priority;

(c) However, higher education in Washington state is currently at a crossroads. Demographic, economic, and technological changes present new and daunting challenges for the state and its institutions of higher education. As the state looks forward to the future, the legislature, the governor, and institutions need a common strategic vision to guide planning and decision making.

(2) Therefore, it is the legislature's intent to reaffirm and strengthen the strategic planning role of the higher education coordinating board. It is also the legislature's intent to examine options for reassigning or altering other roles and responsibilities to enable the board to place priority and focus on planning and coordination." [2003 c 130 § 1.]

Findings—Effective date—1993 c 363: See notes following RCW 28B.80.610.

Industrial project of statewide significance—Defined: RCW 43.157.010.

28B.80.335 Prioritized capital project lists for higher education institutions. (1) Beginning with the 2005-2007 biennial capital budget submittal, the public four-year institu-

tions, in consultation with the council of presidents and the higher education coordinating board, shall prepare a single prioritized individual ranking of the individual projects proposed by the four-year institutions as provided in subsection (2) of this section. The public four-year institutions may aggregate minor works project requests into priority categories without separately ranking each minor project, provided that these aggregated minor works requests are ranked within the overall list. For repairs and improvements to existing facilities and systems, the rating and ranking of individual projects must be based on criteria or factors that include, but are not limited to, the age and condition of buildings or systems, the programmatic suitability of the building or system, and the activity/occupancy level supported by the building or system. For projects creating new space or capacity, the ratings and rankings of projects must be based upon criteria or factors that include, but are not limited to, measuring existing capacity and progress toward meeting increased space utilization levels as determined by the higher education coordinating board.

(2) The single prioritized four-year project list shall be approved by the governing boards of each public four-year institution and shall be submitted to the office of financial management and the higher education coordinating board concurrent with the institution's submittal of their biennial capital budget requests.

(3)(a) The higher education coordinating board, in consultation with the office of financial management and the joint legislative audit and review committee, shall develop common definitions that public four-year institutions and the state board for community and technical colleges shall use in developing their project lists under this section.

(b) As part of its duties under *RCW 28B.80.330(4), the higher education coordinating board shall, as part of its biennial budget guidelines, disseminate, by December 1st of each odd-numbered year, the criteria framework, including general definitions, categories, and rating system, to be used by the public four-year institutions in the development of the prioritized four-year project list. The criteria framework shall specify the general priority order of project types based on criteria determined by the board, in consultation with the public four-year institutions.

(c) Under *RCW 28B.80.330(4), the public four-year institutions shall submit a preliminary prioritized four-year project list to the higher education coordinating board by August 1st of each even-numbered year.

(d) The state board for community and technical colleges shall, as part of its biennial capital budget request, submit a single prioritized ranking of the individual projects proposed for the community and technical colleges. The state board for community and technical colleges shall submit an outline of the prioritized community and technical college project list to the higher education coordinating board under *RCW 28B.80.330(4) by August 1st of each even-numbered year.

(4) The higher education coordinating board, in consultation with the public four-year institutions, shall resolve any disputes or disagreements arising among the four-year institutions concerning the ranking of particular projects. Further, should one or more governing boards of the public four-year institutions fail to approve the prioritized four-year project list as required in this section, or should a prioritized project

list not be submitted by the public four-year institutions concurrent with the submittal of their respective biennial capital budget requests as provided in subsection (2) of this section, the higher education coordinating board shall prepare the prioritized four-year institution project list itself.

(5) In developing any rating and ranking of capital projects proposed by the two-year and four-year public universities and colleges, the board:

(a) Shall be provided with available information by the public two-year and four-year institutions as deemed necessary by the board;

(b) May utilize independent services to verify, sample, or evaluate information provided to the board by the two-year and four-year institutions; and

(c) Shall have full access to all data maintained by the office of financial management and the joint legislative audit and review committee concerning the condition of higher education facilities.

(6) Beginning with the 2005-2007 biennial capital budget submittal, the higher education coordinating board shall, in consultation with the state board for community and technical colleges and four-year colleges and universities, submit its capital budget recommendations and the separate two-year and four-year prioritized project lists. [2003 1st sp.s. c 8 § 2.]

***Reviser's note:** RCW 28B.80.330 was amended by 2003 c 130 § 3, changing subsection (4) to subsection (1)(a).

Findings—Intent—2003 1st sp.s. c 8: "(1) The legislature finds that a capital investment in higher education facilities is needed over the next several biennia to adequately preserve, modernize, and expand the capacity of the state's public two-year and four-year colleges and universities. This investment is needed to responsibly preserve and restore existing facilities and to provide additional space for new students. Further, the legislature finds that capital appropriations will need to respond to each of these areas of need in a planned, balanced, and prioritized manner so that access to a quality system of higher education is ensured.

(2) It is the intent of the legislature that a methodology be developed that will guide capital appropriation decisions by rating and individually ranking, in sequential, priority order, all major capital projects proposed by the two-year and four-year public universities and colleges. Further, it is the intent of the legislature that this rating, ranking, and prioritization of capital needs will reflect the state's higher education policies and goals including the comprehensive master plan for higher education as submitted by the higher education coordinating board and as adopted by the legislature." [2003 1st sp.s. c 8 § 1.]

28B.80.340 Program responsibilities. (1) The board shall perform the following program responsibilities, in consultation with the institutions and with other interested agencies and individuals:

(a) Approve the creation of any new degree programs at the four-year institutions and prepare fiscal notes on any such programs;

(b) Review, evaluate, and make recommendations for the modification, consolidation, initiation, or elimination of on-campus programs, at the four-year institutions;

(c) Review and evaluate and approve, modify, consolidate, initiate, or eliminate off-campus programs at the four-year institutions;

(d) Approve, and adopt guidelines for, higher education centers and consortia;

(e) Approve purchase or lease of major off-campus facilities for the four-year institutions and the community colleges;

(f) Establish campus service areas and define on-campus and off-campus activities and major facilities; and

(g) Approve contracts for off-campus educational programs initiated by the state's four-year institutions individually, in concert with other public institutions, or with independent institutions.

(2) In performing its responsibilities under this section, the board shall consider, and require institutions to demonstrate, how the proposals align with or implement the statewide strategic master plan for higher education under RCW 28B.80.345. The board shall also develop clear guidelines and objective decision-making criteria regarding approval of proposals under this section. [2003 c 130 § 4; 1985 c 370 § 5.]

Findings—Intent—2003 c 130: See note following RCW 28B.80.330.

28B.80.345 Statewide strategic master plan for higher education. (1) The board shall develop a statewide strategic master plan for higher education that proposes a vision and identifies goals and priorities for the system of higher education in Washington state. The board shall also specify strategies for maintaining and expanding access, affordability, quality, efficiency, and accountability among the various institutions of higher education.

(2) In developing the statewide strategic master plan for higher education, the board shall collaborate with the four-year institutions of higher education including the council of presidents, the community and technical college system, and, when appropriate, the work force training and education coordinating board, the superintendent of public instruction, and the independent higher education institutions. The board shall also seek input from students, faculty organizations, community and business leaders in the state, members of the legislature, and the governor.

(3) As a foundation for the statewide strategic master plan for higher education, the board shall develop and establish role and mission statements for each of the four-year institutions of higher education and the community and technical college system. The board shall determine whether certain major lines of study or types of degrees, including applied degrees or research-oriented degrees, shall be assigned uniquely to some institutions or institutional sectors in order to create centers of excellence that focus resources and expertise.

(4) In assessing needs of the state's higher education system, the board may consider and analyze the following information:

(a) Demographic, social, economic, and technological trends and their impact on service delivery;

(b) The changing ethnic composition of the population and the special needs arising from those trends;

(c) Business and industrial needs for a skilled work force;

(d) College attendance, retention, transfer, and dropout rates;

(e) Needs and demands for basic and continuing education and opportunities for lifelong learning by individuals of all age groups; and

(f) Needs and demands for access to higher education by placebound students and individuals in heavily populated areas underserved by public institutions.

(5) The statewide strategic master plan for higher education shall include, but not be limited to, the following:

(a) Recommendations based on enrollment forecasts and analysis of data about demand for higher education, and policies and actions to meet those needs;

(b) State or regional priorities for new or expanded degree programs or off-campus programs, including what models of service delivery may be most cost-effective;

(c) Recommended policies or actions to improve the efficiency of student transfer and graduation or completion;

(d) State or regional priorities for addressing needs in high-demand fields where enrollment access is limited and employers are experiencing difficulty finding enough qualified graduates to fill job openings;

(e) Recommended tuition and fees policies and levels; and

(f) Priorities and recommendations on financial aid.

(6) The board shall present the vision, goals, priorities, and strategies in the statewide strategic master plan for higher education in a way that provides guidance for institutions, the governor, and the legislature to make further decisions regarding institution-level plans, policies, legislation, and operating and capital funding for higher education. In the statewide strategic master plan for higher education, the board shall recommend specific actions to be taken and identify measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities.

(7) Every four years by December 15th, beginning December 15, 2003, the board shall submit an interim statewide strategic master plan for higher education to the governor and the legislature. The interim plan shall reflect the expectations and policy directions of the legislative higher education and fiscal committees, and shall provide a timely and relevant framework for the development of future budgets and policy proposals. The legislature shall, by concurrent resolution, approve or recommend changes to the interim plan, following public hearings. The board shall submit the final plan, incorporating legislative changes, to the governor and the legislature by June of the year in which the legislature approves the concurrent resolution. The plan shall then become state higher education policy unless legislation is enacted to alter the policies set forth in the plan. [2003 c 130 § 2.]

Findings—Intent—2003 c 130: See note following RCW 28B.80.330.

28B.80.610 Higher education institutional responsibilities. (1) At the local level, the higher education institutional responsibilities include but are not limited to:

(a) Development and provision of strategic plans that implement the vision, goals, priorities, and strategies within the statewide strategic master plan for higher education under RCW 28B.80.345 based on the institution's role and mission. Institutional strategic plans shall also contain measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities. In developing their strategic plans, the research universities shall consider the feasibility of significantly increasing the number of evening graduate classes;

(b) For the four-year institutions of higher education, timely provision of information required by the higher educa-

tion coordinating board to report to the governor, the legislature, and the citizens;

(c) Provision of local student financial aid delivery systems to achieve both statewide goals and institutional objectives in concert with statewide policy; and

(d) Operating as efficiently as feasible within institutional missions and goals.

(2) At the state level, the higher education coordinating board shall be responsible for:

(a) Ensuring that strategic plans to be prepared by the institutions are aligned with and implement the statewide strategic master plan for higher education under RCW 28B.80.345 and periodically monitoring institutions' progress toward achieving the goals and priorities within their plans;

(b) Preparation of reports to the governor, the legislature, and the citizens on program accomplishments and use of resources by the institutions;

(c) Administration and policy implementation for statewide student financial aid programs; and

(d) Assistance to institutions in improving operational efficiency through measures that include periodic review of program efficiencies.

(3) At the state level, on behalf of community colleges and technical colleges, the state board for community and technical colleges shall coordinate and report on the system's strategic plans, including reporting on the system's progress toward achieving the statewide goals and priorities within its plan, and shall provide any information required of its colleges by the higher education coordinating board. [2003 c 130 § 5; 1993 c 363 § 2.]

Findings—Intent—2003 c 130: See note following RCW 28B.80.330.

Findings—1993 c 363: "The legislature finds a need to redefine the relationship between the state and its postsecondary education institutions through a compact based on trust, evidence, and a new alignment of responsibilities. As the proportion of the state budget dedicated to postsecondary education programs has continued to decrease and the opportunity for this state's citizens to participate in such programs also has declined, the state institutions of higher education have increasingly less flexibility to respond to emerging challenges through innovative management and programming. The legislature finds that this state has not provided its institutions of higher education with the ability to effectively achieve statewide goals and objectives to increase access to, improve the quality of, and enhance the accountability for its postsecondary education system.

Therefore, the legislature declares that the policy of the state of Washington is to create an environment in which the state institutions of higher education have the authority and flexibility to enhance attainment of statewide goals and objectives for the state's postsecondary education system through decisions and actions at the local level. The policy shall have the following attributes:

(1) The accomplishment of equitable and adequate enrollment by significantly raising enrollment lids, adequately funding those increases, and providing sufficient financial aid for the neediest students;

(2) The development and use of a new definition of quality measured by effective operations and clear results; the efficient use of funds to achieve well-educated students;

(3) The attainment of a new resource management relationship that removes the state from micromanagement, allows institutions greater management autonomy to focus resources on essential functions, and encourages innovation; and

(4) The development of a system of coordinated planning and sufficient feedback to assure policymakers and citizens that students are succeeding and resources are being prudently deployed." [1993 c 363 § 1.]

Effective date—1993 c 363: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 363 § 7.]

28B.80.805 Border county higher education opportunity project—Findings—Intent. (1) The legislature finds that certain tuition policies in Oregon state are more responsive to the needs of students living in economic regions that cross the state border than the Washington state policies. Under Oregon policy, students who are Washington residents may enroll at Portland State University for eight credits or less and pay the same tuition as Oregon residents. Further, the state of Oregon passed legislation in 1997 to begin providing to its community colleges the same level of state funding for students residing in bordering states as students residing in Oregon.

(2) The legislature intends to build on the recent Oregon initiatives regarding tuition policy for students in bordering states and to facilitate regional planning for higher education delivery by creating a project on resident tuition rates in Washington counties that border Oregon state. [2003 c 159 § 1; 2002 c 130 § 1; 1999 c 320 § 1.]

28B.80.806 Border county higher education opportunity project—Created. (1) The border county higher education opportunity project is created. The purpose of the project is to allow Washington institutions of higher education that are located in counties on the Oregon border to implement tuition policies that correspond to Oregon policies. Under the border county project, Columbia Basin Community College, Clark College, Lower Columbia Community College, Grays Harbor Community College, and Walla Walla Community College may enroll students who reside in the bordering Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, and Washington at resident tuition rates. The Tri-Cities and Vancouver branches of Washington State University may enroll students who reside in the bordering Oregon counties of Columbia, Multnomah, Clatsop, Clackamas, Morrow, Umatilla, Union, Wallowa, and Washington for eight credits or less at resident tuition rates.

(2) Washington institutions of higher education participating in the project shall give priority program enrollment to Washington residents. [2003 c 159 § 2; 2002 c 130 § 2; 2000 c 160 § 3; 1999 c 320 § 2.]

Resident tuition rates—Border county higher education opportunity project.
RCW 28B.15.0139.

28B.80.807 Border county higher education opportunity project—Administration. The higher education coordinating board shall administer Washington's participation in the border county higher education opportunity project. [2003 c 159 § 3; 2002 c 130 § 4; 1999 c 320 § 3.]

28B.80.810 Transfer standards pilot project. (*Expires June 30, 2006.*) (1) The higher education coordinating board, in consultation with the state board for community and technical colleges and the council of presidents, shall recruit and select institutions of higher education to participate in a pilot project to define transfer standards in selected academic disciplines on the basis of student competencies. Participants shall include one public four-year institution of higher education, two or more community or technical colleges that regularly transfer a substantial number of students

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to that four-year institution, and one or more private career colleges that prepare students in the academic disciplines selected under the pilot project. Such colleges shall be accredited and licensed under chapter 28C.10 RCW.

(2) The pilot project participants shall identify several academic disciplines to form the basis of the project and develop a work plan, timelines, and expected products for the project, which shall be presented by the higher education coordinating board in a preliminary report to the higher education committees of the legislature by December 1, 2004.

(3) Under the pilot project, participants shall develop standards, definitions, and procedures for quality assurance for a transfer system based on student competencies. It is the legislature's intent that under such a system, four-year institutions of higher education, in collaboration with two-year institutions of higher education, define the knowledge, skills, and abilities students should possess in order to enter an upper division program in a particular academic discipline. The two and four-year institutions providing lower division preparation for such an upper division program are responsible for certifying that a student meets the expected standards, but have flexibility to determine how to assess whether the student has obtained the necessary knowledge, skills, and abilities. Such assessments need not be based on completion of particular courses or accumulation of credits.

(4) The pilot project participants may request assistance in their work from the higher education coordinating board, the western interstate commission on higher education, the state board for community and technical colleges, or the council of presidents. The pilot project participants and the higher education coordinating board shall structure the work of the project in such a way that development costs for the project are absorbed within existing institution and agency budgets.

(5) In collaboration with the higher education coordinating board, the pilot project participants shall report to the higher education committees of the legislature by December 1, 2005, on the progress and status of the pilot project. The report shall identify any barriers encountered by the project and make recommendations for next steps in developing a competency-based transfer system for higher education.

(6) This section expires June 30, 2006. [2003 c 131 § 2.]

Finding—Intent—2003 c 131: "The legislature finds that the focus of transfer between institutions of higher education has been on students' accumulation of credits, where courses necessary for entry to each successive level of higher education have been individually identified and vary by institution and academic discipline. It is the legislature's intent to begin a process that will change the focus of transfer to defining and recognizing student competencies." [2003 c 131 § 1.]

Chapter 28B.85 RCW

DEGREE-GRANTING INSTITUTIONS

Sections

28B.85.030 Current authorization required to offer or grant degree—Penalty for violation. (*Effective July 1, 2004.*)

28B.85.110 Repealed. (*Effective July 1, 2004.*)

28B.85.030 Current authorization required to offer or grant degree—Penalty for violation. (*Effective July 1, 2004.*) (1) A degree-granting institution shall not operate and

shall not grant or offer to grant any degree unless the institution has obtained current authorization from the board.

(2) Any person, group, or entity or any owner, officer, agent, or employee of such entity who willfully violates this section is guilty of a gross misdemeanor and shall be punished by a fine not to exceed one thousand dollars or by imprisonment in the county jail for a term not to exceed one year, or by both such fine and imprisonment. Each day on which a violation occurs constitutes a separate violation. The criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the attorney general of this state. [2003 c 53 § 175; 1986 c 136 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

28B.85.110 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 28B.101 RCW

EDUCATIONAL OPPORTUNITY GRANT PROGRAM—PLACEBOUND STUDENTS

Sections

28B.101.005	Finding—Intent.
28B.101.010	Program created.
28B.101.020	Definition—Eligibility.
28B.101.040	Use of grants.

28B.101.005 Finding—Intent. The legislature finds that many individuals in the state of Washington have attended college and received an associate of arts or associate of science degree, or the equivalent, but are placebound.

The legislature intends to establish an educational opportunity grant program for placebound students who have completed an associate of arts or associate of science degree, or the equivalent, in an effort to increase their participation in and completion of upper-division programs. [2003 c 233 § 1; 1990 c 288 § 2.]

28B.101.010 Program created. The educational opportunity grant program is hereby created to serve placebound financially needy students by assisting them to obtain a baccalaureate degree at public and private institutions of higher education approved for participation by the higher education coordinating board. [2003 c 233 § 2; 1990 c 288 § 3.]

28B.101.020 Definition—Eligibility. (1) For the purposes of this chapter, "placebound" means unable to complete a college program because of family or employment commitments, health concerns, monetary inability, or other similar factors.

(2) To be eligible for an educational opportunity grant, applicants must be placebound residents of the state of Washington as defined in RCW 28B.15.012(2) (a) through (d), who: (a) Are needy students as defined in RCW 28B.10.802(3); and (b) have completed the associate of arts or associate of science degree or the equivalent. A placebound resident is one who may be influenced by the receipt of an enhanced student financial aid award to complete a baccalaureate degree at an eligible institution. An eligible place-

bound applicant is further defined as a person who would be unable to complete a baccalaureate course of study but for receipt of an educational opportunity grant. [2003 c 233 § 3; 1990 c 288 § 4.]

28B.101.040 Use of grants. Grants may be used by eligible participants to attend any public or private college or university in the state of Washington that is accredited by an accrediting association recognized by rule of the higher education coordinating board for the program and that complies with eligibility criteria established by rule of the higher education coordinating board. The participant shall not be eligible for a grant if it will be used for any programs that include religious worship, exercise, or instruction or to pursue a degree in theology. Each participating student may receive up to two thousand five hundred dollars per academic year, not to exceed the student's demonstrated financial need for the course of study. [2003 c 233 § 4; 2002 c 186 § 3. Prior: 1993 sp.s. c 18 § 35; 1993 c 385 § 2; 1990 c 288 § 6.]

Effective date—1993 sp.s. c 18: See note following RCW 28B.10.265.

Chapter 28B.115 RCW

HEALTH PROFESSIONAL CONDITIONAL SCHOLARSHIP PROGRAM

Sections

28B.115.070	Eligible credentialed health care professions—Health professional shortage areas.
28B.115.090	Loan repayment and scholarship awards.

28B.115.070 Eligible credentialed health care professions—Health professional shortage areas. After June 1, 1992, the department, in consultation with the board and the department of social and health services, shall:

(1) Determine eligible credentialed health care professions for the purposes of the loan repayment and scholarship program authorized by this chapter. Eligibility shall be based upon an assessment that determines that there is a shortage or insufficient availability of a credentialed profession so as to jeopardize patient care and pose a threat to the public health and safety. The department shall consider the relative degree of shortages among professions when determining eligibility. The department may add or remove professions from eligibility based upon the determination that a profession is no longer in shortage. Should a profession no longer be eligible, participants or eligible students who have received scholarships shall be eligible to continue to receive scholarships or loan repayments until they are no longer eligible or until their service obligation has been completed;

(2) Determine health professional shortage areas for each of the eligible credentialed health care professions. [2003 c 278 § 3; 1991 c 332 § 20.]

Findings—2003 c 278: See note following RCW 28C.18.120.

28B.115.090 Loan repayment and scholarship awards. (1) The board may grant loan repayment and scholarship awards to eligible participants from the funds appropriated for this purpose, or from any private or public funds given to the board for this purpose. Participants are ineligible to receive loan repayment if they have received a scholarship from programs authorized under this chapter or chapter

70.180 RCW or are ineligible to receive a scholarship if they have received loan repayment authorized under this chapter or chapter 28B.115 RCW.

(2) Funds appropriated for the program, including reasonable administrative costs, may be used by the board for the purposes of loan repayments or scholarships. The board shall annually establish the total amount of funding to be awarded for loan repayments and scholarships and such allocations shall be established based upon the best utilization of funding for that year.

(3) One portion of the funding appropriated for the program shall be used by the board as a recruitment incentive for communities participating in the community-based recruitment and retention program as authorized by chapter 70.185 RCW; one portion of the funding shall be used by the board as a recruitment incentive for recruitment activities in state-operated institutions, county public health departments and districts, county human service agencies, federal and state contracted community health clinics, and other health care facilities, such as rural hospitals that have been identified by the department, as providing substantial amounts of charity care or publicly subsidized health care; one portion of the funding shall be used by the board for all other awards. The board shall determine the amount of total funding to be distributed between the three portions. [2003 c 278 § 4; 1991 c 332 § 22; 1989 1st ex.s. c 9 § 720. Formerly RCW 18.150.050.]

Findings—2003 c 278: See note following RCW 28C.18.120.

Chapter 28B.119 RCW WASHINGTON PROMISE SCHOLARSHIP PROGRAM

Sections

28B.119.010 Program design—Parameters.

28B.119.010 Program design—Parameters. The higher education coordinating board shall design the Washington promise scholarship program based on the following parameters:

(1) Scholarships shall be awarded to students graduating from public and approved private high schools under chapter 28A.195 RCW, students participating in home-based instruction as provided in chapter 28A.200 RCW, and persons twenty-one years of age or younger receiving a GED certificate, who meet both an academic and a financial eligibility criteria.

(a) Academic eligibility criteria shall be defined as follows:

(i) Beginning with the graduating class of 2002, students graduating from public and approved private high schools under chapter 28A.195 RCW must be in the top fifteen percent of their graduating class, as identified by each respective high school at the completion of the first term of the student's senior year; or

(ii) Students graduating from public high schools, approved private high schools under chapter 28A.195 RCW, students participating in home-based instruction as provided in chapter 28A.200 RCW, and persons twenty-one years of age or younger receiving a GED certificate, must equal or exceed a cumulative scholastic assessment test I score of

twelve hundred on their first attempt or must equal or exceed a composite American college test score of twenty-seven on their first attempt.

(b) To meet the financial eligibility criteria, a student's family income shall not exceed one hundred thirty-five percent of the state median family income adjusted for family size, as determined by the higher education coordinating board for each graduating class. Students not meeting the eligibility requirements for the first year of scholarship benefits may reapply for the second year of benefits, but must still meet the income standard set by the board for the student's graduating class.

(2) Promise scholarships are not intended to supplant any grant, scholarship, or tax program related to postsecondary education. If the board finds that promise scholarships supplant or reduce any grant, scholarship, or tax program for categories of students, then the board shall adjust the financial eligibility criteria or the amount of scholarship to the level necessary to avoid supplanting.

(3) Within available funds, each qualifying student shall receive two consecutive annual awards, the value of each not to exceed the full-time annual resident tuition rates charged by Washington's community colleges. The higher education coordinating board shall award scholarships to as many students as possible from among those qualifying under this section.

(4) By October 15th of each year, the board shall determine the award amount of the scholarships, after taking into consideration the availability of funds.

(5) The scholarships may only be used for undergraduate coursework at accredited institutions of higher education in the state of Washington.

(6) The scholarships may be used for undergraduate coursework at Oregon institutions of higher education that are part of the border county higher education opportunity project in RCW 28B.80.806 when those institutions offer programs not available at accredited institutions of higher education in Washington state.

(7) The scholarships may be used for college-related expenses, including but not limited to, tuition, room and board, books, and materials.

(8) The scholarships may not be awarded to any student who is pursuing a degree in theology.

(9) The higher education coordinating board may establish satisfactory progress standards for the continued receipt of the promise scholarship.

(10) The higher education coordinating board shall establish the time frame within which the student must use the scholarship. [2003 c 233 § 5; 2002 c 204 § 2.]

Chapter 28B.125 RCW HEALTH PERSONNEL RESOURCES

Sections

28B.125.005 through 28B.125.030 Repealed.

28B.125.005 through 28B.125.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 28B.133 RCW

GAINING INDEPENDENCE FOR STUDENTS WITH DEPENDENTS PROGRAM

Sections

28B.133.005	Finding—Intent.
28B.133.010	Program created.
28B.133.020	Eligibility.
28B.133.030	Students with dependents grant account.
28B.133.040	Program administration.
28B.133.050	Use of grants.
28B.133.900	Short title.
28B.133.901	Captions not law—2003 c 19.

28B.133.005 Finding—Intent. The legislature finds that financially needy students, especially those with dependents, are finding it increasingly difficult to stay in school due to the high costs of caring for their dependent children.

The legislature intends to establish an educational assistance grant program, funded through gifts, grants, or endowments from private sources, for students with dependents who have additional financial needs due to the care they provide for their dependents eighteen years of age or younger. [2003 c 19 § 1.]

28B.133.010 Program created. The educational assistance grant program for students with dependents is hereby created, subject to the availability of receipts of gifts, grants, or endowments from private sources. The program is created to serve financially needy students with dependents eighteen years of age or younger, by assisting them directly through a grant program to pursue a degree or certificate at public or private institutions of higher education, as defined in RCW 28B.10.802, that participate in the state need grant program. [2003 c 19 § 2.]

28B.133.020 Eligibility. To be eligible for the educational assistance grant program for students with dependents, applicants shall: (1) Be residents of the state of Washington; (2) be needy students as defined in RCW 28B.10.802(3); (3) be eligible to participate in the state need grant program as set forth under RCW 28B.10.810; and (4) have dependents eighteen years of age or younger who are under their care. [2003 c 19 § 3.]

28B.133.030 Students with dependents grant account. (1) The students with dependents grant account is created in the custody of the state treasurer. All receipts from the program shall be deposited into the account. Only the higher education coordinating board, or its designee, may authorize expenditures from the account. Disbursements from the account are exempt from appropriations and the allotment procedures under chapter 43.88 RCW.

(2) The board may solicit and receive gifts, grants, or endowments from private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the educational assistance grant program. The executive director, or the executive director's designee, may spend gifts, grants, or endowments or income from the private sources according to their terms unless the receipt of the gifts, grants, or endowments violates RCW 42.17.710.

(3) The earnings on the account shall be used solely for the purposes in RCW 28B.133.010, except when the terms of

a conditional gift of private moneys in the account require that a portion of earnings on such moneys be reinvested in the account. [2003 c 19 § 4.]

28B.133.040 Program administration. The higher education coordinating board shall develop and administer the educational assistance grant program for students with dependents. In administering the program, once the balance in the students with dependents grant account is five hundred thousand dollars, the board's powers and duties shall include but not be limited to:

- (1) Adopting necessary rules and guidelines;
- (2) Publicizing the program;
- (3) Accepting and depositing donations into the grant account established in RCW 28B.133.030; and
- (4) Soliciting and accepting grants and donations from private sources for the program. [2003 c 19 § 5.]

28B.133.050 Use of grants. The educational assistance grant program for students with dependents grants may be used by eligible participants to attend any public or private college or university in the state of Washington as defined in RCW 28B.10.802. Each participating student may receive an amount to be determined by the higher education coordinating board, with a minimum amount of one thousand dollars per academic year, not to exceed the student's documented financial need for the course of study as determined by the institution.

Educational assistance grants for students with dependents are not intended to supplant any grant scholarship or tax program related to postsecondary education. If the higher education coordinating board finds that the educational assistance grants for students with dependents supplant or reduce any grant, scholarship, or tax program for categories of students, then the higher education coordinating board shall adjust the financial eligibility criteria or the amount of the grant to the level necessary to avoid supplanting. [2003 c 19 § 6.]

28B.133.900 Short title. This chapter may be known and cited as the gaining independence for students with dependents program. [2003 c 19 § 7.]

28B.133.901 Captions not law—2003 c 19. Captions used in this act are not any part of the law. [2003 c 19 § 9.]

Title 28C

VOCATIONAL EDUCATION

Chapters

28C.18 Work force training and education.

Chapter 28C.18 RCW

WORK FORCE TRAINING AND EDUCATION

Sections

28C.18.120	State strategic plan for supply of health care personnel—Reports.
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28C.18.120 State strategic plan for supply of health care personnel—Reports. The board shall:

- (1) Facilitate ongoing collaboration among stakeholders in order to address the health care personnel shortage;
- (2) In collaboration with stakeholders, establish and maintain a state strategic plan for ensuring an adequate supply of health care personnel that safeguards the ability of the health care delivery system in Washington state to provide quality, accessible health care to residents of Washington; and
- (3) Report to the governor and legislature by December 31, 2003, and annually thereafter, on progress on the state plan and make additional recommendations as necessary. [2003 c 278 § 2.]

Findings—2003 c 278: "The legislature finds and declares:

- (1) There is a severe shortage of health care personnel in Washington state;
- (2) The shortage contributes to increased costs in health care and threatens the ability of the health care system to provide adequate and accessible services;
- (3) The current shortage of health care personnel is structural rather than the cyclical shortages of the past, and this is due to demographic changes that will increase demand for health care services;
- (4) An increasing proportion of the population will reach retirement age, and an increasing proportion of health care personnel will also reach retirement age; and
- (5) There should be continuing collaboration among health care work force stakeholders to address the shortage of health care personnel." [2003 c 278 § 1.]

**Title 29
ELECTIONS**

Chapters

- 29.04 General provisions.**
- 29.33 Voting systems.**
- 29.36 Absentee voting.**
- 29.38 Election by mail.**
- 29.51 Polling place regulations during voting hours.**
- 29.81 Voters' pamphlet.**

Reviser's note: Effective July 1, 2004, Title 29 RCW is reorganized and recodified as Title 29A RCW, pursuant to 2003 c 111 § 2401. Sections repealed by 2003 c 111 § 2404 have no entry in the "Effective 7/1/04" column.

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Chapter 29.04 RCW
GENERAL PROVISIONS

Sections

29.04.075	Visits to elections offices, facilities.
29.04.260	Election account.

29.04.075 Visits to elections offices, facilities. The secretary of state, or any staff of the elections division of the office of secretary of state, may make unannounced on-site visits to county election offices and facilities to observe the handling, processing, counting, or tabulation of ballots. [2003 c 109 § 1.]

29.04.260 Election account. (1) The election account is created in the state treasury.

(2) The following receipts must be deposited into the account:

Amounts received from the federal government under Public Law 107-252 (October 29, 2002), known as the "Help America Vote Act of 2002," including any amounts received under subsequent amendments to the act; amounts appropriated or otherwise made available by the state legislature for the purposes of carrying out activities for which federal funds are provided to the state under Public Law 107-252, including any amounts received under subsequent amendments to the act; and such other amounts as may be appropriated by the legislature to the account.

(3) Moneys in the account may be spent only after appropriation. Expenditures from the account may be made only to facilitate the implementation of Public Law 107-252. [2003 c 48 § 1.]

Effective date—2003 c 48: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2003]." [2003 c 48 § 3.]

Chapter 29.33 RCW

VOTING SYSTEMS

(Formerly: Voting machines)

Sections

29.33.305	Disabled voter accessibility.
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29.33.305 Disabled voter accessibility. (1) The secretary of state shall adopt rules and establish standards for voting technology and systems used by the state or any political subdivision to be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually

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impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as other voters.

(2) At each polling location, at least one voting unit certified by the secretary of state shall provide access to individuals who are blind or visually impaired.

(3) Compliance with this provision in regard to voting technology and systems purchased prior to July 27, 2003, shall be achieved at the time of procurement of an upgrade of technology compatible with nonvisual voting methods or replacement of existing voting equipment or systems.

(4) Compliance with subsections (2) and (3) of this section is contingent on available funds to implement this provision.

(5) For purposes of this section, the following definitions apply:

(a) "Accessible" includes receiving, using, selecting, and manipulating voter data and controls.

(b) "Nonvisual" includes synthesized speech, Braille, and other output methods.

(c) "Blind and visually impaired" excludes persons who are both deaf and blind.

(6) This section does not apply to voting by absentee ballot. [2003 c 110 § 1.]

Chapter 29.36 RCW

ABSENTEE VOTING

Sections

29.36.270	Date ballots available, mailed. (<i>Effective until July 1, 2004.</i>)
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29.36.270 Date ballots available, mailed. (*Effective until July 1, 2004.*) (1) Except where a recount or litigation under RCW 29.04.030 is pending, the county auditor shall have sufficient absentee ballots available for absentee voters of that county at least twenty days before any primary, general election, or special election. The county auditor must mail absentee ballots to each voter for whom the county auditor has received a request nineteen days before the primary or election at least eighteen days before the primary or election. For a request for an absentee ballot received after the nineteenth day before the primary or election, the county auditor shall make every effort to mail ballots within one business day, and shall mail the ballots within two business days.

(2) The county auditor shall make every effort to mail ballots to overseas and service voters earlier than eighteen days before a primary or election.

(3) Each county auditor shall certify to the office of the secretary of state the dates the ballots prescribed in subsection (1) of this section were available and mailed.

(4) If absentee ballots will not be available or mailed as prescribed in subsection (1) of this section, the county auditor shall immediately certify to the office of the secretary of state when absentee ballots will be available and mailed. Copies of this certification must be provided to the county canvassing board, the press, jurisdictions with issues on the ballot in the election, and any candidates.

(5) If absentee ballots were not available or mailed as prescribed in subsection (1) of this section, for a reason other than a recount or litigation, the county auditor, in consultation with the certification and training program of the office

of the secretary of state, shall submit a report to the office of the secretary of state outlining why the deadline was missed and what corrective actions will be taken in future elections to ensure that absentee ballots are available and mailed as prescribed in subsection (1) of this section.

(6) Failure to have absentee ballots available and mailed as prescribed in subsection (1) of this section does not by itself provide a basis for an election contest or other legal challenge to the results of a primary, general election, or special election. [2003 c 162 § 2; 1987 c 54 § 1; 1977 ex.s. c 361 § 56; 1965 ex.s. c 103 § 5; 1965 c 9 § 29.30.075. Prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part. Formerly RCW 29.30.075.]

Policy—2003 c 162: "It is the policy of the state of Washington that individuals voting absentee and mail ballots receive their ballots in a timely and consistent manner before each election. Since many voters in Washington state have come to rely upon absentee and mail voting, mailing the ballots in a timely manner is critical in order to maximize participation by every eligible voter." [2003 c 162 § 1.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

Chapter 29.38 RCW ELECTION BY MAIL

Sections

- 29.38.010 Mail ballot precincts. (*Effective until July 1, 2004.*)
29.38.020 Special elections. (*Effective until July 1, 2004.*)

29.38.010 Mail ballot precincts. (*Effective until July 1, 2004.*) The county auditor may designate any precinct having fewer than two hundred active registered voters at the time of closing of voter registration as provided in RCW 29.07.160 as a mail ballot precinct. The county auditor shall notify each registered voter by mail that for all future primaries and elections the voting in his or her precinct will be by mail ballot only. In determining the number of registered voters in a precinct for the purposes of this section, persons who are ongoing absentee voters under RCW 29.36.240 shall not be counted. Nothing in this section may be construed as altering the vote tallying requirements of RCW 29.62.090.

The auditor shall mail each active voter a ballot at least eighteen days before a primary, general election, or special election. The auditor shall send each inactive voter either a ballot or an application to receive a ballot at least eighteen days before a primary, general election, or special election. The auditor shall determine which of the two is to be sent. If the inactive voter returns a voted ballot, the ballot shall be counted and the voter's status restored to active. If the inactive voter completes and returns an application, a ballot shall be sent and the voter's status restored to active. The requirements regarding certification, reporting, and the mailing of overseas and military ballots in RCW 29.36.270 apply to mail ballot precincts.

If the precinct exceeds two hundred registered voters, or the auditor determines to return to a polling place election environment, the auditor shall notify each registered voter, by mail, of this and shall provide the address of the polling place to be used. [2003 c 162 § 3; 2001 c 241 § 15. Prior: 1994 c 269 § 1; 1994 c 57 § 48; 1993 c 417 § 1; 1983 1st ex.s. c 71 §

1; 1974 ex.s. c 35 § 2; 1967 ex.s. c 109 § 6. Formerly RCW 29.36.120.]

Policy—2003 c 162: See note following RCW 29.36.270.

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

29.38.020 Special elections. (*Effective until July 1, 2004.*) At any nonpartisan special election not being held in conjunction with a state primary or general election, the county, city, town, or district requesting the election pursuant to RCW 29.13.010 or 29.13.020 may also request that the special election be conducted by mail ballot. The county auditor may honor the request or may determine that the election is not to be conducted by mail ballot. The decision of the county auditor in this regard is final.

For all special elections not being held in conjunction with a state primary or state general election where voting is conducted by mail ballot, the county auditor shall, not less than eighteen days before the date of such election, mail to each registered voter a mail ballot. The auditor shall handle inactive voters in the same manner as inactive voters in mail ballot precincts. The requirements regarding certification, reporting, and the mailing of overseas and military ballots in RCW 29.36.270 apply to mail ballot elections. [2003 c 162 § 4; 2001 c 241 § 16; 1994 c 57 § 49; 1993 c 417 § 2. Formerly RCW 29.36.121.]

Policy—2003 c 162: See note following RCW 29.36.270.

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

Chapter 29.51 RCW POLLING PLACE REGULATIONS DURING VOTING HOURS

Sections

- 29.51.215 Handicapped voters—Penalty. (*Effective July 1, 2004.*)

29.51.215 Handicapped voters—Penalty. (*Effective July 1, 2004.*)

Reviser's note: RCW 29.51.215 was amended by 2003 c 111 § 2135 without reference to its repeal by 2003 c 53 § 421. It has been decodified, effective July 1, 2004, for publication purposes under RCW 1.12.025.

Chapter 29.81 RCW VOTERS' PAMPHLET

Sections

- 29.81.310 Candidates' statements—Length. (*Effective until July 1, 2004.*)

29.81.310 Candidates' statements—Length. (*Effective until July 1, 2004.*) (1) The maximum number of words for statements submitted by candidates is as follows: State representative, one hundred words; state senator, judge of the superior court, judge of the court of appeals, justice of the supreme court, and all state offices voted upon throughout the state, except that of governor, two hundred words; president and vice-president, United States senator, United States representative, and governor, three hundred words.

(2) Arguments written by committees under RCW 29.81.240 may not exceed two hundred fifty words in length.

(3) Rebuttal arguments written by committees may not exceed seventy-five words in length.

(4) The secretary of state shall allocate space in the pamphlet based on the number of candidates or nominees for each office. [2003 c 254 § 6; 1999 c 260 § 11.]

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- 29A.04.903 Effective date—2003 c 111.

DEFINITIONS

29A.04.001 Scope of definitions. *(Effective July 1, 2004.)* Words and phrases as defined in this chapter, wherever used in Title 29A RCW, shall have the meaning as in this chapter ascribed to them, unless where used the context thereof shall clearly indicate to the contrary or unless otherwise defined in the chapter of which they are a part. [2003 c 111 § 101. Prior: 1965 c 9 § 29.01.005. For like prior law see 1907 c 209 § 1, part; RRS § 5177, part. Formerly RCW 29.01.005.]

29A.04.007 Ballot and related terms. *(Effective July 1, 2004.)* As used in this title:

(1) "Ballot" means, as the context implies, either:

(a) The issues and offices to be voted upon in a jurisdiction or portion of a jurisdiction at a particular primary, general election, or special election;

(b) A facsimile of the contents of a particular ballot whether printed on a paper ballot or ballot card or as part of a voting machine or voting device;

(c) A physical or electronic record of the choices of an individual voter in a particular primary, general election, or special election; or

(d) The physical document on which the voter's choices are to be recorded;

(2) "Paper ballot" means a piece of paper on which the ballot for a particular election or primary has been printed, on which a voter may record his or her choices for any candidate or for or against any measure, and that is to be tabulated manually;

(3) "Ballot card" means any type of card or piece of paper of any size on which a voter may record his or her choices for any candidate and for or against any measure and that is to be tabulated on a vote tallying system;

(4) "Sample ballot" means a printed facsimile of all the issues and offices on the ballot in a jurisdiction and is intended to give voters notice of the issues, offices, and candidates that are to be voted on at a particular primary, general election, or special election;

(5) "Provisional ballot" means a ballot issued to a voter at the polling place on election day by the precinct election board, for one of the following reasons:

(a) The voter's name does not appear in the poll book;

(b) There is an indication in the poll book that the voter has requested an absentee ballot, but the voter wishes to vote at the polling place;

(c) There is a question on the part of the voter concerning the issues or candidates on which the voter is qualified to vote. [2003 c 111 § 102; 1994 c 57 § 2; 1990 c 59 § 2; 1977 ex.s. c 361 § 1. Formerly RCW 29.01.006.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

Intent—1990 c 59: "By this act the legislature intends to unify and simplify the laws and procedures governing filing for elective office, ballot layout, ballot format, voting equipment, and canvassing." [1990 c 59 § 1.]

Effective date—1990 c 59: "Sections 1 through 6, 8 through 96, and 98 through 112 of this act shall take effect July 1, 1992." [1990 c 59 § 113.]

Effective date—1977 ex.s. c 361: "This 1977 amendatory act shall take effect January 1, 1978." [1977 ex.s. c 361 § 113.]

Severability—1977 ex.s. c 361: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 361 § 112.]

29A.04.013 Canvassing. (Effective July 1, 2004.)

"Canvassing" means the process of examining ballots or groups of ballots, subtotals, and cumulative totals in order to determine the official returns of a primary or general election and includes the tabulation of any votes that were not tabulated at the precinct or in a counting center on the day of the primary or election. [2003 c 111 § 103; 1990 c 59 § 3. Formerly RCW 29.01.008.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.04.019 Counting center. (Effective July 1, 2004.)

"Counting center" means the facility or facilities designated by the county auditor to count and canvass mail ballots, absentee ballots, and polling place ballots that are transferred to a central site to be counted, rather than being counted by a poll-site ballot counting device, on the day of a primary or election. [2003 c 111 § 104. Prior: 1999 c 158 § 1; 1990 c 59 § 4. Formerly RCW 29.01.042.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.04.025 County auditor. (Effective July 1, 2004.)

"County auditor" means the county auditor in a noncharter county or the officer, irrespective of title, having the overall responsibility to maintain voter registration and to conduct state and local elections in a charter county. [2003 c 111 § 105; 1984 c 106 § 1. Formerly RCW 29.01.043.]

29A.04.031 Date of mailing. (Effective July 1, 2004.)

For registered voters voting by absentee or mail ballot, "date of mailing" means the date of the postal cancellation on the envelope in which the ballot is returned to the election official by whom it was issued. For all nonregistered absentee voters, "date of mailing" means the date stated by the voter on the envelope in which the ballot is returned to the election official by whom it was issued. [2003 c 111 § 106; 1987 c 346 § 3. Formerly RCW 29.01.045.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.04.037 Disabled voter. (Effective July 1, 2004.)

"Disabled voter" means any registered voter who qualifies for special parking privileges under RCW 46.16.381, or who is defined as blind under RCW 74.18.020, or who qualifies to require assistance with voting under RCW 29A.44.240. [2003 c 111 § 107. Prior: 1987 c 346 § 4. Formerly RCW 29.01.047.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.04.043 Election. (Effective July 1, 2004.)

"Election" when used alone means a general election except where the context indicates that a special election is included. "Election" when used without qualification does not include a primary. [2003 c 111 § 108. Prior: 1990 c 59 § 5; 1965 c 9 § 29.01.050; prior: 1907 c 209 § 1, part; RRS § 5177(c). See also 1950 ex.s. c 14 § 3. Formerly RCW 29.01.050.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.04.049 Election board. (Effective July 1, 2004.)

"Election board" means a group of election officers serving one precinct or a group of precincts in a polling place. [2003 c 111 § 109; 1986 c 167 § 1. Formerly RCW 29.01.055.]

Severability—1986 c 167: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 167 § 26.]

29A.04.055 Election officer. (Effective July 1, 2004.)

"Election officer" includes any officer who has a duty to per-

form relating to elections under the provisions of any statute, charter, or ordinance. [2003 c 111 § 110. Prior: 1965 c 9 § 29.01.060. Formerly RCW 29.01.060.]

29A.04.061 Elector. (*Effective July 1, 2004.*) "Elector" means any person who possesses all of the qualifications to vote under Article VI of the state Constitution. [2003 c 111 § 111. Prior: 1987 c 346 § 2. Formerly RCW 29.01.065.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.04.067 Filing officer. (*Effective July 1, 2004.*) "Filing officer" means the county or state officer with whom declarations of candidacy for an office are required to be filed under this title. [2003 c 111 § 112. Prior: 1990 c 59 § 77. Formerly RCW 29.01.068.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.04.073 General election. (*Effective July 1, 2004.*) "General election" means an election required to be held on a fixed date recurring at regular intervals. [2003 c 111 § 113. Prior: 1965 c 9 § 29.01.070. Formerly RCW 29.01.070.]

29A.04.079 Infamous crime. (*Effective July 1, 2004.*) An "infamous crime" is a crime punishable by death in the state penitentiary or imprisonment in a state correctional facility. [2003 c 111 § 114. Prior: 1992 c 7 § 31; 1965 c 9 § 29.01.080; prior: Code 1881 § 3054; 1865 p 25 § 5; RRS § 5113. Formerly RCW 29.01.080.]

Contests, conviction of felony without reversal or restoration of civil rights as grounds for: RCW 29A.68.020.

Denial of civil rights for conviction of infamous crime: State Constitution Art. 6 § 3.

29A.04.085 Major political party. (*Effective July 1, 2004.*) "Major political party" means a political party of which at least one nominee for president, vice president, United States senator, or a statewide office received at least five percent of the total vote cast at the last preceding state general election in an even-numbered year. A political party qualifying as a major political party under this section retains such status until the next even-year election at which a candidate of that party does not achieve at least five percent of the vote for one of the previously specified offices. If none of these offices appear on the ballot in an even-year general election, the major party retains its status as a major party through that election. [2003 c 111 § 115; 1977 ex.s. c 329 § 9; 1965 c 9 § 29.01.090. Prior: 1907 c 209 § 6, part; RRS § 5183, part. Formerly RCW 29.01.090.]

Partisan primaries, application of chapter: RCW 29A.52.110.

Political parties: Chapter 29A.80 RCW.

29A.04.091 Measures. (*Effective July 1, 2004.*) "Measure" includes any proposition or question submitted to the voters. [2003 c 111 § 117; 1965 c 9 § 29.01.110. Formerly RCW 29.01.110.]

29A.04.097 Minor political party. (*Effective July 1, 2004.*) "Minor political party" means a political organization other than a major political party. [2003 c 111 § 116. Prior: 1965 c 9 § 29.01.100; prior: 1955 c 102 § 8; prior: 1907 c 209 § 26, part; RRS § 5203, part. Formerly RCW 29.01.100.]

Minor party convention: RCW 29A.20.110 through 29A.20.200.

Political parties: Chapter 29A.80 RCW.

29A.04.103 Out-of-state voter. (*Effective July 1, 2004.*) "Out-of-state voter" means any elector of the state of Washington outside the state but not outside the territorial limits of the United States or the District of Columbia. [2003 c 111 § 118. Prior: 1987 c 346 § 5. Formerly RCW 29.01.113.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.04.109 Overseas voter. (*Effective July 1, 2004.*) "Overseas voter" means any elector of the state of Washington outside the territorial limits of the United States or the District of Columbia. [2003 c 111 § 119. Prior: 1987 c 346 § 6. Formerly RCW 29.01.117.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.04.115 Poll-site ballot counting devices. (*Effective July 1, 2004.*) "Poll-site ballot counting device" means a device programmed to accept voted ballots at a polling place for the purpose of tallying and storing the ballots on election day. [2003 c 111 § 120. Prior: 1999 c 158 § 2. Formerly RCW 29.01.119.]

29A.04.121 Precinct. (*Effective July 1, 2004.*) "Precinct" means a geographical subdivision for voting purposes that is established by a county legislative authority. [2003 c 111 § 121; 1965 c 9 § 29.01.120. Prior: 1933 c 1 § 2; RRS § 5114-2; prior: 1915 c 16 § 1; RRS § 5114. Formerly RCW 29.01.120.]

29A.04.127 Primary. (*Effective July 1, 2004.*) "Primary" or "primary election" means a statutory procedure for nominating candidates to public office at the polls. [2003 c 111 § 122. Prior: 1965 c 9 § 29.01.130; prior: 1907 c 209 § 1, part; RRS § 5177(a). See also 1950 ex.s. c 14 § 2. Formerly RCW 29.01.130.]

Nonpartisan primaries: RCW 29A.52.210 through 29A.52.240.

Partisan primaries: RCW 29A.28.010, 29A.28.020, 29A.52.110 through 29A.52.130.

Presidential primary: RCW 29A.56.010 through 29A.56.060.

Times for holding primaries: RCW 29A.04.310.

29A.04.133 Qualified. (*Effective July 1, 2004.*) "Qualified" when pertaining to a winner of an election means that for such election:

- (1) The results have been certified;
- (2) A certificate has been issued;
- (3) Any required bond has been posted; and
- (4) The winner has taken and subscribed an oath or affirmation in compliance with the appropriate statute, or if none is specified, that he or she will faithfully and impartially dis-

charge the duties of the office to the best of his or her ability. This oath or affirmation shall be administered and certified by any officer or notary public authorized to administer oaths, without charge therefor. [2003 c 111 § 123. Prior: 1979 ex.s. c 126 § 2. Formerly RCW 29.01.135.]

Purpose—1979 ex.s. c 126: RCW 29A.20.040(1).

29A.04.139 Recount. (*Effective July 1, 2004.*)

"Recount" means the process of retabulating ballots and producing amended election returns based on that retabulation, even if the vote totals have not changed. [2003 c 111 § 124. Prior: 2001 c 225 § 1. Formerly RCW 29.01.136.]

29A.04.145 Registered voter. (*Effective July 1, 2004.*)

"Registered voter" means any elector who has completed the statutory registration procedures established by this title. The terms "registered voter" and "qualified elector" are synonymous. [2003 c 111 § 125; 1987 c 346 § 7. Formerly RCW 29.01.137.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.04.151 Residence. (*Effective July 1, 2004.*) "Residence" for the purpose of registering and voting means a person's permanent address where he or she physically resides and maintains his or her abode. However, no person gains residence by reason of his or her presence or loses his or her residence by reason of his or her absence:

- (1) While employed in the civil or military service of the state or of the United States;
- (2) While engaged in the navigation of the waters of this state or the United States or the high seas;
- (3) While a student at any institution of learning;
- (4) While confined in any public prison.

Absence from the state on business shall not affect the question of residence of any person unless the right to vote has been claimed or exercised elsewhere. [2003 c 111 § 126; 1971 ex.s. c 178 § 1; 1965 c 9 § 29.01.140. Prior: 1955 c 181 § 1; prior: (i) Code 1881 § 3051; 1865 p 25 § 2; RRS § 5110. (ii) Code 1881 § 3053; 1866 p 8 § 11; 1865 p 25 § 4; RRS § 5111. Formerly RCW 29.01.140.]

Residence, contingencies affecting: State Constitution Art. 6 § 4.

29A.04.157 September primary. (*Effective July 1, 2004.*) "September primary" means the primary election held in September to nominate candidates to be voted for at the ensuing election. [2003 c 111 § 128. Prior: 1965 c 9 § 29.01.160; prior: 1907 c 209 § 1, part; RRS § 5177(b). Formerly RCW 29.01.160.]

29A.04.163 Service voter. (*Effective July 1, 2004.*)

"Service voter" means any elector of the state of Washington who is a member of the armed forces under 42 U.S.C. Sec. 1973 ff-6 while in active service, is a student or member of the faculty at a United States military academy, is a member of the merchant marine of the United States, is a program participant as defined in RCW 40.24.020, or is a member of a religious group or welfare agency officially attached to and serving with the armed forces of the United States. [2003 c

111 § 127. Prior: 1991 c 23 § 13; 1987 c 346 § 8. Formerly RCW 29.01.155.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.04.169 Short term. (*Effective July 1, 2004.*)

"Short term" means the brief period of time starting upon the completion of the certification of election returns and ending with the start of the full term and is applicable only when the office concerned is being held by an appointee to fill a vacancy. The vacancy must have occurred after the last election at which such office could have been voted upon for an unexpired term. Short term elections are always held in conjunction with elections for the full term for the office. [2003 c 111 § 130; 1975-'76 2nd ex.s. c 120 § 14. Formerly RCW 29.01.180.]

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29A.52.210.

29A.04.175 Special election. (*Effective July 1, 2004.*)

"Special election" means any election that is not a general election and may be held in conjunction with a general election or primary. [2003 c 111 § 129; 1965 c 9 § 29.01.170. Prior: Code 1881 § 3056; 1865 p 27 § 2; RRS § 5155. Formerly RCW 29.01.170.]

29A.04.181 Voting system, device, tallying system. (*Effective July 1, 2004.*)

(1) "Voting system" means a voting device, vote tallying system, or combination of these together with ballots and other supplies or equipment used to conduct a primary or election or to canvass the votes cast in a primary or election;

(2) "Voting device" means a piece of equipment used for the purpose of or to facilitate the marking of a ballot to be tabulated by a vote tallying system or a piece of mechanical or electronic equipment used to directly record votes and to accumulate results for a number of issues or offices from a series of voters; and

(3) "Vote tallying system" means a piece of mechanical or electronic equipment and associated data processing software used to tabulate votes cast on ballot cards or otherwise recorded on a voting device or to prepare that system to tabulate ballot cards or count votes. [2003 c 111 § 131. Prior: 1990 c 59 § 6. Formerly RCW 29.01.200.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

GENERAL PROVISIONS

29A.04.205 State policy. (*Effective July 1, 2004.*) It is the policy of the state of Washington to encourage every eligible person to register to vote and to participate fully in all elections, and to protect the integrity of the electoral process by providing equal access to the process while guarding against discrimination and fraud. The election registration laws and the voting laws of the state of Washington must be administered without discrimination based upon race, creed, color, national origin, sex, or political affiliation. [2003 c 111 § 132; 2001 c 41 § 1. Formerly RCW 29.04.001.]

29A.04.210 Registration required—Exception. (*Effective July 1, 2004.*) Only a registered voter shall be permitted to vote:

- (1) At any election held for the purpose of electing persons to public office;
- (2) At any recall election of a public officer;
- (3) At any election held for the submission of a measure to any voting constituency;
- (4) At any primary election.

This section does not apply to elections where being registered to vote is not a prerequisite to voting. [2003 c 111 § 133; 1965 c 9 § 29.04.010. Prior: 1955 c 181 § 8; prior: (i) 1933 c 1 § 22, part; RRS § 5114-22, part. (ii) 1933 c 1 § 23; RRS § 5114-23. See also 1935 c 26 § 3; RRS § 5189. Formerly RCW 29.04.010.]

Out-of-state, overseas, service voters, same ballots as registered voters: RCW 29A.40.010.

Subversive activities, disqualification from voting: RCW 9.81.040.

29A.04.215 County auditor—Duties—Exceptions. (*Effective July 1, 2004.*) The county auditor of each county shall be ex officio the supervisor of all primaries and elections, general or special, and it shall be the county auditor's duty to provide places for holding such primaries and elections; to appoint the precinct election officers and to provide for their compensation; to provide the supplies and materials necessary for the conduct of elections to the precinct election officers; and to publish and post notices of calling such primaries and elections in the manner provided by law. The notice of a general election held in an even-numbered year must indicate that the office of precinct committee officer will be on the ballot. The auditor shall also apportion to each city, town, or district, and to the state of Washington in the odd-numbered year, its share of the expense of such primaries and elections. This section does not apply to general or special elections for any city, town, or district that is not subject to RCW 29A.04.320 and 29A.04.330, but all such elections must be held and conducted at the time, in the manner, and by the officials (with such notice, requirements for filing for office, and certifications by local officers) as provided and required by the laws governing such elections. [2003 c 111 § 134; 1987 c 295 § 1; 1977 ex.s. c 361 § 2; 1971 ex.s. c 202 § 1; 1965 c 123 § 1; 1965 c 9 § 29.04.020. Prior: 1947 c 182 § 1, part; Rem. Supp. 1947 § 5166-10, part; prior: 1945 c 194 § 3, part; 1941 c 180 § 1, part; 1935 c 5 § 1, part; 1933 ex.s. c 29 § 1, part; prior: 1933 c 79 § 1, part; 1927 c 279 § 2, part; 1923 c 53 § 3, part; 1921 c 61 § 5, part; Rem. Supp. 1945 § 5147, part. Formerly RCW 29.04.020.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

Conduct of elections—Canvass: RCW 29A.60.010.

General election laws govern primary: RCW 29A.52.120.

Oaths of officers, county auditor to provide forms for: RCW 29A.44.490.

29A.04.220 County auditor—Public notice of availability of services. (*Effective July 1, 2004.*) The county auditor shall provide public notice of the availability of registration and voting aids, assistance to elderly and disabled persons, and procedures for voting by absentee ballot calculated to reach elderly and disabled persons not later than public notice of the closing of registration for a primary or election.

[2003 RCW Supp—page 300]

[2003 c 111 § 135; 1999 c 298 § 18; 1985 c 205 § 10. Formerly RCW 29.57.140.]

Effective dates—1985 c 205: See note following RCW 29A.16.140.

29A.04.225 Public disclosure reports. (*Effective July 1, 2004.*) Each county auditor or county elections official shall ensure that reports filed pursuant to chapter 42.17 RCW are arranged, handled, indexed, and disclosed in a manner consistent with the rules of the public disclosure commission adopted under RCW 42.17.375. [2003 c 111 § 136. Prior: 1983 c 294 § 2. Formerly RCW 29.04.025.]

29A.04.230 Secretary of state as chief election officer. (*Effective July 1, 2004.*) The secretary of state through the election division shall be the chief election officer for all federal, state, county, city, town, and district elections that are subject to this title. The secretary of state shall keep records of elections held for which he or she is required by law to canvass the results, make such records available to the public upon request, and coordinate those state election activities required by federal law. [2003 c 111 § 137; 1994 c 57 § 4; 1965 c 9 § 29.04.070. Prior: 1963 c 200 § 23; 1949 c 161 § 12; Rem. Supp. 1949 § 5147-2. Formerly RCW 29.04.070.]

Severability—1994 c 57: See note following RCW 10.64.021.

29A.04.235 Election laws for county auditors. (*Effective July 1, 2004.*) The secretary of state shall ensure that each county auditor is provided with the most recent version of the election laws of the state, as contained in this title. Where amendments have been enacted after the last compilation of the election laws, he or she shall ensure that each county auditor receives a copy of those amendments before the next primary or election. The county auditor shall ensure that any statutory information necessary for the precinct election officers to perform their duties is supplied to them in a timely manner. [2003 c 111 § 138; 1965 c 9 § 29.04.060. Prior: (i) 1907 c 209 § 16; RRS § 5193. (ii) 1889 p 413 § 34; RRS § 5299. Formerly RCW 29.04.060.]

29A.04.240 Information in foreign languages. (*Effective July 1, 2004.*) In order to encourage the broadest possible voting participation by all eligible citizens, the secretary of state shall produce voter registration information in the foreign languages required of state agencies. [2003 c 111 § 139; 2001 c 41 § 3. Formerly RCW 29.04.085.]

29A.04.245 Voter guide. (*Effective July 1, 2004.*) The secretary of state shall cause to be produced a "voter guide" detailing what constitutes voter fraud and discrimination under state election laws. This voter guide must be provided to every county election officer and auditor, and any other person upon request. [2003 c 111 § 140; 2001 c 41 § 4. Formerly RCW 29.04.088.]

29A.04.250 Toll-free media and web page. (*Effective July 1, 2004.*) The secretary of state shall provide a toll-free media and web page designed to allow voter communication with the office of the secretary of state. [2003 c 111 § 141. Prior: 2001 c 41 § 5. Formerly RCW 29.04.091.]

29A.04.255 Electronic facsimile documents—Acceptance of. (*Effective July 1, 2004.*) The secretary of state or a county auditor shall accept and file in his or her office electronic facsimile transmissions of the following documents:

- (1) Declarations of candidacy;
- (2) County canvass reports;
- (3) Voters' pamphlet statements;
- (4) Arguments for and against ballot measures that will appear in a voters' pamphlet;
- (5) Requests for recounts;
- (6) Certification of candidates and measures by the secretary of state;
- (7) Direction by the secretary of state for the conduct of a mandatory recount;
- (8) Requests for absentee ballots;
- (9) Any other election related document authorized by rule adopted by the secretary of state under *RCW 29.04.235.

The acceptance by the secretary of state or the county auditor is conditional upon the document being filed in a timely manner, being legible, and otherwise satisfying the requirements of state law or rules with respect to form and content.

If the original copy of a document must be signed and a copy of the document is filed by facsimile transmission under this section, the original copy must be subsequently filed with the official with whom the facsimile was filed. The original copy must be filed by a deadline established by the secretary by rule. The secretary may by rule require that the original of any document, a copy of which is filed by facsimile transmission under this section, also be filed by a deadline established by the secretary by rule. [2003 c 111 § 142; 1991 c 186 § 1. Formerly RCW 29.04.230.]

***Reviser's note:** RCW 29.04.235 was repealed by 2003 c 111 § 2404, effective July 1, 2004. For rule-making duties, see RCW 29A.04.610.

TIMES FOR HOLDING ELECTIONS

29A.04.310 Primaries. (*Effective July 1, 2004.*) Nominating primaries for general elections to be held in November must be held on the third Tuesday of the preceding September or on the seventh Tuesday immediately preceding such general election, whichever occurs first. [2003 c 111 § 143; 1977 ex.s. c 361 § 29; 1965 ex.s. c 103 § 6; 1965 c 9 § 29.13.070. Prior: 1963 c 200 § 25; 1907 c 209 § 3; RRS § 5179. Formerly RCW 29.13.070.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.04.320 State and local general elections—Statewide general election—Exceptions—Special county elections. (*Effective July 1, 2004.*) (1) All state, county, city, town, and district general elections for the election of federal, state, legislative, judicial, county, city, town, district, and precinct officers, and for the submission to the voters of the state, county, city, town, or district of any measure for their adoption and approval or rejection, shall be held on the first Tuesday after the first Monday of November, in the year in which they may be called. A statewide general election shall be held on the first Tuesday after the first Monday of November of each year. However, the statewide general election held in odd-numbered years shall be limited to (a) city, town,

and district general elections as provided for in RCW 29A.04.330, or as otherwise provided by law; (b) the election of federal officers for the remainder of any unexpired terms in the membership of either branch of the Congress of the United States; (c) the election of state and county officers for the remainder of any unexpired terms of offices created by or whose duties are described in Article II, section 15, Article III, sections 16, 17, 19, 20, 21, 22, and 23, and Article IV, sections 3 and 5 of the state Constitution and RCW 2.06.080; (d) the election of county officers in any county governed by a charter containing provisions calling for general county elections at this time; and (e) the approval or rejection of state measures, including proposed constitutional amendments, matters pertaining to any proposed constitutional convention, initiative measures and referendum measures proposed by the electorate, referendum bills, and any other matter provided by the legislature for submission to the electorate.

(2) A county legislative authority may, if it deems an emergency to exist, call a special county election by presenting a resolution to the county auditor at least forty-five days prior to the proposed election date. Except as provided in subsection (4) of this section, a special election called by the county legislative authority shall be held on one of the following dates as decided by such governing body:

- (a) The first Tuesday after the first Monday in February;
- (b) The second Tuesday in March;
- (c) The fourth Tuesday in April;
- (d) The third Tuesday in May;

(e) The day of the primary as specified by RCW 29A.04.310; or

(f) The first Tuesday after the first Monday in November.

(3) In addition to the dates set forth in subsection (2)(a) through (f) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God. Such county special election shall be noticed and conducted in the manner provided by law.

(4) In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29A.56 RCW, the date on which a special election may be called by the county legislative authority under subsection (2) of this section during the month of that primary is the date of the presidential primary.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections except for those elections held pursuant to a home-rule charter adopted under Article XI, section 4 of the state Constitution. This section shall not be construed as fixing the time for holding primary elections, or elections for the recall of any elective public officer. [2003 c 111 § 144; 1994 c 142 § 1; 1992 c 37 § 1; 1989 c 4 § 9 (Initiative Measure No. 99); 1980 c 3 § 1; 1975-'76 2nd ex.s. c 111 § 1; 1975-'76 2nd ex.s. c 3 § 1; 1973 2nd ex.s. c 36 § 1; 1973 c 4 § 1; 1965 c 123 § 2; 1965 c 9 § 29.13.010. Prior: 1955 c 151 § 1; prior: (i) 1923 c 53 § 1; 1921 c 61 § 1; RRS § 5143. (ii) 1921 c 61 § 3; RRS § 5145. Formerly RCW 29.13.010.]

Effective date—1994 c 142: "This act shall take effect January 1, 1995." [1994 c 142 § 3.]

Severability—1975-'76 2nd ex.s. c 111: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 111 § 3.]

29A.04.330 City, town, and district general and special elections—Exceptions. (Effective July 1, 2004.) (1) All city, town, and district general elections shall be held throughout the state of Washington on the first Tuesday following the first Monday in November in the odd-numbered years.

This section shall not apply to:

(a) Elections for the recall of any elective public officer;
 (b) Public utility districts, conservation districts, or district elections at which the ownership of property within those districts is a prerequisite to voting, all of which elections shall be held at the times prescribed in the laws specifically applicable thereto;

(c) Consolidation proposals as provided for in *RCW 28A.315.265 and nonhigh capital fund aid proposals as provided for in chapter 28A.540 RCW.

(2) The county auditor, as ex officio supervisor of elections, upon request in the form of a resolution of the governing body of a city, town, or district, presented to the auditor at least forty-five days prior to the proposed election date, may, if the county auditor deems an emergency to exist, call a special election in such city, town, or district, and for the purpose of such special election he or she may combine, unite, or divide precincts. Except as provided in subsection (3) of this section, such a special election shall be held on one of the following dates as decided by the governing body:

(a) The first Tuesday after the first Monday in February;
 (b) The second Tuesday in March;
 (c) The fourth Tuesday in April;
 (d) The third Tuesday in May;
 (e) The day of the primary election as specified by RCW 29A.04.310; or
 (f) The first Tuesday after the first Monday in November.

(3) In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29A.56 RCW, the date on which a special election may be called under subsection (2) of this section during the month of that primary is the date of the presidential primary.

(4) In addition to subsection (2)(a) through (f) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God, except that no special election may be held between the first day for candidates to file for public office and the last day to certify the returns of the general election other than as provided in subsection (2)(e) and (f) of this section. Such special election shall be conducted and notice thereof given in the manner provided by law.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections. [2003 c 111 § 145; 2002 c 43 § 2; 1994 c 142 § 2; 1992 c 37 § 2; 1990 c 33 § 562; 1989 c 4 § 10 (Ini-

tiative Measure No. 99); 1986 c 167 § 6; 1980 c 3 § 2; 1975-'76 2nd ex.s. c 111 § 2; 1965 c 123 § 3; 1965 c 9 § 29.13.020. Prior: 1963 c 200 § 1; 1955 c 55 § 1; 1951 c 101 § 1; 1949 c 161 § 1; 1927 c 182 § 1; 1923 c 53 § 2; 1921 c 61 § 2; Rem. Supp. 1949 § 5144. Formerly RCW 29.13.020.]

***Reviser's note:** RCW 28A.315.235 provides for consolidation petitions.

Intent—2002 c 43: "The legislature finds that there are conflicting interpretations as to the intent of the legislature in the enactment of chapter 305, Laws of 1999. The purpose of this act is to make statutory changes that further clarify this intent.

It is the intent of the legislature that elections of conservation district supervisors continue to be conducted under procedures in the conservation district statutes, chapter 89.08 RCW, and that such elections not be conducted under the general election laws contained in Title 29 RCW. Further, it is the intent of the legislature that there be no change made with regard to applicability of the public disclosure act, chapter 42.17 RCW, to conservation district supervisors from those that existed before the enactment of chapter 305, Laws of 1999." [2002 c 43 § 1.]

Effective date—2002 c 43: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2002]." [2002 c 43 § 6.]

Effective date—1994 c 142: See note following RCW 29A.04.320.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability—1986 c 167: See note following RCW 29A.04.049.

Severability—1975-'76 2nd ex.s. c 111: See note following RCW 29A.04.320.

ELECTION COSTS

29A.04.410 Costs borne by constituencies. (Effective July 1, 2004.) Every city, town, and district is liable for its proportionate share of the costs when such elections are held in conjunction with other elections held under RCW 29A.04.320 and 29A.04.330.

Whenever any city, town, or district holds any primary or election, general or special, on an isolated date, all costs of such elections must be borne by the city, town, or district concerned.

The purpose of this section is to clearly establish that the county is not responsible for any costs involved in the holding of any city, town, or district election.

In recovering such election expenses, including a reasonable pro-ration of administrative costs, the county auditor shall certify the cost to the county treasurer with a copy to the clerk or auditor of the city, town, or district concerned. Upon receipt of such certification, the county treasurer shall make the transfer from any available and appropriate city, town, or district funds to the county current expense fund or to the county election reserve fund if such a fund is established. Each city, town, or district must be promptly notified by the county treasurer whenever such transfer has been completed. However, in those districts wherein a treasurer, other than the county treasurer, has been appointed such transfer procedure does not apply, but the district shall promptly issue its warrant for payment of election costs. [2003 c 111 § 146; 1965 c 123 § 5; 1965 c 9 § 29.13.045. Prior: 1963 c 200 § 7; 1951 c 257 § 5. Formerly RCW 29.13.045.]

County, municipality, or special district facilities as polling places, payment for: RCW 29A.16.120.

Diking districts, election to authorize, costs: RCW 85.38.060.

Diking or drainage district, reorganization into improvement district

1917 act, election to authorize: RCW 85.38.060.

1933 act, election to authorize: RCW 85.38.060.

Expense of printing and distributing ballot materials: RCW 29A.36.220.

Expense of recount—Charges: RCW 29A.64.080.

Port districts, formation of, election on, expense of: RCW 53.04.070.

Public utility district elections, expense of: RCW 54.08.041.

Reclamation districts of one million acres, election to form, expense: RCW 89.30.115.

Soil and water conservation district, election to form, expense: RCW 89.08.140.

Water-sewer districts

annexation of territory by, election on, expense: RCW 57.24.050.

formation of, expense: RCW 57.04.055.

29A.04.420 State share. (Effective July 1, 2004.) (1) Whenever state officers or measures are voted upon at a state primary or general election held in an odd-numbered year under RCW 29A.04.320, the state of Washington shall assume a prorated share of the costs of that state primary or general election.

(2) Whenever a primary or vacancy election is held to fill a vacancy in the position of United States senator or United States representative under chapter 29A.28 RCW, the state of Washington shall assume a prorated share of the costs of that primary or vacancy election.

(3) The county auditor shall apportion the state's share of these expenses when prorating election costs under RCW 29A.04.410 and shall file such expense claims with the secretary of state.

(4) The secretary of state shall include in his or her biennial budget requests sufficient funds to carry out this section. Reimbursements for election costs shall be from appropriations specifically provided by law for that purpose. [2003 c 111 § 147. Prior: 1985 c 45 § 2; 1977 ex.s. c 144 § 4; 1975-'76 2nd ex.s. c 4 § 1; 1973 c 4 § 2. Formerly RCW 29.13.047.]

Legislative intent—1985 c 45: "It is the intention of the legislature that sections 2 through 7 of this act shall provide an orderly and predictable election procedure for filling vacancies in the offices of United States representative and United States senator." [1985 c 45 § 1.]

29A.04.430 Interest on reimbursement. (Effective July 1, 2004.) For any reimbursement of election costs under RCW 29A.04.420, the secretary of state shall pay interest at an annual rate equal to two percentage points in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in San Francisco on the fifteenth day of the month immediately preceding the payment for any period of time in excess of thirty days after the receipt of a properly executed and documented voucher for such expenses and the entry of an allotment from specifically appropriated funds for this purpose. The secretary of state shall promptly notify any county that submits an incomplete or inaccurate voucher for reimbursement under RCW 29A.04.420. [2003 c 111 § 148; 1986 c 167 § 7. Formerly RCW 29.13.048.]

Severability—1986 c 167: See note following RCW 29A.04.049.

ADMINISTRATION

29A.04.510 Election administration and certification board—Generally. (Effective July 1, 2004.) (1) The Washington state election administration and certification board is

established and has the responsibilities and authorities prescribed by this chapter. The board is composed of the following members:

(a) The secretary of state or the secretary's designee;

(b) The state director of elections or the director's designee;

(c) Four county auditors appointed by the Washington state association of county auditors or their alternates who are county auditors designated by the association to serve as such alternates, each appointee and alternate to serve at the pleasure of the association;

(d) One member from each of the two largest political party caucuses of the house of representatives designated by and serving at the pleasure of the legislative leader of the respective caucus;

(e) One member from each of the two largest political party caucuses of the senate designated by and serving at the pleasure of the legislative leader of the respective caucus; and

(f) One representative from each major political party, designated by and serving at the pleasure of the chair of the party's state central committee.

(2) The board shall elect a chair from among its number; however, neither the secretary of state nor the state director of elections nor their designees may serve as the chair of the board. A majority of the members appointed to the board constitutes a quorum for conducting the business of the board. Chapter 42.30 RCW, the Open Public Meetings Act, and RCW 42.32.030 regarding minutes of meetings, apply to the meetings of the board.

(3) Members of the board shall serve without compensation. The secretary of state shall reimburse members of the board, other than those who are members of the legislature, for travel expenses in accordance with RCW 43.03.050 and 43.03.060. Members of the board who are members of the legislature shall be reimbursed as provided in chapter 44.04 RCW. [2003 c 111 § 149; 1992 c 163 § 3. Formerly RCW 29.60.010.]

29A.04.520 Appeals. (Effective July 1, 2004.) The board created in RCW 29A.04.510 shall review appeals filed under RCW 29A.04.550 or 29A.04.570. A decision of the board regarding the appeal must be supported by not less than a majority of the members appointed to the board. A decision of the board regarding an appeal filed under RCW 29A.04.570 concerning an election review conducted under that section is final. If a decision of the board regarding an appeal filed under RCW 29A.04.550 includes a recommendation that a certificate be issued, the secretary of state, upon the recommendation of the board, shall issue the certificate. [2003 c 111 § 150.]

29A.04.530 Duties of secretary of state. (Effective July 1, 2004.) The secretary of state shall:

(1) Establish and operate, or provide by contract, training and certification programs for state and county elections administration officials and personnel, including training on the various types of election law violations and discrimination, and training programs for political party observers which conform to the rules for such programs established under RCW 29A.04.630;

(2) Administer tests for state and county officials and personnel who have received such training and issue certificates to those who have successfully completed the training and passed such tests;

(3) Maintain a record of those individuals who have received such training and certificates; and

(4) Provide the staffing and support services required by the board created under RCW 29A.04.510. [2003 c 111 § 151. Prior: 2001 c 41 § 11; 1992 c 163 § 5. Formerly RCW 29.60.030.]

Effective date—1992 c 163 §§ 5-13: "Sections 5 through 13 of this act shall take effect July 1, 1993." [1992 c 163 § 15.]

29A.04.540 Training of administrators. (*Effective July 1, 2004.*) A person having responsibility for the administration or conduct of elections, other than precinct election officers, shall, within eighteen months of undertaking those responsibilities, receive general training regarding the conduct of elections and specific training regarding their responsibilities and duties as prescribed by this title or by rules adopted by the secretary of state under this title. Included among those persons for whom such training is mandatory are the following:

- (1) Secretary of state elections division personnel;
- (2) County elections administrators under RCW 36.22.220;
- (3) County canvassing board members;
- (4) Persons officially designated by each major political party as elections observers; and
- (5) Any other person or group charged with election administration responsibilities if the person or group is designated by rule adopted by the secretary of state as requiring the training.

The secretary of state shall reimburse election observers in accordance with RCW 43.03.050 and 43.03.060 for travel expenses incurred to receive training required under subsection (4) of this section.

Neither this section nor RCW 29A.04.530 may be construed as requiring an elected official to receive training or a certificate of training as a condition for seeking or holding elective office or as a condition for carrying out constitutional duties. [2003 c 111 § 152; 1992 c 163 § 6. Formerly RCW 29.60.040.]

Effective date—1992 c 163 §§ 5-13: See note following RCW 29A.04.530.

29A.04.550 Denial of certification—Review and appeal. (*Effective July 1, 2004.*) (1) A decision of the secretary of state to deny certification under RCW 29A.04.530 must be entered in the manner specified for orders under the Administrative Procedure Act, chapter 34.05 RCW. Such a decision is not effective for a period of twenty days following the date of the decision, during which time the person denied certification may file a petition with the secretary of state requesting the secretary to reconsider the decision and to grant certification. The petitioner shall include in the petition, an explanation of the reasons why the initial decision is incorrect and certification should be granted, and may include a request for a hearing on the matter. The secretary of state shall reconsider the matter if the petition is filed in a proper and timely manner. If a hearing is requested, the sec-

retary of state shall conduct the hearing within sixty days after the date on which the petition is filed. The secretary of state shall render a final decision on the matter within ninety days after the date on which the petition is filed.

(2) Within twenty days after the date on which the secretary of state makes a final decision denying a petition under this section, the petitioner may appeal the denial to the board created in RCW 29A.04.510. In deciding appeals, the board shall restrict its review to the record established when the matter was before the secretary of state. The board shall affirm the decision if it finds that the record supports the decision and that the decision is not inconsistent with other decisions of the secretary of state in which the same standards were applied and certification was granted. Similarly, the board shall reverse the decision and recommend to the secretary of state that certification be granted if the board finds that such support is lacking or that such inconsistency exists.

(3) Judicial review of certification decisions will be as prescribed under RCW 34.05.510 through 34.05.598, but is limited to the review of board decisions denying certification. [2003 c 111 § 153; 1992 c 163 § 7. Formerly RCW 29.60.050.]

Effective date—1992 c 163 §§ 5-13: See note following RCW 29A.04.530.

29A.04.560 Election review section. (*Effective July 1, 2004.*) An election review section is established in the elections division of the office of the secretary of state. Permanent staff of the elections division, trained and certified as required by RCW 29A.04.540, shall perform the election review functions prescribed by RCW 29A.04.570. The staff may also be required to assist in training, certification, and other duties as may be assigned by the secretary of state to ensure the uniform and orderly conduct of elections in this state. [2003 c 111 § 154. Prior: 1992 c 163 § 8. Formerly RCW 29.60.060.]

Effective date—1992 c 163 §§ 5-13: See note following RCW 29A.04.530.

29A.04.570 Review of county election procedures. (*Effective July 1, 2004.*) (1)(a) The election review staff of the office of the secretary of state shall conduct a review of election-related policies, procedures, and practices in an affected county or counties:

(i) If the unofficial returns of a primary or general election for a position in the state legislature indicate that a mandatory recount is likely for that position; or

(ii) If unofficial returns indicate a mandatory recount is likely in a statewide election or an election for federal office.

Reviews conducted under (ii) of this subsection shall be performed in as many selected counties as time and staffing permit. Reviews conducted as a result of mandatory recounts shall be performed between the time the unofficial returns are complete and the time the recount is to take place, if possible.

(b) In addition to conducting reviews under (a) of this subsection, the election review staff shall also conduct such a review in a county periodically, in conjunction with a county primary or special or general election, at the direction of the secretary of state or at the request of the county auditor. If any resident of this state believes that an aspect of a primary or election has been conducted inappropriately in a county,

the resident may file a complaint with the secretary of state. The secretary shall consider such complaints in scheduling periodic reviews under this section.

(c) Before an election review is conducted in a county, the secretary of state shall provide the county auditor of the affected county and the chair of the state central committee of each major political party with notice that the review is to be conducted. When a periodic review is to be conducted in a county at the direction of the secretary of state under (b) of this subsection, the secretary shall provide the affected county auditor not less than thirty days' notice.

(2) Reviews shall be conducted in conformance with rules adopted under RCW 29A.04.630. In performing a review in a county under this chapter, the election review staff shall evaluate the policies and procedures established for conducting the primary or election in the county and the practices of those conducting it. As part of the review, the election review staff shall issue to the county auditor and the members of the county canvassing board a report of its findings and recommendations regarding such policies, procedures, and practices. A review conducted under this chapter shall not include any evaluation, finding, or recommendation regarding the validity of the outcome of a primary or election or the validity of any canvass of returns nor does the election review staff have any jurisdiction to make such an evaluation, finding, or recommendation under this title.

(3) The county auditor of the county in which a review is conducted under this section or a member of the canvassing board of the county may appeal the findings or recommendations of the election review staff regarding the review by filing an appeal with the board created under RCW 29A.04.510. [2003 c 111 § 155. Prior: 1997 c 284 § 1; 1992 c 163 § 9. Formerly RCW 29.60.070.]

Effective date—1992 c 163 §§ 5-13: See note following RCW 29A.04.530.

29A.04.580 County auditor and review staff. (*Effective July 1, 2004.*) The county auditor may designate any person who has been certified under this chapter, other than the auditor, to participate in a review conducted in the county under this chapter. Each county auditor and canvassing board shall cooperate fully during an election review by making available to the reviewing staff any material requested by the staff. The reviewing staff shall have full access to ballot pages, absentee voting materials, any other election material normally kept in a secure environment after the election, and other requested material. If ballots are reviewed by the staff, they shall be reviewed in the presence of the canvassing board or its designees. Ballots shall not leave the custody of the canvassing board. During the review and after its completion, the review staff may make appropriate recommendations to the county auditor or canvassing board, or both, to bring the county into compliance with the training required under this chapter, and the laws or rules of the state of Washington, to safeguard election material or to preserve the integrity of the elections process. [2003 c 111 § 156. Prior: 1992 c 163 § 10. Formerly RCW 29.60.080.]

Effective date—1992 c 163 §§ 5-13: See note following RCW 29A.04.530.

29A.04.590 Election assistance and clearinghouse program. (*Effective July 1, 2004.*) The secretary of state shall establish within the elections division an election assistance and clearinghouse program, which shall provide regular communication between the secretary of state, local election officials, and major and minor political parties regarding newly enacted elections legislation, relevant judicial decisions affecting the administration of elections, and applicable attorney general opinions, and which shall respond to inquiries from elections administrators, political parties, and others regarding election information. This section does not empower the secretary of state to offer legal advice or opinions, but the secretary may discuss the construction or interpretation of election law, case law, or legal opinions from the attorney general or other competent legal authority. [2003 c 111 § 157. Prior: 1992 c 163 § 11. Formerly RCW 29.60.090.]

Effective date—1992 c 163 §§ 5-13: See note following RCW 29A.04.530.

RULE-MAKING AUTHORITY

29A.04.610 Rules by secretary of state. (*Effective July 1, 2004.*) The secretary of state as chief election officer shall make reasonable rules in accordance with chapter 34.05 RCW not inconsistent with the federal and state election laws to effectuate any provision of this title and to facilitate the execution of its provisions in an orderly, timely, and uniform manner relating to any federal, state, county, city, town, and district elections. To that end the secretary shall assist local election officers by devising uniform forms and procedures.

In addition to the rule-making authority granted otherwise by this section, the secretary of state shall make rules governing the following provisions:

- (1) The maintenance of voter registration records;
- (2) The preparation, maintenance, distribution, review, and filing of precinct maps;
- (3) Standards for the design, layout, and production of ballots;
- (4) The examination and testing of voting systems for certification;
- (5) The source and scope of independent evaluations of voting systems that may be relied upon in certifying voting systems for use in this state;
- (6) Standards and procedures for the acceptance testing of voting systems by counties;
- (7) Standards and procedures for testing the programming of vote tallying software for specific primaries and elections;
- (8) Standards and procedures for the preparation and use of each type of certified voting system including procedures for the operation of counting centers where vote tallying systems are used;
- (9) Standards and procedures to ensure the accurate tabulation and canvassing of ballots;
- (10) Consistency among the counties of the state in the preparation of ballots, the operation of vote tallying systems, and the canvassing of primaries and elections;
- (11) Procedures to ensure the secrecy of a voter's ballot when a small number of ballots are counted at the polls or at a counting center;

(12) The use of substitute devices or means of voting when a voting device at the polling place is found to be defective, the counting of votes cast on the defective device, the counting of votes cast on the substitute device, and the documentation that must be submitted to the county auditor regarding such circumstances;

(13) Procedures for the transportation of sealed containers of voted ballots or sealed voting devices;

(14) The acceptance and filing of documents via electronic facsimile;

(15) Voter registration applications and records;

(16) The use of voter registration information in the conduct of elections;

(17) The coordination, delivery, and processing of voter registration records accepted by driver licensing agents or the department of licensing;

(18) The coordination, delivery, and processing of voter registration records accepted by agencies designated by the governor to provide voter registration services;

(19) Procedures to receive and distribute voter registration applications by mail;

(20) Procedures for a voter to change his or her voter registration address within a county by telephone;

(21) Procedures for a voter to change the name under which he or she is registered to vote;

(22) Procedures for canceling dual voter registration records and for maintaining records of persons whose voter registrations have been canceled;

(23) Procedures for the electronic transfer of voter registration records between county auditors and the office of the secretary of state;

(24) Procedures and forms for declarations of candidacy;

(25) Procedures and requirements for the acceptance and filing of declarations of candidacy by electronic means;

(26) Procedures for the circumstance in which two or more candidates have a name similar in sound or spelling so as to cause confusion for the voter;

(27) Filing for office;

(28) The order of positions and offices on a ballot;

(29) Sample ballots;

(30) Independent evaluations of voting systems;

(31) The testing, approval, and certification of voting systems;

(32) The testing of vote tallying software programming;

(33) Standards and procedures to prevent fraud and to facilitate the accurate processing and canvassing of absentee ballots and mail ballots;

(34) Standards and procedures to guarantee the secrecy of absentee ballots and mail ballots;

(35) Uniformity among the counties of the state in the conduct of absentee voting and mail ballot elections;

(36) Standards and procedures to accommodate out-of-state voters, overseas voters, and service voters;

(37) The tabulation of paper ballots before the close of the polls;

(38) The accessibility of polling places and registration facilities that are accessible to elderly and disabled persons;

(39) The aggregation of precinct results if reporting the results of a single precinct could jeopardize the secrecy of a person's ballot;

(40) Procedures for conducting a statutory recount;

(41) Procedures for filling vacancies in congressional offices if the general statutory time requirements for availability of absentee ballots, certification, canvassing, and related procedures cannot be met;

(42) Procedures for the statistical sampling of signatures for purposes of verifying and canvassing signatures on initiative, referendum, and recall election petitions;

(43) Standards and deadlines for submitting material to the office of the secretary of state for the voters' pamphlet;

(44) Deadlines for the filing of ballot titles for referendum bills and constitutional amendments if none have been provided by the legislature;

(45) Procedures for the publication of a state voters' pamphlet; and

(46) Procedures for conducting special elections regarding nuclear waste sites if the general statutory time requirements for availability of absentee ballots, certification, canvassing, and related procedures cannot be met. [2003 c 111 § 161; 1971 ex.s. c 202 § 2; 1965 c 9 § 29.04.080. Prior: 1963 c 200 § 24; 1949 c 161 § 13; Rem. Supp. 1949 § 5147-3.] Formerly RCW 29.04.080.

Absentee voters, secretary of state duties regarding: RCW 29A.40.150.

Forms

statement of change in residence of voter, design by secretary of state—Availability to public: RCW 29A.08.850.

statement registered voter is deceased, design by secretary of state: RCW 29A.08.510.

29A.04.620 Rules. (Effective July 1, 2004.) The secretary of state as chief election officer may make rules in accordance with chapter 34.05 RCW to facilitate the operation, accomplishment, and purpose of the presidential primary authorized in RCW 29A.56.010 through 29A.56.060. The secretary of state shall adopt rules consistent with this chapter to comply with national or state political party rules. [2003 c 111 § 162; 1995 1st sp.s. c 20 § 4; 1989 c 4 § 7 (Initiative Measure No. 99). Formerly RCW 29.19.070.]

Effective date—1995 1st sp.s. c 20: See note following RCW 29A.56.020.

29A.04.630 Joint powers and duties with board. (Effective July 1, 2004.) (1) The secretary of state and the board created in RCW 29A.04.510 shall jointly adopt rules, in the manner specified for the adoption of rules under the Administrative Procedure Act, chapter 34.05 RCW, governing:

(a) The training of persons officially designated by major political parties as elections observers under this title, and the training and certification of election administration officials and personnel;

(b) The policies and procedures for conducting election reviews under RCW 29A.04.570; and

(c) The policies and standards to be used by the board in reviewing and rendering decisions regarding appeals filed under RCW 29A.04.570.

(2) The board created in RCW 29A.04.510 may adopt rules governing its procedures. [2003 c 111 § 163; 1992 c 163 § 4. Formerly RCW 29.60.020.]

CONSTRUCTION

29A.04.900 Continuation of existing law. (*Effective July 1, 2004.*) The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [2003 c 111 § 158. Prior: 1965 c 9 § 29.98.010. Formerly RCW 29.98.010.]

29A.04.901 Headings and captions not part of law. (*Effective July 1, 2004.*) Chapter headings, part, subpart, and section or subsection captions, as used in this title do not constitute any part of the law. [2003 c 111 § 159; 1965 c 9 § 29.98.020. Formerly RCW 29.98.020.]

29A.04.902 Invalidity of part not to affect remainder. (*Effective July 1, 2004.*) If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [2003 c 111 § 160. Prior: 1965 c 9 § 29.98.030. Formerly RCW 29.98.030.]

29A.04.903 Effective date—2003 c 111. This act takes effect July 1, 2004. [2003 c 111 § 2405.]

Chapter 29A.08 RCW

VOTERS AND REGISTRATION

Sections

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- 29A.08.010 "Information required for voter registration." (*Effective July 1, 2004.*)
- 29A.08.020 Mailing, date and method. (*Effective July 1, 2004.*)
- 29A.08.030 Notices, various. (*Effective July 1, 2004.*)
- 29A.08.040 "Person," "political purpose." (*Effective July 1, 2004.*)
- GENERAL PROVISIONS
- 29A.08.105 County auditor, duties—Registration assistants. (*Effective July 1, 2004.*)
- 29A.08.110 Auditor's procedure. (*Effective July 1, 2004.*)
- 29A.08.115 Registration assistants. (*Effective July 1, 2004.*)
- 29A.08.120 Registration by mail. (*Effective July 1, 2004.*)
- 29A.08.125 Computer file of voter registration records. (*Effective July 1, 2004.*)
- 29A.08.130 Count of registered voters. (*Effective July 1, 2004.*)
- 29A.08.135 Updating information. (*Effective July 1, 2004.*)
- 29A.08.140 Closing files—Notice. (*Effective July 1, 2004.*)
- 29A.08.145 Late registration—Special procedure. (*Effective July 1, 2004.*)
- 29A.08.150 Expense of registration. (*Effective July 1, 2004.*)
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FORMS

- 29A.08.210 Application—Information required—Warning. (*Effective July 1, 2004.*)
- 29A.08.220 Application—Format—Production and distribution. (*Effective July 1, 2004.*)
- 29A.08.230 Oath of applicant. (*Effective July 1, 2004.*)
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- 29A.08.250 Supplied without cost—Citizenship statement. (*Effective July 1, 2004.*)
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MOTOR VOTER AND REGISTRATION AT STATE AGENCIES

- 29A.08.310 Voter registration in state offices, colleges. (*Effective July 1, 2004.*)

- 29A.08.320 Registration or transfer at designated agencies—Form and application. (*Effective July 1, 2004.*)
- 29A.08.330 Registration at designated agencies—Procedures. (*Effective July 1, 2004.*)
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- 29A.08.350 Duties of secretary of state, department of licensing, county auditors—Information update. (*Effective July 1, 2004.*)
- 29A.08.360 Address changes at department of licensing. (*Effective July 1, 2004.*)

TRANSFERS AND NAME CHANGES

- 29A.08.410 Address change within county—Transfer by telephone. (*Effective July 1, 2004.*)
- 29A.08.420 Reregistration on transfer to another county. (*Effective July 1, 2004.*)
- 29A.08.430 Transfer on election day. (*Effective July 1, 2004.*)
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CANCELLATIONS

- 29A.08.510 Death. (*Effective July 1, 2004.*)
- 29A.08.520 Felony conviction. (*Effective July 1, 2004.*)
- 29A.08.530 Weekly report of cancellations and name changes. (*Effective July 1, 2004.*)
- 29A.08.540 Record of cancellations. (*Effective July 1, 2004.*)

LIST MAINTENANCE

- 29A.08.605 Registration list maintenance. (*Effective July 1, 2004.*)
- 29A.08.610 Dual registration or voting detection. (*Effective July 1, 2004.*)
- 29A.08.615 "Active," "inactive" registered voters. (*Effective July 1, 2004.*)
- 29A.08.620 Assignment of voter to inactive status—Confirmation notice. (*Effective July 1, 2004.*)
- 29A.08.625 Voting by inactive or canceled voters. (*Effective July 1, 2004.*)
- 29A.08.630 Return of inactive voter to active status—Cancellation of registration. (*Effective July 1, 2004.*)
- 29A.08.635 Confirmation notices—Form, contents. (*Effective July 1, 2004.*)
- 29A.08.640 Confirmation notice—Response, auditor's action. (*Effective July 1, 2004.*)
- 29A.08.645 Electronic file format. (*Effective July 1, 2004.*)
- 29A.08.650 Voter registration data base. (*Effective July 1, 2004, until January 1, 2005.*)

PUBLIC ACCESS TO REGISTRATION RECORDS

- 29A.08.710 Originals and automated files. (*Effective July 1, 2004.*)
- 29A.08.720 Registration, voting records—As public records—Information furnished—Restrictions, confidentiality. (*Effective July 1, 2004.*)
- 29A.08.730 Registration, voting—Furnishing data upon request—Cost—Use restricted. (*Effective July 1, 2004.*)
- 29A.08.740 Violations of restricted use of registered voter data—Penalties—Liabilities. (*Effective July 1, 2004.*)
- 29A.08.750 Computer file of registered voters—County records to secretary of state—Reimbursement. (*Effective July 1, 2004.*)
- 29A.08.760 Computer file—Duplicate copy—Restrictions and penalties. (*Effective July 1, 2004.*)
- 29A.08.770 Records concerning accuracy and currency of voters lists. (*Effective July 1, 2004.*)

CHALLENGES

- 29A.08.810 Initiation. (*Effective July 1, 2004.*)
- 29A.08.820 Voting by person challenged—Burden of proof, procedures. (*Effective July 1, 2004.*)
- 29A.08.830 Affidavit—Administration, notice of challenge. (*Effective July 1, 2004.*)
- 29A.08.840 Procedure before cancellation. (*Effective July 1, 2004.*)
- 29A.08.850 Challenge of registration—Forms, availability. (*Effective July 1, 2004.*)

DEFINITIONS

29A.08.010 "Information required for voter registration." (*Effective July 1, 2004.*) As used in this chapter: "Information required for voter registration" means the minimum information provided on a voter registration application

that is required by the county auditor in order to place a voter registration applicant on the voter registration rolls. This information includes the applicant's name, complete residence address, date of birth, and a signature attesting to the truth of the information provided on the application. All other information supplied is ancillary and not to be used as grounds for not registering an applicant to vote. [2003 c 111 § 201; 1994 c 57 § 9. Formerly RCW 29.07.005.]

Severability—1994 c 57: See note following RCW 10.64.021.

29A.08.020 Mailing, date and method. (*Effective July 1, 2004.*) The definitions set forth in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "By mail" means delivery of a completed original voter registration application by mail or by personal delivery.

(2) For voter registration applicants, "date of mailing" means the date of the postal cancellation on the voter registration application. This date will also be used as the date of application for the purpose of meeting the registration cutoff deadline. If the postal cancellation date is illegible then the date of receipt by the elections official is considered the date of application. If an application is received by the elections official by the close of business on the fifth day after the cutoff date for voter registration and the postal cancellation date is illegible, the application will be considered to have arrived by the cutoff date for voter registration. [2003 c 111 § 204; 1994 c 57 § 30; 1993 c 434 § 1. Formerly RCW 29.08.010.]

Severability—1994 c 57: See note following RCW 10.64.021.

29A.08.030 Notices, various. (*Effective July 1, 2004.*) The definitions set forth in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Verification notice" means a notice sent by the county auditor to a voter registration applicant and is used to verify or collect information about the applicant in order to complete the registration.

(2) "Acknowledgement notice" means a notice sent by nonforwardable mail by the county auditor to a registered voter to acknowledge a voter registration transaction, which can include initial registration, transfer, or reactivation of an inactive registration. An acknowledgement notice may be a voter registration card.

(3) "Confirmation notice" means a notice sent to a registered voter by first class forwardable mail at the address indicated on the voter's permanent registration record and to any other address at which the county auditor could reasonably expect mail to be received by the voter in order to confirm the voter's residence address. The confirmation notice must be designed so that the voter may update his or her current residence address. [2003 c 111 § 203. Prior: 1994 c 57 § 33. Formerly RCW 29.10.011.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

29A.08.040 "Person," "political purpose." (*Effective July 1, 2004.*) For purposes of this chapter, the following words have the following meanings:

(1) "Person" means an individual, partnership, joint venture, public or private corporation, association, state or local

governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(2) "Political purpose" means a purpose concerned with the support of or opposition to any candidate for any partisan or nonpartisan office or concerned with the support of or opposition to any ballot proposition or issue; "political purpose" includes, but is not limited to, such activities as the advertising for or against any candidate or ballot measure or the solicitation of financial support. [2003 c 111 § 202; 1973 1st ex.s. c 111 § 1. Formerly RCW 29.04.095.]

GENERAL PROVISIONS

29A.08.105 County auditor, duties—Registration assistants. (*Effective July 1, 2004.*) (1) In all counties, the county auditor shall be the chief registrar of voters for every precinct within the county. The auditor may appoint registration assistants to assist in registering persons residing in the county. Each registration assistant holds office at the pleasure of the county auditor and must be a registered voter.

(2) The county auditor shall be the custodian of the official registration records of the county. The county auditor shall ensure that mail-in voter registration application forms are readily available to the public at locations to include but not limited to the elections office, and all common schools, fire stations, and public libraries. [2003 c 111 § 205; 1999 c 298 § 4; 1994 c 57 § 8; 1984 c 211 § 3; 1980 c 48 § 1; 1971 ex.s. c 202 § 4; 1965 c 9 § 29.07.010. Prior: 1957 c 251 § 4; prior: 1939 c 15 § 1, part; 1933 c 1 § 3, part; RRS § 5114-3, part; prior: 1891 c 104 §§ 1, part, 2, part; RRS §§ 5116, part, 5117, part. Formerly RCW 29.07.010.]

Severability—1994 c 57: See note following RCW 10.64.021.

Intent—1984 c 211: See note following RCW 29A.08.310.

29A.08.110 Auditor's procedure. (*Effective July 1, 2004.*) (1) On receipt of an application for voter registration under this chapter, the county auditor shall review the application to determine whether the information supplied is complete. An application that contains the applicant's name, complete valid residence address, date of birth, and signature attesting to the truth of the information provided on the application is complete. If it is not complete, the auditor shall promptly mail a verification notice of the deficiency to the applicant. This verification notice shall require the applicant to provide the missing information. If the verification notice is not returned by the applicant or is returned as undeliverable the auditor shall not place the name of the applicant on the county voter list. If the applicant provides the required information, the applicant shall be registered to vote as of the date of mailing of the original voter registration application.

(2) If the information is complete, the applicant is considered to be registered to vote as of the date of mailing. The auditor shall record the appropriate precinct identification, taxing district identification, and date of registration on the voter's record. Within forty-five days after the receipt of an application but no later than seven days before the next primary, special election, or general election, the auditor shall send to the applicant, by first class mail, an acknowledge-

ment notice identifying the registrant's precinct and containing such other information as may be required by the secretary of state. The postal service shall be instructed not to forward a voter registration card to any other address and to return to the auditor any card which is not deliverable. If the applicant has indicated that he or she is registered to vote in another county in Washington but has also provided an address within the auditor's county that is for voter registration purposes, the auditor shall send, on behalf of the registrant, a registration cancellation notice to the auditor of that other county and the auditor receiving the notice shall cancel the registrant's voter registration in that other county. If the registrant has indicated on the form that he or she is registered to vote within the county but has provided a new address within the county that is for voter registration purposes, the auditor shall transfer the voter's registration.

(3) If an acknowledgement notice card is properly mailed as required by this section to the address listed by the voter as being the voter's mailing address and the notice is subsequently returned to the auditor by the postal service as being undeliverable to the voter at that address, the auditor shall promptly send the voter a confirmation notice. The auditor shall place the voter's registration on inactive status pending a response from the voter to the confirmation notice. [2003 c 111 § 206. Prior: 1994 c 57 § 32; 1993 c 434 § 6. Formerly RCW 29.08.060.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

29A.08.115 Registration assistants. (Effective July 1, 2004.) Every registration assistant shall keep registration supplies at his or her usual place of residence or usual place of business. A person or organization collecting voter registration application forms must transmit the forms to the secretary of state or a designee at least once weekly. [2003 c 111 § 207; 1971 ex.s. c 202 § 15; 1965 c 9 § 29.07.110. Prior: 1957 c 251 § 11; prior: 1947 c 68 § 1, part; 1945 c 95 § 1, part; 1933 c 1 § 6, part; Rem. Supp. 1947 § 5114-6, part; prior: 1919 c 163 § 6, part; 1915 c 16 § 6, part; 1901 c 135 § 5, part; 1893 c 45 § 1, part; 1889 p 415 § 6, part; RRS § 5124, part. Formerly RCW 29.07.110.]

29A.08.120 Registration by mail. (Effective July 1, 2004.) Any elector of this state may register to vote by mail under this chapter. [2003 c 111 § 208. Prior: 1993 c 434 § 3. Formerly RCW 29.08.030.]

29A.08.125 Computer file of voter registration records. (Effective July 1, 2004.) Each county auditor shall maintain a computer file containing the records of all registered voters within the county. The auditor may provide for the establishment and maintenance of such files by private contract or through interlocal agreement as provided by chapter 39.34 RCW. The computer file must include, but not be limited to, each voter's last name, first name, middle initial, date of birth, residence address, gender, date of registration, applicable taxing district and precinct codes, and the last date on which the individual voted. The county auditor shall subsequently record each consecutive date upon which the individual has voted and retain at least the last five such consecutive dates. If the voter has not voted at least five times since

establishing his or her current registration record, only the available dates will be included. [2003 c 111 § 209; 1993 c 408 § 11; 1991 c 81 § 22; 1974 ex.s. c 127 § 12. Formerly RCW 29.07.220.]

Severability—Effective dates—1993 c 408: See notes following RCW 2.36.054.

Effective date—1991 c 81: See note following RCW 29A.84.540.

29A.08.130 Count of registered voters. (Effective July 1, 2004.) (1) Except as otherwise specified by this title, registered voters include those assigned to active and inactive status by the county auditor.

(2) Election officials shall not include inactive voters in the count of registered voters for the purpose of dividing precincts, creating vote-by-mail precincts, determining voter turnout, or other purposes in law for which the determining factor is the number of registered voters. Election officials shall not include persons who are ongoing absentee voters under RCW 29A.40.040 in determining the maximum permissible size of vote-by-mail precincts or in determining the maximum permissible size of precincts. Nothing in this subsection may be construed as altering the vote tallying requirements of RCW 29A.60.230. [2003 c 111 § 210; 1994 c 57 § 40. Formerly RCW 29.10.081.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

29A.08.135 Updating information. (Effective July 1, 2004.) The county auditor shall acknowledge each new voter registration or transfer by providing or sending the voter a card identifying his or her current precinct and containing such other information as may be prescribed by the secretary of state. When a person who has previously registered to vote in a jurisdiction applies for voter registration in a new jurisdiction, the person shall provide on the registration form, all information needed to cancel any previous registration. The county auditor shall forward any information pertaining to the voter's prior voter registration to the county where the voter was previously registered, so that registration may be canceled. If the prior voter registration is in another state, the notification must be made to the state elections office of that state. A county auditor receiving official information that a voter has registered to vote in another jurisdiction shall immediately cancel that voter's registration. [2003 c 111 § 211; 2001 c 41 § 6; 1975 1st ex.s. c 184 § 1; 1973 c 153 § 2. Formerly RCW 29.07.092.]

Severability—1975 1st ex.s. c 184: "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 184 § 5.]

29A.08.140 Closing files—Notice. (Effective July 1, 2004.) The registration files of all precincts shall be closed against original registration or transfers for thirty days immediately preceding every primary, special election, and general election to be held in such precincts.

The county auditor shall give notice of the closing of the precinct files for original registration and transfer and notice of the special registration and voting procedure provided by RCW 29A.08.145 by one publication in a newspaper of gen-

eral circulation in the county at least five days before the closing of the precinct files.

No person may vote at any primary, special election, or general election in a precinct polling place unless he or she has registered to vote at least thirty days before that primary or election. If a person, otherwise qualified to vote in the state, county, and precinct in which he or she applies for registration, does not register at least thirty days before any primary, special election, or general election, he or she may register and vote by absentee ballot for that primary or election under RCW 29A.08.145. [2003 c 111 § 212. Prior: 1993 c 383 § 2; 1980 c 3 § 4; 1974 ex.s. c 127 § 4; 1971 ex.s. c 202 § 20; 1965 c 9 § 29.07.160; prior: 1947 c 68 § 2; 1933 c 1 § 9; Rem. Supp. 1947 § 5114-9. Formerly RCW 29.07.160.]

29A.08.145 Late registration—Special procedure. (*Effective July 1, 2004.*) This section establishes a special procedure which an elector may use to register to vote during the period beginning after the closing of registration for voting at the polls under RCW 29A.08.140 and ending on the fifteenth day before a primary, special election, or general election. A qualified elector in the county may register to vote in person in the office of the county auditor or at a voter registration location specifically designated for this purpose by the county auditor of the county in which the applicant resides, and apply for an absentee ballot for that primary or election. The auditor or registration assistant shall register that individual in the manner provided in this chapter. The application for an absentee ballot executed by the newly registered voter for the primary or election that follows the execution of the registration shall be promptly transmitted to the auditor with the completed voter registration form. [2003 c 111 § 213; 1993 c 383 § 1. Formerly RCW 29.07.152.]

29A.08.150 Expense of registration. (*Effective July 1, 2004.*) The expense of registration in all rural precincts must be paid by the county. The expense of registration in all precincts lying wholly within a city or town must be paid by the city or town. Registration expenses for this section include both active and inactive voters. [2003 c 111 § 214; 1965 c 9 § 29.07.030. Prior: 1939 c 82 § 1, part; 1933 c 1 § 4, part; RRS § 5114-4, part; prior: 1891 c 104 § 4; RRS § 5119. Formerly RCW 29.07.030.]

29A.08.155 Payment for maintenance of electronic records. (*Effective July 1, 2004.*) To compensate counties with fewer than ten thousand registered voters at the time of the most recent state general election for unrecoverable costs incident to the maintenance of voter registration records on electronic data processing systems, the secretary of state shall, in June of each year, pay such counties an amount equal to thirty cents for each registered voter in the county at the time of the most recent state general election. [2003 c 111 § 215. Prior: 1980 c 32 § 6; 1974 ex.s. c 127 § 13. Formerly RCW 29.07.230.]

FORMS

29A.08.210 Application—Information required—Warning. (*Effective July 1, 2004.*) An applicant for voter [2003 RCW Supp—page 310]

registration shall complete an application providing the following information concerning his or her qualifications as a voter in this state:

- (1) The address of the last former registration of the applicant as a voter in the state;
- (2) The applicant's full name;
- (3) The applicant's date of birth;
- (4) The address of the applicant's residence for voting purposes;
- (5) The mailing address of the applicant if that address is not the same as the address in subsection (4) of this section;
- (6) The sex of the applicant;
- (7) A declaration that the applicant is a citizen of the United States;
- (8) The applicant's signature; and
- (9) Any other information that the secretary of state determines is necessary to establish the identity of the applicant and prevent duplicate or fraudulent voter registrations.

This information shall be recorded on a single registration form to be prescribed by the secretary of state.

If the applicant fails to provide the information required for voter registration, the auditor shall send the applicant a verification notice. The auditor shall not register the applicant until the required information is provided. If a verification notice is returned as undeliverable or the applicant fails to respond to the notice within forty-five days, the auditor shall not register the applicant to vote.

The following warning shall appear in a conspicuous place on the voter registration form:

"If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to five years, or by a fine of up to ten thousand dollars, or both imprisonment and fine."

[2003 c 111 § 216; 1994 c 57 § 11; 1990 c 143 § 7; 1973 1st ex.s. c 21 § 3; 1971 ex.s. c 202 § 9; 1965 c 9 § 29.07.070. Prior: 1947 c 68 § 3, part; 1933 c 1 § 11, part; Rem. Supp. 1947 § 5114-11, part; prior: 1921 c 177 § 7, part; 1915 c 16 § 8, part; 1901 c 135 § 4, part; 1893 c 45 § 3, part; 1889 p 416 § 8, part; RRS § 5126, part. Formerly RCW 29.07.070.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

Effective date—1990 c 143 §§ 1-8: See note following RCW 29A.08.340.

Civil disabilities of wife abolished: RCW 26.16.160.

Civil rights

loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.

restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

Copy of instrument restoring civil rights as evidence: RCW 5.44.090.

Qualifications of electors: State Constitution Art. 6 § 1 (Amendment 5).

Residence defined: RCW 29A.04.151.

Subversive activities as disqualification for voting: RCW 9.81.040.

29A.08.220 Application—Format—Production and distribution. (*Effective July 1, 2004.*) (1) The secretary of state shall specify by rule the format of all voter registration applications. These applications shall be compatible with existing voter registration records. An applicant for voter

registration shall be required to complete only one application and to provide the required information other than his or her signature no more than one time. These applications shall also contain information for the voter to transfer his or her registration.

Any application format specified by the secretary for use in registering to vote in state and local elections shall satisfy the requirements of the National Voter Registration Act of 1993 (P.L. 103-31) for registering to vote in federal elections.

(2) The secretary of state shall adopt by rule a uniform data format for transferring voter registration records on machine-readable media.

(3) All registration applications required under RCW 29A.08.210 and 29A.08.340 shall be produced and furnished by the secretary of state to the county auditors and the department of licensing.

(4) The secretary of state shall produce and distribute any instructional material and other supplies needed to implement RCW 29A.08.340 and 46.20.155.

(5) Any notice or statement that must be provided under the National Voter Registration Act of 1993 (P.L. 103-31) to prospective registrants concerning registering to vote in federal elections shall also be provided to prospective registrants concerning registering to vote under this title in state and local elections as well as federal elections. [2003 c 111 § 217. Prior: 1994 c 57 § 18; 1990 c 143 § 9; 1973 1st ex.s. c 21 § 7; 1971 ex.s. c 202 § 18; 1965 c 9 § 29.07.140; prior: (i) 1933 c 1 § 30; RRS § 5114-30. (ii) 1933 c 1 § 13, part; RRS § 5114-13, part. Formerly RCW 29.07.140.]

Severability—1994 c 57: See note following RCW 10.64.021.

29A.08.230 Oath of applicant. (Effective July 1, 2004.) For all voter registrations, the registrant shall sign the following oath:

"I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am not presently denied my civil rights as a result of being convicted of a felony, I will have lived in Washington at this address for thirty days immediately before the next election at which I vote, and I will be at least eighteen years old when I vote."

[2003 c 111 § 218; 1994 c 57 § 12; 1990 c 143 § 8; 1973 1st ex.s. c 21 § 4; 1971 ex.s. c 202 § 10; 1965 c 9 § 29.07.080. Prior: 1933 c 1 § 12; RRS § 5114-12. Formerly RCW 29.07.080.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

Effective date—1990 c 143 §§ 1-8: See note following RCW 29A.08.340.

Civil rights

loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.

restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

29A.08.240 Signature card. (Effective July 1, 2004.) At the time of registering, a voter shall sign his or her name upon a signature card to be transmitted to the secretary of state. The voter shall also provide his or her first name followed by the last name or names and the name of the county in which he or she is registered. Once each week the county auditor shall transmit all such cards to the secretary of state.

The secretary of state may exempt a county auditor who is providing electronic voter registration and electronic voter signature information to the secretary of state from the requirements of this section. [2003 c 111 § 219; 1994 c 57 § 13; 1973 1st ex.s. c 21 § 5; 1971 ex.s. c 202 § 11; 1965 c 9 § 29.07.090. Prior: 1933 c 1 § 13, part; RRS § 5114-13, part. Formerly RCW 29.07.090.]

Severability—1994 c 57: See note following RCW 10.64.021.

Signature cards—File for checking initiative and referendum petitions: RCW 29A.72.220.

29A.08.250 Supplied without cost—Citizenship statement. (Effective July 1, 2004.) The secretary of state shall furnish registration forms necessary to carry out the registration of voters as provided by this chapter without cost to the respective counties. All voter registration forms must include clear and conspicuous language, designed to draw an applicant's attention, stating that the applicant must be a United States citizen in order to register to vote. [2003 c 111 § 220; 2001 c 41 § 8; 1999 c 298 § 7; 1993 c 434 § 8. Formerly RCW 29.08.080.]

29A.08.260 Supply and distribution. (Effective July 1, 2004.) The county auditor shall distribute forms by which a person may register to vote by mail and cancel any previous registration in this state. The county auditor shall keep a supply of voter registration forms in his or her office at all times for political parties and others interested in assisting in voter registration, and shall make every effort to make these forms generally available to the public. The county auditor shall provide voter registration forms to city and town clerks, state offices, schools, fire stations, and any other locations considered appropriate by the auditor for extending registration opportunities to all areas of the county. After the initial distribution of voter registration forms to a given location, a representative designated by the official in charge of that location shall notify the county auditor of the need for additional voter registration supplies. [2003 c 111 § 221. Prior: 1993 c 434 § 4. Formerly RCW 29.08.040.]

MOTOR VOTER AND REGISTRATION AT STATE AGENCIES

29A.08.310 Voter registration in state offices, colleges. (Effective July 1, 2004.) (1) The governor, in consultation with the secretary of state, shall designate agencies to provide voter registration services in compliance with federal statutes.

(2) Each state agency designated shall provide voter registration services for employees and the public within each office of that agency.

(3) The secretary of state shall design and provide a standard notice informing the public of the availability of voter registration, which notice shall be posted in each state agency where such services are available.

(4) The secretary of state shall design and provide standard voter registration forms for use by these state agencies.

(5) Each institution of higher education shall put in place an active prompt on its course registration web site, or similar web site that students actively and regularly use, that, if selected, will link the student to the secretary of state's voter

registration web site. The prompt must ask the student if he or she wishes to register to vote. [2003 c 111 § 222; 2002 c 185 § 3; 1994 c 57 § 10; 1984 c 211 § 2. Formerly RCW 29.07.025.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

Intent—1984 c 211: "It is the intention of the legislature, in order to encourage the broadest possible participation in the electoral process by the citizens of the state of Washington, to make voter registration services available in state offices which have significant contact with the public." [1984 c 211 § 1.]

29A.08.320 Registration or transfer at designated agencies—Form and application. (Effective July 1, 2004.)

(1) A person may register to vote or transfer a voter registration when he or she applies for service or assistance and with each renewal, recertification, or change of address at agencies designated under *RCW 29.07.420.

(2) A prospective applicant shall initially be offered a form adopted by the secretary of state that is designed to determine whether the person wishes to register to vote. The form must comply with all applicable state and federal statutes regarding content.

The form shall also contain a box that may be checked by the applicant to indicate that he or she declines to register.

If the person indicates an interest in registering or has made no indication as to a desire to register or not register to vote, the person shall be given a mail-in voter registration application or a prescribed agency application as provided by RCW 29A.08.330. [2003 c 111 § 223. Prior: 1994 c 57 § 27. Formerly RCW 29.07.430.]

***Reviser's note:** RCW 29.07.420 was repealed by 2003 c 111 § 2404, effective July 1, 2004. Registration agencies are now designated under RCW 29A.08.310.

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

29A.08.330 Registration at designated agencies—Procedures. (Effective July 1, 2004.)

(1) The secretary of state shall prescribe the method of voter registration for each designated agency. The agency shall use either the state voter registration by mail form with a separate declination form for the applicant to indicate that he or she declines to register at this time, or the agency may use a separate form approved for use by the secretary of state.

(2) The person providing service at the agency shall offer voter registration services to every client whenever he or she applies for service or assistance and with each renewal, recertification, or change of address. The person providing service shall give the applicant the same level of assistance with the voter registration application as is offered to fill out the agency's forms and documents, including information about age and citizenship requirements for voter registration.

(3) If an agency uses a computerized application process, it may, in consultation with the secretary of state, develop methods to capture simultaneously the information required for voter registration during a person's computerized application process.

(4) Each designated agency shall provide for the voter registration application forms to be collected from each agency office at least once each week. The agency shall then forward the application forms to the secretary of state each

week. The secretary of state shall forward the forms to the county in which the applicant has registered to vote no later than ten days after the date on which the forms were received by the secretary of state. [2003 c 111 § 224. Prior: 2001 c 41 § 7; 1994 c 57 § 28. Formerly RCW 29.07.440.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

29A.08.340 Registration with driver's license application or renewal. (Effective July 1, 2004.) (1) A person may register to vote, transfer a voter registration, or change his or her name for voter registration purposes when he or she applies for or renews a driver's license or identification card under chapter 46.20 RCW.

(2) To register to vote, transfer his or her voter registration, or change his or her name for voter registration purposes under this section, the applicant shall provide the information required by RCW 29A.08.210.

(3) The driver licensing agent shall record that the applicant has requested to register to vote or transfer a voter registration. [2003 c 111 § 225; 2001 c 41 § 16; 1999 c 298 § 6; 1994 c 57 § 21; 1990 c 143 § 1. Formerly RCW 29.07.260.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

Effective date—1990 c 143 §§ 1-8: "Sections 1 through 8 of this act shall take effect January 1, 1992." [1990 c 143 § 13.]

Civil rights

loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.

restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

Driver licensing agents duties regarding voter registration: RCW 46.20.155.

29A.08.350 Duties of secretary of state, department of licensing, county auditors—Information update. (Effective July 1, 2004.)

(1) The secretary of state shall provide for the voter registration forms submitted under RCW 29A.08.340 to be collected from each driver's licensing facility within five days of their completion.

(2) The department of licensing shall produce and transmit to the secretary of state a machine-readable file containing the following information from the records of each individual who requested a voter registration or transfer at a driver's license facility during each period for which forms are transmitted under subsection (1) of this section: The name, address, date of birth, gender of the applicant, the driver's license number, the date on which the application for voter registration or transfer was submitted, and the location of the office at which the application was submitted.

(3) The voter registration forms from the driver's licensing facilities must be forwarded to the county in which the applicant has registered to vote no later than ten days after the date on which the forms were to be collected.

(4) For a voter registration application where the address for voting purposes is different from the address in the machine-readable file received from the department of licensing, the secretary of state shall amend the record of that application in the machine-readable file to reflect the county in which the applicant has registered to vote.

(5) The secretary of state shall sort the records in the machine-readable file according to the county in which the applicant registered to vote and produce a file of voter regis-

tration transactions for each county. The records of each county may be transmitted on or through whatever medium the county auditor determines will best facilitate the incorporation of these records into the existing voter registration files of that county.

(6) The secretary of state shall produce a list of voter registration transactions for each county and transmit a copy of this list to that county with each file of voter registration transactions no later than ten days after the date on which that information was to be transmitted under subsection (1) of this section.

(7) If a registrant has indicated on the voter registration application form that he or she is registered to vote in another county in Washington but has also provided an address within the auditor's county that is for voter registration purposes, the auditor shall send, on behalf of the registrant, a registration cancellation notice to the auditor of that other county and the auditor receiving the notice shall cancel the registrant's voter registration in that other county. If the registrant has indicated on the form that he or she is registered to vote within the county but has provided a new address within the county that is for voter registration purposes, the auditor shall transfer the voter's registration. [2003 c 111 § 226; 1994 c 57 § 22; 1990 c 143 § 2. Formerly RCW 29.07.270.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

Effective date—1990 c 143 §§ 1-8: See note following RCW 29A.08.340.

29A.08.360 Address changes at department of licensing. (Effective July 1, 2004.) (1) The department of licensing shall provide information on all persons changing their address on change of address forms submitted to the department unless the voter has indicated that the address change is not for voting purposes. This information will be transmitted to the secretary of state each week in a machine-readable file containing the following information on persons changing their address: The name, address, date of birth, gender of the applicant, the applicant's driver's license number, the applicant's former address, the county code for the applicant's former address, and the date that the request for address change was received.

(2) The secretary of state shall forward this information to the appropriate county each week. When the information indicates that the voter has moved within the county, the county auditor shall use the change of address information to transfer the voter's registration and send the voter an acknowledgement notice of the transfer. If the information indicates that the new address is outside the voter's original county, the county auditor shall send the voter a registration by mail form at the voter's new address and advise the voter of the need to reregister in the new county. The auditor shall then place the voter on inactive status. [2003 c 111 § 227.]

TRANSFERS AND NAME CHANGES

29A.08.410 Address change within county—Transfer by telephone. (Effective July 1, 2004.) To maintain a valid voter registration, a registered voter who changes his or her residence from one address to another within the same county shall transfer his or her registration to the new address

in one of the following ways: (1) Sending to the county auditor a signed request stating the voter's present address and the address from which the voter was last registered; (2) appearing in person before the auditor and signing such a request; (3) transferring the registration in the manner provided by RCW 29A.08.430; or (4) telephoning the county auditor to transfer the registration. The telephone call transferring a registration by telephone must be received by the auditor before the precinct registration files are closed to new registrations for the next primary or special or general election in which the voter participates. [2003 c 111 § 228; 1994 c 57 § 35; 1991 c 81 § 23; 1975 1st ex.s. c 184 § 2; 1971 ex.s. c 202 § 24; 1965 c 9 § 29.10.020. Prior: 1955 c 181 § 4; prior: 1933 c 1 § 14, part; RRS § 5114-14, part; prior: 1919 c 163 § 9, part; 1915 c 16 § 9, part; 1889 p 417 § 12, part; RRS § 5129, part. Formerly RCW 29.10.020.]

Severability—1994 c 57: See note following RCW 10.64.021.

Effective date—1991 c 81: See note following RCW 29A.84.540.

Severability—1975 1st ex.s. c 184: See note following RCW 29A.08.135.

29A.08.420 Reregistration on transfer to another county. (Effective July 1, 2004.) A registered voter who changes his or her residence from one county to another county, shall be required to register anew. The voter shall sign an authorization to cancel his or her current registration. An authorization to cancel a voter's registration must be forwarded promptly to the county auditor of the county in which the voter was previously registered. The county auditor of the county where the previous registration was made shall cancel the registration of the voter if it appears that the signatures in the registration record and on the cancellation authorization form were made by the same person. [2003 c 111 § 229; 1999 c 100 § 3; 1994 c 57 § 36; 1991 c 81 § 24; 1977 ex.s. c 361 § 26; 1971 ex.s. c 202 § 26; 1965 c 9 § 29.10.040. Prior: 1933 c 1 § 15; RRS § 5114-15. Formerly RCW 29.10.040.]

Severability—1994 c 57: See note following RCW 10.64.021.

Effective date—1991 c 81: See note following RCW 29A.84.540.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.08.430 Transfer on election day. (Effective July 1, 2004.) (1) A person who is registered to vote in this state may transfer his or her voter registration on the day of a special or general election or primary under the following procedures:

(a) The voter may complete, at the polling place, a registration transfer form designed by the secretary of state and supplied by the county auditor; or

(b) The voter may write in his or her new residential address in the precinct list of registered voters.

The county auditor shall determine which of these two procedures are to be used in the county or may determine that both procedures are to be available to voters for use in the county.

(2) A voter who transfers his or her registration in the manner authorized by this section shall vote in the precinct in which he or she was previously registered.

(3) The auditor shall, within ninety days, mail to each voter who has transferred a registration under this section a notice of his or her current precinct and polling place. [2003 c 111 § 230. Prior: 1991 c 81 § 28; 1979 c 96 § 1. Formerly RCW 29.10.170.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

29A.08.440 Voter name change. (Effective July 1, 2004.) To maintain a valid voter registration, a person who changes his or her name shall notify the county auditor regarding the name change in one of the following ways: (1) By sending the auditor a notice clearly identifying the name under which he or she is registered to vote, the voter's new name, and the voter's residence. Such a notice must be signed by the voter using both this former name and the voter's new name; (2) by appearing in person before the auditor or a registration assistant and signing such a change-of-name notice; (3) by signing such a change-of-name notice at the voter's precinct polling place on the day of a primary or special or general election; (4) by properly executing a name change on a mail-in registration application or a prescribed state agency application.

A properly registered voter who files a change-of-name notice at the voter's precinct polling place during a primary or election and who desires to vote at that primary or election shall sign the poll book using the voter's former and new names in the same manner as is required for the change-of-name notice. [2003 c 111 § 231; 1994 c 57 § 37; 1991 c 81 § 25. Formerly RCW 29.10.051.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

Effective date—1991 c 81: See note following RCW 29A.84.540.

CANCELLATIONS

29A.08.510 Death. (Effective July 1, 2004.) In addition to case-by-case maintenance under RCW 29A.08.620 and 29A.08.630 and the general program of maintenance of voter registration lists under RCW 29A.08.605, deceased voters will be canceled from voter registration lists as follows:

(1) Every month, the registrar of vital statistics of the state shall prepare a separate list of persons who resided in each county, for whom a death certificate was transmitted to the registrar and was not included on a previous list, and shall supply the appropriate list to each county auditor.

A county auditor shall compare this list with the registration records and cancel the registrations of deceased voters within at least forty-five days before the next primary or election held in the county after the auditor receives the list.

(2) In addition, the county auditor may also use newspaper obituary articles as a source of information in order to cancel a voter's registration. The auditor must verify the identity of the voter by matching the voter's date of birth or an address. The auditor shall record the date and source of the obituary in the cancellation records.

(3) In addition, any registered voter may sign a statement, subject to the penalties of perjury, to the effect that to his or her personal knowledge or belief another registered voter is deceased. This statement may be filed with the county auditor. Upon the receipt of such signed statement,

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the county auditor shall cancel the registration records concerned and so notify the secretary of state. [2003 c 111 § 232; 1999 c 100 § 1; 1994 c 57 § 41; 1983 c 110 § 1; 1971 ex.s. c 202 § 29; 1965 c 9 § 29.10.090. Prior: 1961 c 32 § 1; 1933 c 1 § 20; RRS § 5114-20. Formerly RCW 29.10.090.]

Severability—1994 c 57: See note following RCW 10.64.021.

29A.08.520 Felony conviction. (Effective July 1, 2004.) Upon receiving official notice of a person's conviction of a felony in either state or federal court, if the convicted person is a registered voter in the county, the county auditor shall cancel the defendant's voter registration. [2003 c 111 § 233. Prior: 1994 c 57 § 42. Formerly RCW 29.10.097.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

Restoration of civil rights: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

29A.08.530 Weekly report of cancellations and name changes. (Effective July 1, 2004.) Once each week after the cancellation of the registration of any voter or the change of name of a voter, each county auditor shall certify all cancellations or name changes to the secretary of state. The certificate shall set forth the name of each voter whose registration has been canceled or whose name was changed, and the county, city or town, and precinct in which the voter was registered. A county may be exempted from this requirement by entering into an interlocal agreement with the secretary of state. [2003 c 111 § 234; 1999 c 298 § 8; 1994 c 57 § 43; 1971 ex.s. c 202 § 31; 1965 c 9 § 29.10.100. Prior: 1933 c 1 § 13, part; RRS § 5114-13, part. Formerly RCW 29.10.100.]

Severability—1994 c 57: See note following RCW 10.64.021.

29A.08.540 Record of cancellations. (Effective July 1, 2004.) Every county auditor shall carefully preserve in a separate file or list the registration records of persons whose voter registrations have been canceled as authorized under this title. The files or lists shall be kept in the manner prescribed by rule by the secretary of state. Information from such canceled registration records is available for public inspection and copying to the same extent established by RCW 29A.08.710 for other voter registration information.

The county auditor may destroy the voter registration information and records of any person whose voter registration has been canceled for a period of two years or more. [2003 c 111 § 235. Prior: 1991 c 81 § 26; 1971 ex.s. c 202 § 32; 1965 ex.s. c 156 § 1; 1965 c 9 § 29.10.110; prior: 1961 c 32 § 2; 1947 c 85 § 5; 1933 c 1 § 21; Rem. Supp. 1947 § 5114-21. Formerly RCW 29.10.110.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

LIST MAINTENANCE

29A.08.605 Registration list maintenance. (Effective July 1, 2004.) In addition to the case-by-case maintenance required under RCW 29A.08.620 and 29A.08.630 and the canceling of registrations under RCW 29A.08.510, the county auditor shall establish a general program of voter registration list maintenance. This program must be a thorough review that is applied uniformly throughout the county and

must be nondiscriminatory in its application. Any program established must be completed at least once every two years and not later than ninety days before the date of a primary or general election for federal office. The county may fulfill its obligations under this section in one of the following ways:

(1) The county auditor may enter into one or more contracts with the United States postal service, or its licensee, which permit the auditor to use postal service change-of-address information. If the auditor receives change of address information from the United States postal service that indicates that a voter has changed his or her residence address within the county, the auditor shall transfer the registration of that voter and send a confirmation notice informing the voter of the transfer to the new address. If the auditor receives postal change of address information indicating that the voter has moved out of the county, the auditor shall send a confirmation notice to the voter and advise the voter of the need to reregister in the new county. The auditor shall place the voter's registration on inactive status;

(2) A direct, nonforwardable, nonprofit or first-class mailing to every registered voter within the county bearing the postal endorsement "Return Service Requested." If address correction information for a voter is received by the county auditor after this mailing, the auditor shall place that voter on inactive status and shall send to the voter a confirmation notice;

(3) Any other method approved by the secretary of state. [2003 c 111 § 236. Prior: 1999 c 100 § 2; 1994 c 57 § 44; prior: 1993 c 434 § 10; 1993 c 417 § 8; 1991 c 363 § 31; 1989 c 261 § 1; 1987 c 359 § 1. Formerly RCW 29.10.180.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

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

29A.08.610 Dual registration or voting detection. (*Effective July 1, 2004.*) In addition to the case-by-case cancellation procedure required in RCW 29A.08.420, the county auditor, in conjunction with the office of the secretary of state, shall participate in an annual list maintenance program designed to detect persons registered in more than one county or voting in more than one county in an election. This program must be applied uniformly throughout the county and must be nondiscriminatory in its application. The program must be completed not later than thirty days before the date of a primary or general election.

The office of the secretary of state shall cause to be created a list of registered voters with the same date of birth and similar names who appear on two or more county lists of registered voters. The office of the secretary of state shall forward this list to each county auditor so that they may properly cancel the previous registration of voters who have subsequently registered in a different county. The county auditor of the county where the previous registration was made shall cancel the registration of the voter if it appears that the signatures in the registration and the signature provided to the new county on the voter's new registration were made by the same person.

If a voter is suspected of voting in two or more counties in an election, the county auditors in each county shall cooperate without delay to determine the voter's county of resi-

dence. The county auditor of the county of residence of the voter suspected of voting in two or more counties shall take action under RCW 29A.84.010 without delay. [2003 c 111 § 237; 2001 c 41 § 10; 1999 c 100 § 4. Formerly RCW 29.10.185.]

29A.08.615 "Active," "inactive" registered voters. (*Effective July 1, 2004.*) Registered voters are divided into two categories, "active" and "inactive." All registered voters are classified as active, unless assigned to inactive status by the county auditor. [2003 c 111 § 238. Prior: 1994 c 57 § 34. Formerly RCW 29.10.015.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

29A.08.620 Assignment of voter to inactive status—Confirmation notice. (*Effective July 1, 2004.*) (1) A county auditor shall assign a registered voter to inactive status and shall send the voter a confirmation notice if any of the following documents are returned by the postal service as undeliverable:

- (a) An acknowledgement of registration;
- (b) An acknowledgement of transfer to a new address;
- (c) A vote-by-mail ballot, absentee ballot, or application for a ballot;
- (d) Notification to a voter after precinct reassignment;
- (e) Notification to serve on jury duty; or
- (f) Any other document other than a confirmation notice, required by statute, to be mailed by the county auditor to the voter.

(2) A county auditor shall also assign a registered voter to inactive status and shall send the voter a confirmation notice:

- (a) Whenever change of address information received from the department of licensing under RCW 29A.08.350, or by any other agency designated to provide voter registration services under *RCW 29.07.420, indicates that the voter has moved to an address outside the county; or
- (b) If the auditor receives postal change of address information under RCW 29A.08.605, indicating that the voter has moved out of the county. [2003 c 111 § 239. Prior: 1994 c 57 § 38. Formerly RCW 29.10.071.]

***Reviser's note:** RCW 29.07.420 was repealed by 2003 c 111 § 2404, effective July 1, 2004. Registration agencies are now designated under RCW 29A.08.310.

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

29A.08.625 Voting by inactive or canceled voters. (*Effective July 1, 2004.*) (1) A voter whose registration has been made inactive under this chapter and who offers to vote at an ensuing election before two federal elections have been held must be allowed to vote a regular ballot and the voter's registration restored to active status.

(2) A voter whose registration has been properly canceled under this chapter shall vote a provisional ballot. The voter shall mark the provisional ballot in secrecy, the ballot placed in a security envelope, the security envelope placed in a provisional ballot envelope, and the reasons for the use of the provisional ballot noted.

(3) Upon receipt of such a voted provisional ballot the auditor shall investigate the circumstances surrounding the original cancellation. If he or she determines that the cancellation was in error, the voter's registration must be immediately reinstated, and the voter's provisional ballot must be counted. If the original cancellation was not in error, the voter must be afforded the opportunity to reregister at his or her correct address, and the voter's provisional ballot must not be counted. [2003 c 111 § 240; 1994 c 57 § 47. Formerly RCW 29.10.220.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

29A.08.630 Return of inactive voter to active status—Cancellation of registration. (Effective July 1, 2004.) The county auditor shall return an inactive voter to active voter status if, during the period beginning on the date the voter was assigned to inactive status and ending on the day of the second general election for federal office that occurs after the date that the voter was sent a confirmation notice, the voter: Notifies the auditor of a change of address within the county; responds to a confirmation notice with information that the voter continues to reside at the registration address; votes or attempts to vote in a primary or a special or general election and resides within the county; or signs any petition authorized by statute for which the signatures are required by law to be verified by the county auditor. If the inactive voter fails to provide such a notice or take such an action within that period, the auditor shall cancel the person's voter registration. [2003 c 111 § 241. Prior: 1994 c 57 § 39. Formerly RCW 29.10.075.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

29A.08.635 Confirmation notices—Form, contents. (Effective July 1, 2004.) Confirmation notices must be on a form prescribed by, or approved by, the secretary of state and must request that the voter confirm that he or she continues to reside at the address of record and desires to continue to use that address for voting purposes. The notice must inform the voter that if the voter does not respond to the notice and does not vote in either of the next two federal elections, his or her voter registration will be canceled. [2003 c 111 § 242. Prior: 1994 c 57 § 45. Formerly RCW 29.10.200.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

29A.08.640 Confirmation notice—Response, auditor's action. (Effective July 1, 2004.) If the response to the confirmation notice provides the county auditor with the information indicating that the voter has moved within the county, the auditor shall transfer the voter's registration. If the response indicates that the voter has left the county, the auditor shall cancel the voter's registration. [2003 c 111 § 243. Prior: 1994 c 57 § 46. Formerly RCW 29.10.210.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

29A.08.645 Electronic file format. (Effective July 1, 2004.) The secretary of state shall create a standard electronic file format (state transfer form) to be used for the trans-

fer of voter registration information between county auditors and the office of the secretary of state. The format must be prescribed by rule and contain at least the following information: Voter name, address, date of birth, date of registration, mailing address, legislative and congressional district, and digitized signature image. Each county shall program its voter registration system to convert this data from the county's storage format into the state transfer format. [2003 c 111 § 244; 1999 c 100 § 5. Formerly RCW 29.10.230.]

29A.08.650 Voter registration data base. (Effective July 1, 2004, until January 1, 2005.) (1) The office of the secretary of state shall work in conjunction with the county auditors of the state of Washington to initiate the creation of a statewide voter registration data base. The secretary of state shall identify a group of voter registration experts whose responsibility will be to work on a design for the voter registration data base system.

(2) Among the intended goals the voter registration data base must be designed to accomplish at a minimum, are the following:

- (a) Identify duplicate voter registrations;
- (b) Identify suspected duplicate voters;
- (c) Screen against the department of corrections data base to aid in the cancellation of voter registration of felons;
- (d) Provide up-to-date signatures of voters for the purposes of initiative signature checking;
- (e) Provide for a comparison between the voter registration data base and the department of licensing change of address data base;
- (f) Provide online access for county auditors with the goal of real time duplicate checking and update capabilities, if sufficient funds are available;
- (g) Provide for the cancellation of voter registration for persons who have moved to other states and surrendered their Washington state drivers' licenses;
- (h) Ensure that each county shall maintain legal control of the registration records for that county. [2003 c 111 § 245; 2002 c 21 § 2. Formerly RCW 29.04.250.]

Expiration date—2003 c 111 § 245: "RCW 29.04.250 and 2002 c 21 s 2 and section 245 of this act expire January 1, 2005." [2003 c 111 § 2403.]

Finding—2002 c 21: "The legislature recognizes that national task forces studying election issues have identified statewide voter registration systems as important tools for protecting the integrity of elections, and it is likely that federal funds will be made available for states that employ statewide voter registration systems. Therefore, the legislature finds a need for the state of Washington to begin the process of creating such a system." [2002 c 21 § 1.]

Effective date—2002 c 21: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect May 1, 2002." [2002 c 21 § 3.]

Expiration date—2002 c 21: "This act expires January 1, 2005." [2002 c 21 § 4.]

PUBLIC ACCESS TO REGISTRATION RECORDS

29A.08.710 Originals and automated files. (Effective July 1, 2004.) (1) The county auditor shall have custody of the voter registration records for each county. The original voter registration form must be filed without regard to pre-cinct and is considered confidential and unavailable for public inspection and copying. An automated file of all regis-

tered voters must be maintained pursuant to RCW 29A.08.125. An auditor may maintain the automated file in lieu of filing or maintaining the original voter registration forms if the automated file includes all of the information from the original voter registration forms including, but not limited to, a retrievable facsimile of each voter's signature.

(2) The following information contained in voter registration records or files regarding a voter or a group of voters is available for public inspection and copying: The voter's name, gender, voting record, date of registration, and registration number. The address and political jurisdiction of a registered voter are available for public inspection and copying except as provided by chapter 40.24 RCW. No other information from voter registration records or files is available for public inspection or copying. [2003 c 111 § 246; 1994 c 57 § 17; 1991 c 81 § 21; 1971 ex.s. c 202 § 17; 1965 c 9 § 29.07.130. Prior: 1933 c 1 § 13, part; RRS § 5114-13, part. Formerly RCW 29.07.130.]

Severability—1994 c 57: See note following RCW 10.64.021.

Effective date—1991 c 81: See note following RCW 29A.84.540.

29A.08.720 Registration, voting records—As public records—Information furnished—Restrictions, confidentiality. (Effective July 1, 2004.) (1) In the case of voter registration records received through the department of licensing, the identity of the office at which any particular individual registered to vote is not available for public inspection and shall not be disclosed to the public. In the case of voter registration records received through an agency designated under *RCW 29.07.420, the identity of the agency at which any particular individual registered to vote is not available for public inspection and shall not be disclosed to the public. Any record of a particular individual's choice not to register to vote at an office of the department of licensing or a state agency designated under *RCW 29.07.420 is not available for public inspection and any information regarding such a choice by a particular individual shall not be disclosed to the public.

(2) All poll books or current lists of registered voters, except original voter registration forms or their images, shall be public records and be made available for inspection under such reasonable rules and regulations as the county auditor may prescribe. The county auditor shall promptly furnish current lists or mailing labels of registered voters in his or her possession, at actual reproduction cost, to any person requesting such information. The lists and labels shall not be used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. However, the lists and labels may be used for any political purpose. [2003 c 111 § 247; 1994 c 57 § 5; 1975-'76 2nd ex.s. c 46 § 1; 1974 ex.s. c 127 § 2; 1973 1st ex.s. c 111 § 2; 1971 ex.s. c 202 § 3; 1965 ex.s. c 156 § 6. Formerly RCW 29.04.100.]

***Reviser's note:** RCW 29.07.420 was repealed by 2003 c 111 § 2404, effective July 1, 2004. Registration agencies are now designated under RCW 29A.08.310.

Severability—1994 c 57: See note following RCW 10.64.021.

Forms, secretary of state to design—Availability to public: RCW 29A.08.850.

Signature required to vote—Procedure if voter unable to sign name: RCW 29A.44.210.

29A.08.730 Registration, voting—Furnishing data upon request—Cost—Use restricted. (Effective July 1, 2004.) Except original voter registration forms or their images, a reproduction of any form of data storage, in the custody of the county auditor, including poll books and precinct lists of registered voters, magnetic tapes or discs, punched cards, and any other form of storage of such books and lists, shall at the written request of any person be furnished to him or her by the county auditor pursuant to such reasonable rules and regulations as the county auditor may prescribe, and at a cost equal to the county's actual cost in reproducing such form of data storage. Any data contained in a form of storage furnished under this section shall not be used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product or service or for the purpose of mailing or delivering any solicitation for money, services or anything of value. However, the data may be used for any political purpose. Whenever the county auditor furnishes any form of data storage under this section, he or she shall also furnish the person receiving the same with a copy of RCW 29A.08.740. [2003 c 111 § 248; 1994 c 57 § 6; 1973 1st ex.s. c 111 § 3. Formerly RCW 29.04.110.]

Severability—1994 c 57: See note following RCW 10.64.021.

29A.08.740 Violations of restricted use of registered voter data—Penalties—Liabilities. (Effective July 1, 2004.) (1) Any person who uses registered voter data furnished under RCW 29A.08.720 or 29A.08.730 for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value is guilty of a class C felony punishable by imprisonment in a state correctional facility for a period of not more than five years or a fine of not more than ten thousand dollars or both such fine and imprisonment, and is liable to each person provided such advertisement or solicitation, without the person's consent, for the nuisance value of such person having to dispose of it, which value is herein established at five dollars for each item mailed or delivered to the person's residence. However, a person who mails or delivers any advertisement, offer, or solicitation for a political purpose is not liable under this section unless the person is liable under subsection (2) of this section. For purposes of this subsection, two or more attached papers or sheets or two or more papers that are enclosed in the same envelope or container or are folded together are one item. Merely having a mailbox or other receptacle for mail on or near the person's residence is not an indication that the person consented to receive the advertisement or solicitation. A class action may be brought to recover damages under this section, and the court may award a reasonable attorney's fee to any party recovering damages under this section.

(2) Each person furnished data under RCW 29A.08.720 or 29A.08.730 shall take reasonable precautions designed to assure that the data is not used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose

of mailing or delivering any solicitation for money, services, or anything of value. However, the data may be used for any political purpose. Where failure to exercise due care in carrying out this responsibility results in the data being used for such purposes, then such person is jointly and severally liable for damages under subsection (1) of this section along with any other person liable under subsection (1) of this section for the misuse of such data. [2003 c 111 § 249; 2003 c 53 § 176; 1999 c 298 § 2; 1992 c 7 § 32; 1974 ex.s. c 127 § 3; 1973 1st ex.s. c 111 § 4. Formerly RCW 29.04.120.]

Reviser's note: This section was amended by 2003 c 53 § 176 and by 2003 c 111 § 249, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

29A.08.750 Computer file of registered voters—County records to secretary of state—Reimbursement. (Effective July 1, 2004.) (1) No later than June 15th or November 15th, any political party organization or any other individual may request in writing from the secretary of state to receive a copy of the subsequent statewide computer file of registered voters compiled under subsection (2) of this section. At the time it makes this request, the political party or individual shall deposit sufficient funds with the secretary of state to pay for the cost of assembling, compiling, and distributing the computer file of registered voters and shall agree to the statutory restrictions regarding the commercial use of this data.

(2) Not earlier than January 1st or July 1st subsequent to the receipt of a request and deposit under subsection (1) of this section, each county auditor shall provide to the secretary of state, or a data processing agency designated by the secretary of state, a duplicate computer tape or data file of the records of the registered voters in that county, containing the information specified in RCW 29A.08.125. The secretary of state shall reimburse each county for the actual cost of reproduction and mailing of the duplicate computer tape or data file. [2003 c 111 § 250. Prior: 1993 c 441 § 1; 1975-'76 2nd ex.s. c 46 § 2. Formerly RCW 29.04.150.]

Effective date—1993 c 441: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 441 § 3.]

29A.08.760 Computer file—Duplicate copy—Restrictions and penalties. (Effective July 1, 2004.) As soon as any or all of the voter registration data from the counties has been received under RCW 29A.08.750 and processed, the secretary of state shall provide a duplicate copy of this data to the political party organization or other individual making the request, at cost, shall provide a duplicate copy of the master statewide computer tape or data file of registered voters to the statute law committee without cost, and shall provide a duplicate copy of the master statewide computer tape or electronic data file of registered voters to the department of information services for purposes of creating the jury source list without cost. Restrictions as to the commercial use of the information on the statewide computer tape or data file of registered voters, and penalties for its misuse, shall be the same as provided in RCW 29A.08.730 and 29A.08.740.

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[2003 c 111 § 251; 1995 c 135 § 2. Prior: 1993 c 441 § 2; 1993 c 408 § 10; 1977 ex.s. c 226 § 1; 1975-'76 2nd ex.s. c 46 § 3. Formerly RCW 29.04.160.]

Intent—1995 c 135: "The only intent of the legislature in this act is to correct multiple amendments and delete obsolete provisions. It is not the intent of the legislature to change the substance or effect of any presently effective statute." [1995 c 135 § 1.]

Effective date—1993 c 441: See note following RCW 29A.08.750.

Severability—Effective dates—1993 c 408: See notes following RCW 2.36.054.

29A.08.770 Records concerning accuracy and currency of voters lists. (Effective July 1, 2004.) Each county auditor shall maintain for at least two years and shall make available for public inspection and copying all records concerning the implementation of programs and activities conducted for the purpose of insuring the accuracy and currency of official lists of eligible voters. These records must include lists of the names and addresses of all persons to whom notices are sent and information concerning whether or not each person has responded to the notices. These records must contain lists of all persons removed from the list of eligible voters and the reasons why the voters were removed. [2003 c 111 § 252. Prior: 1994 c 57 § 7. Formerly RCW 29.04.240.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

CHALLENGES

29A.08.810 Initiation. (Effective July 1, 2004.) Registration of a person as a voter is presumptive evidence of his or her right to vote at any primary or election, general or special. A person's right to vote may be challenged at the polls only by a precinct judge or inspector. A challenge may be made only upon the belief or knowledge of the challenging officer that the voter is unqualified. The challenge must be supported by evidence or testimony given to the county canvassing board under RCW 29A.08.820 and may not be based on unsupported allegations or allegations by anonymous third parties. The identity of the challenger, and any third person involved in the challenge, shall be public record and shall be announced at the time the challenge is made.

Challenges initiated by a registered voter must be filed not later than the day before any primary or election, general or special, at the office of the appropriate county auditor. A challenged voter may properly transfer or reregister until three days before the primary or election, general or special, by applying personally to the county auditor. Challenges may also be initiated by the office of the county prosecuting attorney and must be filed in the same manner as challenges initiated by a registered voter. [2003 c 111 § 253. Prior: 2001 c 41 § 9; 1987 c 288 § 1; 1983 1st ex.s. c 30 § 2. Formerly RCW 29.10.125.]

Right to vote

loss of: State Constitution Art. 6 § 3, RCW 11.88.010, 11.88.090.

restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

29A.08.820 Voting by person challenged—Burden of proof, procedures. (Effective July 1, 2004.) When the right of a person has been challenged under RCW 29A.08.810 or

29A.08.830(2), the challenged person shall be permitted to vote a ballot which shall be placed in a sealed envelope separate from other voted ballots. In precincts where voting machines are used, any person whose right to vote is challenged under RCW 29A.08.810 or 29A.08.830(2) shall be furnished a paper ballot, which shall be placed in a sealed envelope after being marked. Included with the challenged ballot shall be (1) an affidavit filed under RCW 29A.08.830 challenging the person's right to vote or (2) an affidavit signed by the precinct election officer and any third party involved in the officer's challenge and stating the reasons the voter is being challenged. The sealed ballots of challenged voters shall be transmitted at the close of the election to the canvassing board or other authority charged by law with canvassing the returns of the particular primary or election. The county auditor shall notify the challenger and the challenged voter, by certified mail, of the time and place at which the county canvassing board will meet to rule on challenged ballots. If the challenge is made by a precinct election officer under RCW 29A.08.810, the officer must appear in person before the board unless he or she has received written authorization from the canvassing board to submit an affidavit supporting the challenge. If the challenging officer has based his or her challenge upon evidence provided by a third party, that third party must appear with the challenging officer before the canvassing board, unless he or she has received written authorization from the canvassing board to submit an affidavit supporting the challenge. If the challenge is filed under RCW 29A.08.830, the challenger must either appear in person before the board or submit an affidavit supporting the challenge. The challenging party must prove to the canvassing board by clear and convincing evidence that the challenged voter's registration is improper. If the challenging party fails to meet this burden, the challenged ballot shall be accepted as valid and counted. The canvassing board shall give the challenged voter the opportunity to present testimony, either in person or by affidavit, and evidence to the canvassing board before making their determination. All challenged ballots must be determined no later than the time of canvassing for the particular primary or election. The decision of the canvassing board or other authority charged by law with canvassing the returns shall be final. Challenges of absentee ballots shall be determined according to RCW 29A.40.140. [2003 c 111 § 254; 1987 c 288 § 2; 1983 1st ex.s. c 30 § 3. Formerly RCW 29.10.127.]

Right to vote

loss of: State Constitution Art. 6 § 3, RCW 11.88.010, 11.88.090.

restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

29A.08.830 Affidavit—Administration, notice of challenge. (Effective July 1, 2004.) (1) Any registered voter may request that the registration of another voter be canceled if he or she believes that the voter does not meet the requirements of Article VI, section 1 of the state Constitution or that voter no longer maintains a legal voting residence at the address shown on his or her registration record. The challenger shall file with the county auditor a signed affidavit subject to the penalties of perjury, to the effect that to his or her personal knowledge and belief another registered voter does not actually reside at the address as given on his or her

registration record or is otherwise not a qualified voter and that the voter in question is not protected by the provisions of Article VI, section 4, of the Constitution of the state of Washington. The person filing the challenge must furnish the address at which the challenged voter actually resides.

(2) Any such challenge of a voter's registration and right to vote made less than thirty days before a primary or election, special or general, shall be administered under RCW 29A.08.820. The county auditor shall notify the challenged voter and the precinct election officers in the voter's precinct that a challenge has been filed, provide the name of the challenger, and instruct both the precinct election officers and the voter that, in the event the challenged voter desires to vote at the ensuing primary or election, a challenged ballot will be provided. The voter shall also be informed that the status of his or her registration and the disposition of any challenged ballot will be determined by the county canvassing board in the manner provided by RCW 29A.08.820. If the challenged voter does not vote at the ensuing primary or election, the challenge shall be processed in the same manner as challenges made more than thirty days prior to the primary or election under RCW 29A.08.840. [2003 c 111 § 255. Prior: 1987 c 288 § 3; 1983 1st ex.s. c 30 § 4; 1967 c 225 § 2; 1965 ex.s. c 156 § 2. Formerly RCW 29.10.130.]

29A.08.840 Procedure before cancellation. (Effective July 1, 2004.) All challenges of voter registration under RCW 29A.08.830 made thirty days or more before a primary or election, general or special, shall be delivered to the appropriate county auditor who shall notify the challenged voter, by certified mail, that his or her voter registration has been challenged.

The notification shall be mailed to the address at which the challenged voter is registered, any address provided by the challenger under RCW 29A.08.830, and to any other address at which the individual whose registration is being challenged is alleged to reside or at which the county auditor would reasonably expect that individual to receive notice of the challenge of his or her voter registration. Included in the notification shall be a request that the challenged voter appear at a hearing to be held within ten days of the mailing of the request, at the place, day, and hour stated, in order to determine the validity of his or her registration. The challenger shall be provided with a copy of this notification and request. If either the challenger or the challenged voter is unable to appear in person, he or she may file a reply by means of an affidavit stating under oath the reasons he or she believes the registration to be invalid or valid.

If both the challenger and the challenged voter file affidavits instead of appearing in person, an evaluation of the affidavits by the county auditor constitutes a hearing for the purposes of this section.

The county auditor shall hold a hearing at which time both parties may present their facts and arguments. After reviewing the facts and arguments, including any evidence submitted by either side, the county auditor shall rule as to the validity or invalidity of the challenged registration. His or her ruling is final subject only to a petition for judicial review by the superior court under chapter 34.05 RCW. If either party, or both parties, fail to appear at the meeting or fail to file an affidavit, the county auditor shall determine the status

of the registration based on his or her evaluation of the available facts. [2003 c 111 § 256. Prior: 1987 c 288 § 4; 1983 1st ex.s. c 30 § 5; 1971 ex.s. c 202 § 34; 1967 c 225 § 3; 1965 ex.s. c 156 § 3. Formerly RCW 29.10.140.]

29A.08.850 Challenge of registration—Forms, availability. (*Effective July 1, 2004.*) The secretary of state as chief elections officer shall cause appropriate forms to be designed to carry out the provisions of RCW 29A.08.830 and 29A.08.840. The county auditors and registration assistants shall have such forms available. Further, a reasonable supply of such forms shall be at each polling place on the day of a primary or election, general or special. [2003 c 111 § 257; 1991 c 81 § 27; 1971 ex.s. c 202 § 35; 1965 ex.s. c 156 § 4. Formerly RCW 29.10.150.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

Chapter 29A.12 RCW VOTING SYSTEMS

Sections

29A.12.010	Authority for use. (<i>Effective July 1, 2004.</i>)
29A.12.020	Inspection and test by secretary of state—Report. (<i>Effective July 1, 2004.</i>)
29A.12.030	Submitting system or component for examination. (<i>Effective July 1, 2004.</i>)
29A.12.040	Independent evaluation. (<i>Effective July 1, 2004.</i>)
29A.12.050	Approval required—Modification. (<i>Effective July 1, 2004.</i>)
29A.12.060	Maintenance and operation. (<i>Effective July 1, 2004.</i>)
29A.12.070	Acceptance test. (<i>Effective July 1, 2004.</i>)
29A.12.080	Requirements for approval. (<i>Effective July 1, 2004.</i>)
29A.12.090	Single district and precinct. (<i>Effective July 1, 2004.</i>)
29A.12.100	Requirements of tallying systems for approval. (<i>Effective July 1, 2004.</i>)
29A.12.110	Record of ballot format—Devices sealed. (<i>Effective July 1, 2004.</i>)
29A.12.120	Election officials—Instruction, compensation, requirements. (<i>Effective July 1, 2004.</i>)
29A.12.130	Tallying systems—Programming tests. (<i>Effective July 1, 2004.</i>)
29A.12.140	Operating procedures. (<i>Effective July 1, 2004.</i>)
29A.12.150	Recording requirements. (<i>Effective July 1, 2004.</i>)

29A.12.010 Authority for use. (*Effective July 1, 2004.*) At any primary or election in any county, votes may be cast, registered, recorded, or counted by means of voting systems that have been approved under RCW 29A.12.020. [2003 c 111 § 301. Prior: 1990 c 59 § 17; 1967 ex.s. c 109 § 12; 1965 c 9 § 29.33.020; prior: (i) 1913 c 58 § 1, part; RRS § 5300, part. (ii) 1913 c 58 § 18; RRS § 5318. Formerly RCW 29.33.020.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.12.020 Inspection and test by secretary of state—Report. (*Effective July 1, 2004.*) The secretary of state shall inspect, evaluate, and publicly test all voting systems or components of voting systems that are submitted for review under RCW 29A.12.030. The secretary of state shall determine whether the voting systems conform with all of the requirements of this title, the applicable rules adopted in accordance with this title, and with generally accepted safety requirements. The secretary of state shall transmit a copy of the report of any examination under this section, within thirty days after completing the examination, to the county auditor

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of each county. [2003 c 111 § 302. Prior: 1990 c 59 § 18; 1982 c 40 § 1. Formerly RCW 29.33.041.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Severability—1982 c 40: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 40 § 11.]

29A.12.030 Submitting system or component for examination. (*Effective July 1, 2004.*) The manufacturer or distributor of a voting system or component of a voting system may submit that system or component to the secretary of state for examination under RCW 29A.12.020. [2003 c 111 § 303. Prior: 1990 c 59 § 19; 1982 c 40 § 2. Formerly RCW 29.33.051.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Severability—1982 c 40: See note following RCW 29A.12.020.

29A.12.040 Independent evaluation. (*Effective July 1, 2004.*) (1) The secretary of state may rely on the results of independent design, engineering, and performance evaluations in the examination under RCW 29A.12.020 if the source and scope of these independent evaluations are specified by rule.

(2) The secretary of state may contract with experts in mechanical or electrical engineering or data processing to assist in examining a voting system or component. The manufacturer or distributor who has submitted a voting system for testing under RCW 29A.12.030 shall pay the secretary of state a deposit to reimburse the cost of any contract for consultation under this section and for any other unrecoverable costs associated with the examination of a voting system or component by the manufacturer or distributor who submitted the voting system or component for examination. [2003 c 111 § 304. Prior: 1990 c 59 § 20; 1982 c 40 § 3. Formerly RCW 29.33.061.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Severability—1982 c 40: See note following RCW 29A.12.020.

29A.12.050 Approval required—Modification. (*Effective July 1, 2004.*) If voting systems or devices or vote tallying systems are to be used for conducting a primary or election, only those that have the approval of the secretary of state or had been approved under this chapter or the former chapter 29.34 RCW before March 22, 1982, may be used. Any modification, change, or improvement to any voting system or component of a system that does not impair its accuracy, efficiency, or capacity or extend its function, may be made without reexamination or reapproval by the secretary of state under RCW 29A.12.020. [2003 c 111 § 305; 1990 c 59 § 21; 1982 c 40 § 4. Formerly RCW 29.33.081.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Severability—1982 c 40: See note following RCW 29A.12.020.

29A.12.060 Maintenance and operation. (*Effective July 1, 2004.*) The county auditor of a county in which voting systems are used is responsible for the preparation, main-

tenance, and operation of those systems and may employ and direct persons to perform some or all of these functions. [2003 c 111 § 306. Prior: 1990 c 59 s 22; 1965 c 9 § 29.33.130; prior: 1955 c 323 § 2; prior: 1935 c 85 § 1, part; 1919 c 163 § 23, part; 1915 c 114 § 5, part; 1913 c 58 § 10, part; RRS § 5309, part. Formerly RCW 29.33.130.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.12.070 Acceptance test. (Effective July 1, 2004.)

An agreement to purchase or lease a voting system or a component of a voting system is subject to that system or component passing an acceptance test sufficient to demonstrate that the equipment is the same as that certified by the secretary of state and that the equipment is operating correctly as delivered to the county. [2003 c 111 § 307. Prior: 1998 c 58 § 1; 1990 c 59 § 23. Formerly RCW 29.33.145.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.12.080 Requirements for approval. (Effective July 1, 2004.) No voting device shall be approved by the secretary of state unless it:

- (1) Secures to the voter secrecy in the act of voting;
- (2) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;
- (3) Permits the voter to vote for all the candidates of one party or in part for the candidates of one or more other parties;
- (4) Correctly registers all votes cast for any and all persons and for or against any and all measures;
- (5) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for president and vice president of the United States; and
- (6) Except for functions or capabilities unique to this state, has been tested, certified, and used in at least one other state or election jurisdiction. [2003 c 111 § 308. Prior: 1990 c 59 § 26; 1982 c 40 § 6; 1977 ex.s. c 361 § 66; 1971 ex.s. c 6 § 1; 1967 ex.s. c 109 § 18. Formerly RCW 29.33.300, 29.34.080.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Severability—1982 c 40: See note following RCW 29A.12.020.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

Severability—1971 ex.s. c 6: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 6 § 3.]

Voting devices, machines—Recording requirements: RCW 29A.12.150.

29A.12.090 Single district and precinct. (Effective July 1, 2004.) The ballot on a single voting device shall not contain the names of candidates for the offices of United States representative, state senator, state representative, county council, or county commissioner in more than one district. In all general elections, primaries, and special elections, in each polling place the voting devices containing ballots for candidates from each congressional, legislative, or county council or commissioner district shall be grouped

together and physically separated from those devices containing ballots for other districts. Each voter shall be directed by the precinct election officers to the correct group of voting devices. [2003 c 111 § 309. Prior: 1990 c 59 § 27; 1989 c 155 § 1; 1987 c 295 § 8; 1983 c 143 § 1. Formerly RCW 29.33.310, 29.34.085.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.12.100 Requirements of tallying systems for approval. (Effective July 1, 2004.) The secretary of state shall not approve a vote tallying system unless it:

- (1) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;
- (2) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;
- (3) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each issue of the ballot in that precinct;
- (4) Accommodates rotation of candidates' names on the ballot under RCW 29A.36.140;
- (5) Produces precinct and cumulative totals in printed form; and
- (6) Except for functions or capabilities unique to this state, has been tested, certified, and used in at least one other state or election jurisdiction. [2003 c 111 § 310. Prior: 1990 c 59 § 28; 1982 c 40 § 7; 1967 ex.s. c 109 § 19. Formerly RCW 29.33.320, 29.34.090.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Severability—1982 c 40: See note following RCW 29A.12.020.

Voting devices, machines—Recording requirements: RCW 29A.12.150.

29A.12.110 Record of ballot format—Devices sealed. (Effective July 1, 2004.) In preparing a voting device for a primary or election, a record shall be made of the ballot format installed in each device and the precinct or portion of a precinct for which that device has been prepared. Except where provided by a rule adopted under RCW 29A.04.610, after being prepared for a primary or election, each device shall be sealed with a uniquely numbered seal and provided to the inspector of the appropriate polling place. [2003 c 111 § 311; 1990 c 59 § 25. Formerly RCW 29.33.330.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.12.120 Election officials—Instruction, compensation, requirements. (Effective July 1, 2004.) (1) Before each state primary or general election at which voting systems are to be used, the county auditor shall instruct all precinct election officers appointed under RCW 29A.44.410, counting center personnel, and political party observers designated under RCW 29A.60.170 in the proper conduct of their duties.

(2) The county auditor may waive instructional requirements for precinct election officers, counting center personnel, and political party observers who have previously received instruction and who have served for a sufficient length of time to be fully qualified to perform their duties.

The county auditor shall keep a record of each person who has received instruction and is qualified to serve at the subsequent primary or election.

(3) As compensation for the time spent in receiving instruction, each precinct election officer who qualifies and serves at the subsequent primary or election shall receive an additional two hours compensation, to be paid at the same time and in the same manner as compensation is paid for services on the day of the primary or election.

(4) Except for the appointment of a precinct election officer to fill a vacancy under RCW 29A.44.440, no inspector or judge may serve at any primary or election at which voting systems are used unless he or she has received the required instruction and is qualified to perform his or her duties in connection with the voting devices. No person may work in a counting center at a primary or election at which a vote tallying system is used unless that person has received the required instruction and is qualified to perform his or her duties in connection with the handling and tallying of ballots for that primary or election. No person may serve as a political party observer unless that person has received the required instruction and is familiar with the operation of the counting center and the vote tallying system and the procedures to be employed to verify the accuracy of the programming for that vote tallying system. [2003 c 111 § 312. Prior: 1990 c 59 § 29; 1977 ex.s. c 361 § 69. Formerly RCW 29.33.340, 29.34.143.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.12.130 Tallying systems—Programming tests. (*Effective July 1, 2004.*) At least three days before each state primary or general election, the office of the secretary of state shall provide for the conduct of tests of the programming for each vote tallying system to be used at that primary or general election. The test must verify that the system will correctly count the vote cast for all candidates and on all measures appearing on the ballot at that primary or general election. The test shall verify the capability of the vote tallying system to perform all of the functions that can reasonably be expected to occur during conduct of that particular primary or election. If any error is detected, the cause shall be determined and corrected, and an errorless total shall be produced before the primary or election.

Such tests shall be observed by at least one representative from each major political party, if representatives have been appointed by the respective major political parties and are present at the test, and shall be open to candidates, the press, and the public. The county auditor and any political party observers shall certify that the test has been conducted in accordance with this section. Copies of this certification shall be retained by the secretary of state and the county auditor. All programming materials, test results, and test ballots shall be securely sealed until the day of the primary or general election. [2003 c 111 § 313; 1998 c 58 § 2; 1990 c 59 § 32; 1977 ex.s. c 361 § 73. Formerly RCW 29.33.350, 29.34.163.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

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Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.12.140 Operating procedures. (*Effective July 1, 2004.*) The secretary of state may publish recommended procedures for the operation of the various vote tallying systems that have been approved. These procedures allow the office of the secretary of state to restrict or define the use of approved systems in elections. [2003 c 111 § 314. Prior: 1998 c 58 § 3; 1990 c 59 § 34; 1977 ex.s. c 361 § 75; 1967 ex.s. c 109 § 32. Formerly RCW 29.33.360, 29.34.170.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.12.150 Recording requirements. (*Effective July 1, 2004.*) (1) No voting device or machine may be used in a county with a population of seventy thousand or more to conduct a primary or general or special election in this state unless it correctly records on a separate ballot the votes cast by each elector for any person and for or against any measure and such separate ballots are available for audit purposes after such a primary or election.

(2) The secretary of state shall not certify under this title any voting device or machine for use in conducting a primary or general or special election in this state unless the device or machine correctly records on a separate ballot the votes cast by each elector for any person and for or against any measure and such separate ballots are available for audit purposes after such a primary or election. [2003 c 111 § 315; 1998 c 245 § 26; 1991 c 363 § 30; 1990 c 184 § 1. Formerly RCW 29.04.200.]

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

Chapter 29A.16 RCW

PRECINCT AND POLLING PLACE DETERMINATION AND ACCESSIBILITY

Sections

29A.16.010	Intent—Duties of county auditors. (<i>Effective July 1, 2004.</i>)
29A.16.020	Alternative polling places or procedures. (<i>Effective July 1, 2004.</i>)
29A.16.030	Costs for modifications—Alternatives—Election costs. (<i>Effective July 1, 2004.</i>)
29A.16.040	Precincts—Number of voters—Dividing, altering, or combining—Creating new precincts. (<i>Effective July 1, 2004.</i>)
29A.16.050	Precincts—Restrictions on precinct boundaries—Designated by number. (<i>Effective July 1, 2004.</i>)
29A.16.060	Combining or dividing precincts, election boards. (<i>Effective July 1, 2004.</i>)
29A.16.110	Polling place—May be located outside precinct. (<i>Effective July 1, 2004.</i>)
29A.16.120	Polling place—Use of county, municipality, or special district facilities. (<i>Effective July 1, 2004.</i>)
29A.16.130	Public buildings as polling places. (<i>Effective July 1, 2004.</i>)
29A.16.140	Inaccessible polling places—Auditors' list. (<i>Effective July 1, 2004.</i>)
29A.16.150	Polling places—Accessibility required, exceptions. (<i>Effective July 1, 2004.</i>)
29A.16.160	Review by and recommendations of disabled voters. (<i>Effective July 1, 2004.</i>)
29A.16.170	County auditors—Notice of accessibility. (<i>Effective July 1, 2004.</i>)

29A.16.010 Intent—Duties of county auditors. (*Effective July 1, 2004.*) The intent of this chapter is to require state and local election officials to designate and use polling places in all elections and permanent registration locations which are accessible to elderly and disabled persons. County auditors shall:

- (1) Make modifications such as installation of temporary ramps or relocation of polling places within buildings, where appropriate;
- (2) Designate new, accessible polling places to replace those that are inaccessible; and
- (3) Continue to use polling places and voter registration locations which are accessible to elderly and disabled persons. [2003 c 111 § 401; 1999 c 298 § 13; 1985 c 205 § 1; 1979 ex.s. c 64 § 1. Formerly RCW 29.57.010.]

29A.16.020 Alternative polling places or procedures. (*Effective July 1, 2004.*) The secretary of state shall establish procedures to assure that, in any primary or election, any disabled or elderly voter assigned to an inaccessible polling place will, upon advance request of that voter, either be permitted to vote at an alternative accessible polling place not overly inconvenient to that voter or be provided with an alternative means of casting a ballot on the day of the primary or election. The county auditor shall make any accommodations in voting procedures necessary to allow the use of alternative polling places by elderly or disabled voters under this section. [2003 c 111 § 402; 1999 c 298 § 15; 1985 c 205 § 5. Formerly RCW 29.57.090.]

Effective dates—1985 c 205: See note following RCW 29A.16.140.

29A.16.030 Costs for modifications—Alternatives—Election costs. (*Effective July 1, 2004.*) (1) County auditors shall seek alternative polling places or other low-cost alternatives including, but not limited to, procedural changes and assistance from local disabled groups, service organizations, and other private sources before incurring costs for modifications under this chapter.

(2) The cost of those modifications to buildings or other facilities, including signs designating disabled accessible parking and entrances, that are necessary to permit the use of those facilities for polling places under this chapter or any procedures established under RCW 29A.16.020 shall be treated as election costs and prorated under RCW 29A.04.410. [2003 c 111 § 403; 1999 c 298 § 20; 1985 c 205 § 12. Formerly RCW 29.57.160.]

Effective dates—1985 c 205: See note following RCW 29A.16.140.

29A.16.040 Precincts—Number of voters—Dividing, altering, or combining—Creating new precincts. (*Effective July 1, 2004.*) (1) Precinct boundaries may be altered at any time as long as sufficient time exists prior to a given election for the necessary procedural steps to be honored. Except as permitted under subsection (4) of this section, no precinct boundaries may be changed during the period starting on the thirtieth day prior to the first day for candidates to file for the primary election and ending with the day of the general election.

(2) Precincts in which voting machines or electronic voting devices are used may contain as many as nine hundred

active registered voters. The number of poll-site ballot counting devices at each polling place is at the discretion of the auditor. The number of devices must be adequate to meet the expected voter turnout.

(3) On petition of twenty-five or more voters resident more than ten miles from any polling site, the county legislative authority shall establish a separate voting precinct therefor.

(4) The county auditor shall temporarily adjust precinct boundaries when a city or town annexes unincorporated territory to the city or town, or whenever unincorporated territory is incorporated as a city or town. The adjustment must be made as soon as possible after the approval of the annexation or incorporation. The temporary adjustment must be limited to the minimum changes necessary to accommodate the addition of the territory to the city or town, or to establish the eligible voters within the boundaries of the new city or town, and remains in effect only until precinct boundary modifications reflecting the annexation or incorporation are adopted by the county legislative authority.

The county legislative authority may establish by ordinance a limitation on the maximum number of active registered voters in each precinct within its jurisdiction. The limitation may be different for precincts based upon the method of voting used for such precincts and the number may be less than the number established by law, but in no case may the number exceed that authorized by law.

The county legislative authority of each county in the state hereafter formed shall, at their first session, divide their respective counties into election precincts and establish the boundaries of the precincts. The county auditor shall thereupon designate the voting place for each such precinct or whether the precinct is a vote by mail precinct.

(5) In determining the number of active registered voters for the purposes of this section, persons who are ongoing absentee voters under RCW 29A.40.040 shall not be counted. Nothing in this subsection may be construed as altering the vote tallying requirements of RCW 29A.60.230. [2003 c 111 § 404; 1999 c 158 § 3; 1994 c 57 § 3; 1986 c 167 § 2; 1980 c 107 § 3. Prior: 1977 ex.s. c 361 § 4; 1977 ex.s. c 128 § 1; 1975-'76 2nd ex.s. c 129 § 3; 1967 ex.s. c 109 § 1; 1965 c 9 § 29.04.040; prior: (i) 1921 c 178 § 1, part; 1915 c 11 § 1, part; 1907 c 130 § 1, part; 1889 p 402 § 7, part; Code 1881 § 3067, part; 1865 p 30 § 1, part; RRS § 5171, part. (ii) 1907 c 130 § 2, part; 1889 p 408 § 21, part; RRS § 5278, part. (iii) Code 1881 § 2679; 1854 p 65 § 4, part; No RRS. Formerly RCW 29.04.040.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

Severability—1986 c 167: See note following RCW 29A.04.049.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

Severability—1977 ex.s. c 128: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 128 § 6.]

Effective date—Severability—1975-'76 2nd ex.s. c 129: See notes following RCW 29A.76.040.

"Precinct" defined: RCW 29A.04.121.

29A.16.050 Precincts—Restrictions on precinct boundaries—Designated by number. (*Effective July 1, 2004.*) (1) Every voting precinct must be wholly within a single congressional district, a single legislative district, a single district of a county legislative authority, and, if applicable, a single city.

(2) Every voting precinct shall be composed, as nearly as practicable, of contiguous and compact areas.

(3) Except as provided in this subsection, changes to the boundaries of any precinct shall follow visible, physical features delineated on the most current maps provided by the United States census bureau. A change need not follow such visible, physical features if (a) it is necessitated by an annexation or incorporation and the proposed precinct boundary is identical to an exterior boundary of the annexed or incorporated area which does not follow a visible, physical feature; or (b) doing so would substantially impair election administration in the involved area.

(4) After a change to precinct boundaries is adopted by the county legislative authority, if the change does not follow visible physical features, the county auditor shall send to the secretary of state an electronic or paper copy of the description, a map or maps of the changes, and a statement of the applicable exception under subsection (3) of this section. For boundary changes made pursuant to subsection (3)(b) of this section, the auditor shall include a statement of the reasons why following visible, physical features would have substantially impaired election administration.

(5) Every voting precinct within each county shall be designated by number for the purpose of preparation of maps and the tabulation of population for apportionment purposes. These precincts may be identified with names or other numbers for other election purposes.

(6) After a change to precinct boundaries in a city or town, the county auditor shall send one copy of the map or maps delineating the new precinct boundaries within that city or town to the city or town clerk.

(7) Precinct maps are public records and shall be available for inspection by the public during normal office hours in the offices where they are kept. Copies shall be made available to the public for a fee necessary to cover the cost of reproduction. [2003 c 111 § 405; 1999 c 298 § 1; 1989 c 278 § 1; 1977 ex.s. c 128 § 2; 1965 c 9 § 29.04.050. Prior: 1921 c 178 § 1, part; 1915 c 11 § 1, part; 1907 c 130 § 1, part; 1889 p 402 § 7, part; Code 1881 § 3067, part; 1865 p 30 § 1, part; RRS § 5171, part. Formerly RCW 29.04.050.]

Severability—1977 ex.s. c 128: See note following RCW 29A.16.040.

29A.16.060 Combining or dividing precincts, election boards. (*Effective July 1, 2004.*) At any special election or primary, the county auditor may combine, unite, or divide precincts and may combine or unite election boards for the purpose of holding such election. At any general election, the county auditor may combine or unite election boards for the purpose of holding such election, but shall report all election returns by individual precinct. [2003 c 111 § 406. Prior: 2001 c 241 § 22; 1986 c 167 § 3; 1977 ex.s. c 361 § 5; 1974 ex.s. c 127 § 1; 1965 c 9 § 29.04.055; prior: 1963 c 200 § 22; 1951 c 70 § 1. Formerly RCW 29.04.055.]

Severability—1986 c 167: See note following RCW 29A.04.049.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.16.110 Polling place—May be located outside precinct. (*Effective July 1, 2004.*) Polling places for the various voting precincts may be located outside the boundaries of the respective precincts, when the officers conducting the primary or election shall deem it feasible. However, such polling places must be located within a reasonable distance of their respective precincts. The purpose of this section is to furnish adequate voting facilities at readily accessible and identifiable locations, and nothing in this section affects the number, method of selection, or duties of precinct election officers. [2003 c 111 § 407; 1965 c 9 § 29.48.005. Prior: 1951 c 123 § 1. Formerly RCW 29.48.005.]

29A.16.120 Polling place—Use of county, municipal, or special district facilities. (*Effective July 1, 2004.*) The legislative authority of each county, municipality, and special district shall, at the request of the county auditor, make their facilities available for use as polling places for primaries, special elections, and state general elections held within that county. When, in the judgment of the county auditor, a facility of a county, municipality, or special district would provide a location for a polling place that would best satisfy the requirements of this chapter, he or she shall notify the legislative authority of that county, municipality, or district of the number of facilities needed for use as polling places. Payment for polling places and any other conditions or obligations regarding these polling places shall be provided for by contract between the county auditor and the county, municipality, or district. [2003 c 111 § 408. Prior: 1985 c 205 § 14; 1965 c 9 § 29.48.007; prior: 1955 c 201 § 1. Formerly RCW 29.48.007.]

Effective dates—1985 c 205: See note following RCW 29A.16.140.

29A.16.130 Public buildings as polling places. (*Effective July 1, 2004.*) Each state agency and entity of local government shall permit the use of any of its buildings and the most suitable locations therein as polling places when required by a county auditor to provide accessible places in each precinct. [2003 c 111 § 409. Prior: 1979 ex.s. c 64 § 4. Formerly RCW 29.57.040.]

29A.16.140 Inaccessible polling places—Auditors' list. (*Effective July 1, 2004.*) No later than April 1st of each even-numbered year, each county auditor shall submit to the secretary of state a list showing the number of polling places in the county and specifying any that have been found inaccessible. The auditor shall indicate the reasons for inaccessibility, and what efforts have been made pursuant to this chapter to locate alternative polling places or to make the existing facilities temporarily accessible.

If a county auditor's list shows, for two consecutive reporting periods, that no polling places have been found inaccessible, the auditor need not submit further reports unless the secretary of state specifically reinstates the requirement for that county. Notice of reinstatement must be in writing and delivered at least sixty days before the reporting date. [2003 c 111 § 410. Prior: 1999 c 298 § 14; 1985 c 205 § 3. Formerly RCW 29.57.070.]

Effective dates—1985 c 205: "(1) Sections 1, 2, and 13 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

(2) Sections 15 and 16 of this act shall take effect as provided by Article II, section 1(c) of the state Constitution.

(3) Sections 3 through 12 and 14 of this act shall take effect on January 1, 1986." [1985 c 205 § 18.]

29A.16.150 Polling places—Accessibility required, exceptions. (Effective July 1, 2004.) Each polling place must be accessible unless:

(1) The county auditor has determined that it is inaccessible, that no alternative accessible polling place is available, that no temporary modification of that polling place or any alternative polling place is possible, and that the county auditor has complied with the procedures established under RCW 29A.16.020; or

(2) The secretary of state determines that a state of emergency exists that would otherwise interfere with the efficient administration of the primary or election. [2003 c 111 § 411. Prior: 1999 c 298 § 16; 1985 c 205 § 6. Formerly RCW 29.57.100.]

Effective dates—1985 c 205: See note following RCW 29A.16.140.

29A.16.160 Review by and recommendations of disabled voters. (Effective July 1, 2004.) County auditors shall, as feasible, solicit and use the assistance of disabled voters in reviewing sites and recommending inexpensive remedies to improve accessibility. [2003 c 111 § 412. Prior: 1979 ex.s. c 64 § 5. Formerly RCW 29.57.050.]

29A.16.170 County auditors—Notice of accessibility. (Effective July 1, 2004.) Each county auditor shall include a notice of the accessibility of polling places in the notice of election published under RCW 29A.52.310 and 29A.52.350. [2003 c 111 § 413. Prior: 1999 c 298 § 19; 1985 c 205 § 11. Formerly RCW 29.57.150.]

Effective dates—1985 c 205: See note following RCW 29A.16.140.

Chapter 29A.20 RCW

QUALIFICATIONS, TERMS, AND REQUIREMENTS FOR ELECTIVE OFFICES

Sections

GENERAL

- 29A.20.010 Preservation of declarations of candidacy. *(Effective July 1, 2004.)*
- 29A.20.020 Qualifications for filing, appearance on ballot. *(Effective July 1, 2004.)*
- 29A.20.030 Local officers, beginning of terms—Organization of district boards of directors. *(Effective July 1, 2004.)*
- 29A.20.040 Local elected officials, commencement of term of office—Purpose. *(Effective July 1, 2004.)*

MINOR PARTY AND INDEPENDENT CANDIDATE NOMINATIONS

- 29A.20.110 Definitions—"Convention" and "election jurisdiction." *(Effective July 1, 2004.)*
- 29A.20.120 Nomination by convention or write-in—Dates—Special filing period. *(Effective July 1, 2004.)*
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- 29A.20.140 Convention—Requirements for validity. *(Effective July 1, 2004.)*
- 29A.20.150 Nominating petition—Requirements. *(Effective July 1, 2004.)*
- 29A.20.160 Certificate of nomination—Requisites. *(Effective July 1, 2004.)*

- 29A.20.170 Multiple certificates of nomination. *(Effective July 1, 2004.)*
- 29A.20.180 Presidential electors—Selection at convention. *(Effective July 1, 2004.)*
- 29A.20.190 Certificate of nomination—Checking signatures—Appeal of determination. *(Effective July 1, 2004.)*
- 29A.20.200 Declarations of candidacy required, exceptions—Payment of fees. *(Effective July 1, 2004.)*

GENERAL

29A.20.010 Preservation of declarations of candidacy. (Effective July 1, 2004.) The secretary of state and each county auditor shall preserve all declarations of candidacy filed in their respective offices for six months. All declarations of candidacy must be open to public inspection. [2003 c 111 § 501; 1965 c 9 § 29.27.090. Prior: 1921 c 178 § 1, part; 1915 c 11 § 1, part; 1907 c 130 § 1, part; 1889 p 402 § 7, part; Code 1881 § 3067, part; 1865 p 30 § 1, part; RRS § 5171, part. Formerly RCW 29.27.090.]

29A.20.020 Qualifications for filing, appearance on ballot. (Effective July 1, 2004.) (1) A person filing a declaration of candidacy for an office shall, at the time of filing, be a registered voter and possess the qualifications specified by law for persons who may be elected to the office.

(2) Excluding the office of precinct committee officer or a temporary elected position such as a charter review board member or freeholder, no person may file for more than one office.

(3) The name of a candidate for an office shall not appear on a ballot for that office unless, except as provided in RCW 3.46.067 and 3.50.057, the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in the geographic area represented by the office. For the purposes of this section, each geographic area in which registered voters may cast ballots for an office is represented by that office. If a person elected to an office must be nominated from a district or similar division of the geographic area represented by the office, the name of a candidate for the office shall not appear on a primary ballot for that office unless the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in that district or division. The officer with whom declarations of candidacy must be filed under this title shall review each such declaration filed regarding compliance with this subsection.

(4) This section does not apply to the office of a member of the United States Congress. [2003 c 111 § 502; 1999 c 298 § 9; 1993 c 317 § 10; 1991 c 178 § 1. Formerly RCW 29.15.025, 29.18.021.]

Severability—Effective date—1993 c 317: See notes following RCW 3.50.810.

29A.20.030 Local officers, beginning of terms—Organization of district boards of directors. (Effective July 1, 2004.) The term of every city, town, and district officer elected to office on the first Tuesday following the first Monday in November of the odd-numbered years begins in accordance with RCW 29A.20.040. However, a person elected to less than a full term shall assume office as soon as the election returns have been certified and he or she is qualified in accordance with RCW 29A.04.133.

Each board of directors of every district shall be organized at the first meeting held after one or more newly elected directors take office. [2003 c 111 § 503; 1979 ex.s. c 126 § 14; 1965 c 123 § 6; 1965 c 9 § 29.13.050. Prior: 1963 c 200 § 8; 1959 c 86 § 1; prior: 1951 c 257 § 6. (i) 1949 c 161 § 9; Rem. Supp. 1949 § 5146-1. (ii) 1949 c 163 § 1; 1921 c 61 § 4; Rem. Supp. 1949 § 5146. Formerly RCW 29.13.050.]

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

29A.20.040 Local elected officials, commencement of term of office—Purpose. (*Effective July 1, 2004.*) (1) The legislature finds that certain laws are in conflict governing the assumption of office of various local officials. The purpose of this section is to provide a common date for the assumption of office for all the elected officials of counties, cities, towns, and special purpose districts other than school districts where the ownership of property is not a prerequisite of voting. A person elected to the office of school director begins his or her term of office at the first official meeting of the board of directors after certification of the election results. It is also the purpose of this section to remove these conflicts and delete old statutory language concerning such elections which is no longer necessary.

(2) For elective offices of counties, cities, towns, and special purpose districts other than school districts where the ownership of property is not a prerequisite of voting, the term of incumbents ends and the term of successors begins after the successor is elected and qualified, and the term commences immediately after December 31st following the election, except as follows:

(a) Where the term of office varies from this standard according to statute; and

(b) If the election results have not been certified prior to January 1st after the election, in which event the time of commencement for the new term occurs when the successor becomes qualified in accordance with RCW 29A.04.133.

(3) For elective offices governed by this section, the oath of office must be taken as the last step of qualification as defined in RCW 29A.04.133 but may be taken either:

(a) Up to ten days prior to the scheduled date of assuming office; or

(b) At the last regular meeting of the governing body of the applicable county, city, town, or special district held before the winner is to assume office. [2003 c 111 § 504; 1999 c 298 § 3; 1980 c 35 § 7; 1979 ex.s. c 126 § 1. Formerly RCW 29.04.170.]

Severability—1980 c 35: See note following RCW 28A.343.300.

MINOR PARTY AND INDEPENDENT CANDIDATE NOMINATIONS

29A.20.110 Definitions—"Convention" and "election jurisdiction." (*Effective July 1, 2004.*) A "convention" for the purposes of this chapter, is an organized assemblage of registered voters representing an independent candidate or candidates or a new or minor political party, organization, or principle. As used in this chapter, the term "election jurisdiction" shall mean the state or any political subdivision or jurisdiction of the state from which partisan officials are elected. This term shall include county commissioner districts or

council districts for members of a county legislative authority, counties for county officials who are nominated and elected on a county-wide basis, legislative districts for members of the legislature, congressional districts for members of Congress, and the state for president and vice president, members of the United States senate, and state officials who are elected on a statewide basis. [2003 c 111 § 505; 1977 ex.s. c 329 § 1; 1965 c 9 § 29.24.010. Prior: 1955 c 102 § 2; prior: 1937 c 94 § 2, part; RRS § 5168, part. Formerly RCW 29.24.010.]

Minor political party defined: RCW 29A.04.097.

Voter registration: Chapter 29A.08 RCW.

29A.20.120 Nomination by convention or write-in—Dates—Special filing period. (*Effective July 1, 2004.*) (1) Any nomination of a candidate for partisan public office by other than a major political party may be made only: (a) In a convention held not earlier than the last Saturday in June and not later than the first Saturday in July or during any of the seven days immediately preceding the first day for filing declarations of candidacy as fixed in accordance with RCW 29A.28.040; (b) as provided by RCW 29A.60.020; or (c) as otherwise provided in this section.

(2) Nominations of candidates for president and vice president of the United States other than by a major political party may be made either at a convention conducted under subsection (1) of this section, or at a similar convention taking place not earlier than the first Sunday in July and not later than seventy days before the general election. Conventions held during this time period may not nominate candidates for any public office other than president and vice president of the United States, except as provided in subsection (3) of this section.

(3) If a special filing period for a partisan office is opened under RCW 29A.24.210, candidates of minor political parties and independent candidates may file for office during that special filing period. The names of those candidates may not appear on the ballot unless they are nominated by convention held no later than five days after the close of the special filing period and a certificate of nomination is filed with the filing officer no later than three days after the convention. The requirements of RCW 29A.20.130 do not apply to such a convention. If primary ballots or a voters' pamphlet are ordered to be printed before the deadline for submitting the certificate of nomination and the certificate has not been filed, then the candidate's name will be included but may not appear on the general election ballot unless the certificate is timely filed and the candidate otherwise qualifies to appear on that ballot.

(4) A minor political party may hold more than one convention but in no case shall any such party nominate more than one candidate for any one partisan public office or position. For the purpose of nominating candidates for the offices of president and vice president, United States senator, or a statewide office, a minor party or independent candidate holding multiple conventions may add together the number of signatures of different individuals from each convention obtained in support of the candidate or candidates in order to obtain the number required by RCW 29A.20.140. For all other offices for which nominations are made, signatures of

the requisite number of registered voters must be obtained at a single convention. [2003 c 111 § 506. Prior: 2001 c 30 § 2; 1989 c 215 § 2; 1977 ex.s. c 329 § 2; 1965 c 9 § 29.24.020; prior: 1955 c 102 § 3; prior: (i) 1937 c 94 § 1; RRS § 5167. (ii) 1937 c 94 § 4; RRS § 5170. (iii) 1937 c 94 § 10; RRS § 5170-6. (iv) 1907 c 209 § 26, part; RRS § 5203, part. Formerly RCW 29.24.020.]

Primaries, when held: RCW 29A.04.310.

29A.20.130 Convention—Notice. (*Effective July 1, 2004.*) Each minor party or independent candidate must publish a notice in a newspaper of general circulation within the county in which the party or the candidate intends to hold a convention. The notice must appear at least ten days before the convention is to be held, and shall state the date, time, and place of the convention. Additionally, it shall include the mailing address of the person or organization sponsoring the convention. [2003 c 111 § 507. Prior: 1989 c 215 § 1. Formerly RCW 29.24.025.]

29A.20.140 Convention—Requirements for validity. (*Effective July 1, 2004.*) (1) To be valid, a convention must be attended by at least twenty-five registered voters.

(2) In order to nominate candidates for the offices of president and vice president of the United States, United States senator, or any statewide office, a nominating convention shall obtain and submit to the filing officer the signatures of at least two hundred registered voters of the state of Washington. In order to nominate candidates for any other office, a nominating convention shall obtain and submit to the filing officer the signatures of twenty-five persons who are registered to vote in the jurisdiction of the office for which the nominations are made. [2003 c 111 § 508. Prior: 1989 c 215 § 3; 1977 ex.s. c 329 § 3; 1965 c 9 § 29.24.030; prior: 1955 c 102 § 4; prior: (i) 1937 c 94 § 2, part; RRS § 5168, part. (ii) 1937 c 94 § 3; RRS § 5169. Formerly RCW 29.24.030.]

29A.20.150 Nominating petition—Requirements. (*Effective July 1, 2004.*) A nominating petition submitted under this chapter shall clearly identify the name of the minor party or independent candidate convention as it appears on the certificate of nomination as required by RCW 29A.20.160(3). The petition shall also contain a statement that the person signing the petition is a registered voter of the state of Washington and shall have a space for the voter to sign his or her name and to print his or her name and address. No person may sign more than one nominating petition under this chapter for an office for a primary or election. [2003 c 111 § 509. Prior: 2001 c 64 § 1; 2001 c 30 § 3; 1989 c 215 § 5. Formerly RCW 29.24.035.]

29A.20.160 Certificate of nomination—Requisites. (*Effective July 1, 2004.*) A certificate evidencing nominations made at a convention must:

- (1) Be in writing;
- (2) Contain the name of each person nominated, his or her residence, and the office for which he or she is named, and if the nomination is for the offices of president and vice president of the United States, a sworn statement from both nominees giving their consent to the nomination;

(3) Identify the minor political party or the independent candidate on whose behalf the convention was held;

(4) Be verified by the oath of the presiding officer and secretary;

(5) Be accompanied by a nominating petition or petitions bearing the signatures and addresses of registered voters equal in number to that required by RCW 29A.20.140;

(6) Contain proof of publication of the notice of calling the convention; and

(7) Be submitted to the appropriate filing officer not later than one week following the adjournment of the convention at which the nominations were made. If the nominations are made only for offices whose jurisdiction is entirely within one county, the certificate and nominating petitions must be filed with the county auditor. If a minor party or independent candidate convention nominates any candidates for offices whose jurisdiction encompasses more than one county, all nominating petitions and the convention certificates must be filed with the secretary of state. [2003 c 111 § 510; 1989 c 215 § 4; 1977 ex.s. c 329 § 4; 1965 c 9 § 29.24.040. Prior: 1955 c 102 § 5; prior: 1937 c 94 § 5, part; RRS § 5170-1, part. Formerly RCW 29.24.040.]

Requirements of candidates for public office under subversive activities act: Chapter 9.81 RCW.

29A.20.170 Multiple certificates of nomination. (*Effective July 1, 2004.*) (1) If two or more valid certificates of nomination are filed purporting to nominate different candidates for the same position using the same party name, the filing officer must give effect to both certificates. If conflicting claims to the party name are not resolved either by mutual agreement or by a judicial determination of the right to the name, the candidates must be treated as independent candidates. Disputes over the right to the name must not be permitted to delay the printing of either ballots or a voters' pamphlet. Other candidates nominated by the same conventions may continue to use the partisan affiliation unless a court of competent jurisdiction directs otherwise.

(2) A person affected may petition the superior court of the county in which the filing officer is located for a judicial determination of the right to the name of a minor political party, either before or after documents are filed with the filing officer. The court shall resolve the conflict between competing claims to the use of the same party name according to the following principles: (a) The prior established public use of the name during previous elections by a party composed of or led by the same individuals or individuals in documented succession; (b) prior established public use of the name earlier in the same election cycle; (c) the nomination of a more complete slate of candidates for a number of offices or in a number of different regions of the state; (d) documented affiliation with a national or statewide party organization with an established use of the name; (e) the first date of filing of a certificate of nomination; and (f) such other indicia of an established right to use of the name as the court may deem relevant. If more than one filing officer is involved, and one of them is the secretary of state, the petition must be filed in the superior court for Thurston county. Upon resolving the conflict between competing claims, the court may also address any ballot designation for the candidate who does not prevail.

[2003 c 111 § 511. Prior: 2001 c 30 § 4. Formerly RCW 29.24.045.]

29A.20.180 Presidential electors—Selection at convention. (*Effective July 1, 2004.*) A minor political party or independent candidate convention nominating candidates for the offices of president and vice president of the United States shall, not later than ten days after the adjournment of the convention, submit a list of presidential electors to the office of the secretary of state. The list shall contain the names and the mailing addresses of the persons selected and shall be verified by the presiding officer of the convention. [2003 c 111 § 512. Prior: 1989 c 215 § 6. Formerly RCW 29.24.055.]

29A.20.190 Certificate of nomination—Checking signatures—Appeal of determination. (*Effective July 1, 2004.*) Upon the receipt of the certificate of nomination, the officer with whom it is filed shall check the certificate and canvass the signatures on the accompanying nominating petitions to determine if the requirements of RCW 29A.20.140 have been met. Once the determination has been made, the filing officer shall notify the presiding officer of the convention and any other persons requesting the notification, of his or her decision regarding the sufficiency of the certificate or the nominating petitions. Any appeal regarding the filing officer's determination must be filed with the superior court of the county in which the certificate or petitions were filed not later than five days from the date the determination is made, and shall be heard and finally disposed of by the court within five days of the filing. Nominating petitions shall not be available for public inspection or copying. [2003 c 111 § 513. Prior: 1989 c 215 § 7; 1977 ex.s. c 329 § 6; 1965 c 9 § 29.24.060; prior: 1937 c 94 § 6; RRS § 5170-2. Formerly RCW 29.24.060.]

29A.20.200 Declarations of candidacy required, exceptions—Payment of fees. (*Effective July 1, 2004.*) Not later than the Friday immediately preceding the first day for candidates to file, the secretary of state shall notify the county auditors of the names and designations of all minor party and independent candidates who have filed valid convention certificates and nominating petitions with that office. Except for the offices of president and vice president, persons nominated under this chapter shall file declarations of candidacy as provided by RCW 29A.24.030 and 29A.24.070. The name of a candidate nominated at a convention shall not be printed upon the primary ballot unless he or she pays the fee required by law to be paid by candidates for the same office to be nominated at a primary. [2003 c 111 § 514; 1990 c 59 § 103; 1989 c 215 § 8; 1977 ex.s. c 329 § 7; 1965 c 9 § 29.24.070. Prior: 1955 c 102 § 7; prior: (i) 1937 c 94 § 7, part; RRS § 5170-3, part. (ii) 1907 c 209 § 26, part; RRS § 5203, part. Formerly RCW 29.24.070.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Chapter 29A.24 RCW FILING FOR OFFICE

Sections

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GENERAL

- 29A.24.010 Officials to designate position numbers, when—Effect. (*Effective July 1, 2004.*)
- 29A.24.020 Designation of short terms, full terms, and unexpired terms—Filing declarations—Election to both short and full terms. (*Effective July 1, 2004.*)
- 29A.24.030 Declaration of candidacy. (*Effective July 1, 2004.*)
- 29A.24.040 Declaration of candidacy—Electronic filing. (*Effective July 1, 2004.*)
- 29A.24.050 Declaration of candidacy—Certain offices, when filed. (*Effective July 1, 2004.*)
- 29A.24.060 Candidates' names—Nicknames. (*Effective July 1, 2004.*)
- 29A.24.070 Declaration of candidacy—Where filed—Copy to public disclosure commission. (*Effective July 1, 2004.*)
- 29A.24.080 Declaration—Filing by mail. (*Effective July 1, 2004.*)
- 29A.24.090 Declaration—Fees and petitions. (*Effective July 1, 2004.*)
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- 29A.24.120 Date for withdrawal—Notice. (*Effective July 1, 2004.*)
- 29A.24.130 Withdrawal of candidacy. (*Effective July 1, 2004.*)
- 29A.24.140 Void in candidacy—Exception. (*Effective July 1, 2004.*)
- 29A.24.150 Notice of void in candidacy. (*Effective July 1, 2004.*)
- 29A.24.160 Filings to fill void in candidacy—How made. (*Effective July 1, 2004.*)
- 29A.24.170 Reopening of filing—Before sixth Tuesday before primary. (*Effective July 1, 2004.*)
- 29A.24.180 Reopening of filing—After sixth Tuesday before primary. (*Effective July 1, 2004.*)
- 29A.24.190 Scheduled election lapses, when. (*Effective July 1, 2004.*)
- 29A.24.200 Lapse of election when no filing for single positions—Effect. (*Effective July 1, 2004.*)
- 29A.24.210 Vacancy in partisan elective office—Special filing period. (*Effective July 1, 2004.*)

WRITE-IN CANDIDATES

- 29A.24.310 Write-in voting—Candidates, declaration. (*Effective July 1, 2004.*)
- 29A.24.320 Write-in candidates—Notice to auditors, ballot counters. (*Effective July 1, 2004.*)

Certifying primary candidates: RCW 29A.36.010.

GENERAL

29A.24.010 Officials to designate position numbers, when—Effect. (*Effective July 1, 2004.*) Not less than thirty days before the first day for filing declarations of candidacy under RCW 29A.24.050 for legislative, judicial, county, city, town, or district office, where more than one position with the same name, district number, or title will be voted upon at the succeeding election, the filing officer shall designate the positions to be filled by number.

The positions so designated shall be dealt with as separate offices for all election purposes. With the exception of the office of justice of the supreme court, the position numbers shall be assigned, whenever possible, to reflect the position numbers that were used to designate the same positions at the last full-term election for those offices. [2003 c 111 § 601. Prior: 1990 c 59 § 79; 1965 c 52 § 1. Formerly RCW 29.15.130, 29.18.015.]

29A.24.020 Designation of short terms, full terms, and unexpired terms—Filing declarations—Election to both short and full terms. (*Effective July 1, 2004.*) If at the same election there are short terms or full terms and unexpired terms of office to be filled, the filing officer shall distinguish them and designate the short term, the full term, and the unexpired term, as such, or by use of the words "short term," "unexpired two year term," or "four year term," as the case may be.

In filing the declaration of candidacy in such cases the candidate shall specify that the candidacy is for the short term, the full term, or the unexpired term. When both a short term and a full term for the same position are scheduled to be voted upon, or when a short term is created after the close of the filing period, a single declaration of candidacy accompanied by a single filing fee shall be construed as a filing for both the short term and the full term and the name of such candidate shall appear upon the ballot for the position sought with the designation "short term and full term." The candidate elected to both such terms shall be sworn into and assume office for the short term as soon as the election returns have been certified and shall again be sworn into office on the second Monday in January following the election to assume office for the full term. [2003 c 111 § 602. Prior: 1990 c 59 § 92; 1975-'76 2nd ex.s. c 120 § 4; 1965 c 9 § 29.21.140; prior: (i) 1927 c 155 § 1, part; 1925 ex.s. c 68 § 1, part; 1921 c 116 § 1, part; 1919 c 85 § 1, part; 1911 c 101 § 1, part; 1909 c 82 § 11, part; 1907 c 209 § 38, part; RRS § 5212, part. (ii) 1933 c 85 § 1, part; RRS § 5213-1, part. Formerly RCW 29.15.140, 29.21.140.]

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29A.52.210.

Term of person elected to fill vacancy: RCW 42.12.030.

Vacancies in public office, how filled: RCW 42.12.010.

29A.24.030 Declaration of candidacy. (Effective July 1, 2004.) A candidate who desires to have his or her name printed on the ballot for election to an office other than president of the United States, vice president of the United States, or an office for which ownership of property is a prerequisite to voting shall complete and file a declaration of candidacy. The secretary of state shall adopt, by rule, a declaration of candidacy form for the office of precinct committee officer and a separate standard form for candidates for all other offices filing under this chapter. Included on the standard form shall be:

(1) A place for the candidate to declare that he or she is a registered voter within the jurisdiction of the office for which he or she is filing, and the address at which he or she is registered;

(2) A place for the candidate to indicate the position for which he or she is filing;

(3) A place for the candidate to indicate a party designation, if applicable;

(4) A place for the candidate to indicate the amount of the filing fee accompanying the declaration of candidacy or for the candidate to indicate that he or she is filing a nominating petition in lieu of the filing fee under RCW 29A.24.090;

(5) A place for the candidate to sign the declaration of candidacy, stating that the information provided on the form is true and swearing or affirming that he or she will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

In the case of a declaration of candidacy filed electronically, submission of the form constitutes agreement that the information provided with the filing is true, that he or she will support the Constitutions and laws of the United States and the state of Washington, and that he or she agrees to electronic payment of the filing fee established in RCW 29A.24.090.

The secretary of state may require any other information on the form he or she deems appropriate to facilitate the filing process. [2003 c 111 § 603; 2002 c 140 § 1; 1990 c 59 § 82. Formerly RCW 29.15.010.]

Implementation—2002 c 140: "The secretary of state may take the necessary steps to ensure that this act is implemented on its effective date." [2002 c 140 § 5.]

Captions not law—2002 c 140: "Section captions used in this act are not part of the law." [2002 c 140 § 6.]

29A.24.040 Declaration of candidacy—Electronic filing. (Effective July 1, 2004.) A candidate may file his or her declaration of candidacy for an office by electronic means on a system specifically designed and authorized by a filing officer to accept filings.

(1) Filings that are received electronically must capture all information specified in RCW 29A.24.030 (1) through (4).

(2) Electronic filing may begin at 9:00 a.m. the fourth Monday in July and continue through 4:00 p.m. the following Friday.

(3) In case of special filing periods established in this chapter, electronic filings may be accepted beginning at 9:00 a.m. on the first day of the special filing period through 4:00 p.m. the last day of the special filing period. [2003 c 111 § 604. Prior: 2002 c 140 § 2. Formerly RCW 29.15.044.]

Implementation—Captions not law—2002 c 140: See notes following RCW 29A.24.030.

29A.24.050 Declaration of candidacy—Certain offices, when filed. (Effective July 1, 2004.) Except where otherwise provided by this title, declarations of candidacy for the following offices shall be filed during regular business hours with the filing officer no earlier than the fourth Monday in July and no later than the following Friday in the year in which the office is scheduled to be voted upon:

(1) Offices that are scheduled to be voted upon for full terms or both full terms and short terms at, or in conjunction with, a state general election; and

(2) Offices where a vacancy, other than a short term, exists that has not been filled by election and for which an election to fill the vacancy is required in conjunction with the next state general election.

This section supersedes all other statutes that provide for a different filing period for these offices. [2003 c 111 § 605. Prior: 1990 c 59 § 81; 1986 c 167 § 8; 1984 c 142 § 2. Formerly RCW 29.15.020, 29.18.025.]

Severability—1986 c 167: See note following RCW 29A.04.049.

Intent—1984 c 142: "It is the intention of the legislature that this act shall provide an equitable qualifying procedure for candidates who, at the time of filing, lack sufficient assets or income to pay the filing fees otherwise required of candidates for public office." [1984 c 142 § 1.]

29A.24.060 Candidates' names—Nicknames. (Effective July 1, 2004.) When filing for office, a candidate may indicate the manner in which he or she desires his or her name to be printed on the ballot. For filing purposes, a candidate may use a nickname by which he or she is commonly known as his or her first name, but the last name shall be the name under which he or she is registered to vote.

No candidate may:

(1) Use a nickname that denotes present or past occupation, including military rank;

(2) Use a nickname that denotes the candidate's position on issues or political affiliation;

(3) Use a nickname designed intentionally to mislead voters. [2003 c 111 § 606; 1990 c 59 § 83. Formerly RCW 29.15.090.]

29A.24.070 Declaration of candidacy—Where filed—Copy to public disclosure commission. (*Effective July 1, 2004.*) Declarations of candidacy shall be filed with the following filing officers:

(1) The secretary of state for declarations of candidacy for statewide offices, United States senate, and United States house of representatives;

(2) The secretary of state for declarations of candidacy for the state legislature, the court of appeals, and the superior court when voters from a district comprising more than one county vote upon the candidates;

(3) The county auditor for all other offices. For any non-partisan office, other than judicial offices and school director in joint districts, where voters from a district comprising more than one county vote upon the candidates, a declaration of candidacy shall be filed with the county auditor of the county in which a majority of the registered voters of the district reside. For school directors in joint school districts, the declaration of candidacy shall be filed with the county auditor of the county designated by the state board of education as the county to which the joint school district is considered as belonging under RCW 28A.323.040.

Each official with whom declarations of candidacy are filed under this section, within one business day following the closing of the applicable filing period, shall transmit to the public disclosure commission the information required in RCW 29A.24.030 (1) through (4) for each declaration of candidacy filed in his or her office during such filing period or a list containing the name of each candidate who files such a declaration in his or her office during such filing period together with a precise identification of the position sought by each such candidate and the date on which each such declaration was filed. Such official, within three days following his or her receipt of any letter withdrawing a person's name as a candidate, shall also forward a copy of such withdrawal letter to the public disclosure commission. [2003 c 111 § 607; 2002 c 140 § 4; 1998 c 22 § 1; 1990 c 59 § 84; 1977 ex.s. c 361 § 30; 1975-'76 2nd ex.s. c 112 § 1; 1965 c 9 § 29.18.040. Prior: 1907 c 209 § 7; RRS § 5184. Formerly RCW 29.15.030, 29.18.040.]

Implementation—Captions not law—2002 c 140: See notes following RCW 29A.24.030.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

Construction—1975-'76 2nd ex.s. c 112: RCW 42.17.945.

Severability—1975-'76 2nd ex.s. c 112: RCW 42.17.912.

Precinct committee officer, filing of declaration of candidacy with county auditor: RCW 29A.80.040.

Public disclosure—Campaign finances, lobbying, records: Chapter 42.17 RCW.

29A.24.080 Declaration—Filing by mail. (*Effective July 1, 2004.*) Any candidate may mail his or her declaration

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of candidacy for an office to the filing officer. Such declarations of candidacy shall be processed by the filing officer in the following manner:

(1) Any declaration received by the filing officer by mail before the tenth business day immediately preceding the first day for candidates to file for office shall be returned to the candidate submitting it, together with a notification that the declaration of candidacy was received too early to be processed. The candidate shall then be permitted to resubmit his or her declaration of candidacy during the filing period.

(2) Any properly executed declaration of candidacy received by mail on or after the tenth business day immediately preceding the first day for candidates to file for office and before the close of business on the last day of the filing period shall be included with filings made in person during the filing period. In partisan and judicial elections the filing officer shall determine by lot the order in which the names of those candidates shall appear upon sample and absentee primary ballots.

(3) Any declaration of candidacy received by the filing officer after the close of business on the last day for candidates to file for office shall be rejected and returned to the candidate attempting to file it. [2003 c 111 § 608. Prior: 1987 c 110 § 2; 1986 c 120 § 2. Formerly RCW 29.15.040, 29.18.045.]

Precinct committee officer, declaration of candidacy, fee: RCW 29A.80.040, 29A.80.050.

29A.24.090 Declaration—Fees and petitions. (*Effective July 1, 2004.*) A filing fee of one dollar shall accompany each declaration of candidacy for precinct committee officer; a filing fee of ten dollars shall accompany the declaration of candidacy for any office with a fixed annual salary of one thousand dollars or less; a filing fee equal to one percent of the annual salary of the office at the time of filing shall accompany the declaration of candidacy for any office with a fixed annual salary of more than one thousand dollars per annum. No filing fee need accompany a declaration of candidacy for any office for which compensation is on a per diem or per meeting attended basis.

A candidate who lacks sufficient assets or income at the time of filing to pay the filing fee required by this section shall submit with his or her declaration of candidacy a nominating petition. The petition shall contain not less than a number of signatures of registered voters equal to the number of dollars of the filing fee. The signatures shall be of voters registered to vote within the jurisdiction of the office for which the candidate is filing.

When the candidacy is for:

(1) A legislative or judicial office that includes territory from more than one county, the fee shall be paid to the secretary of state for equal division between the treasuries of the counties comprising the district.

(2) A city or town office, the fee shall be paid to the county auditor who shall transmit it to the city or town clerk for deposit in the city or town treasury. [2003 c 111 § 609. Prior: 1999 c 298 § 10; 1999 c 157 § 2; 1990 c 59 § 85; 1987 c 295 § 2; 1984 c 142 § 4; 1965 c 9 § 29.18.050; prior: 1909 c 82 § 2; 1907 c 209 § 5; RRS § 5182. Formerly RCW 29.15.050, 29.18.050.]

Intent—1984 c 142: See note following RCW 29A.24.050.

Precinct committee officer, declaration of candidacy, fee: RCW 29A.80.040, 29A.80.050.

29A.24.100 Nominating petition—Form. (*Effective July 1, 2004.*) The nominating petition authorized by RCW 29A.24.090 shall be printed on sheets of uniform color and size, shall contain no more than twenty numbered lines, and must be in substantially the following form:

The warning prescribed by RCW 29A.72.140; followed by:

We, the undersigned registered voters of (the state of Washington or the political subdivision for which the nomination is made), hereby petition that the name of (candidate's name) be printed on the official primary ballot for the office of (insert name of office).

The petition must include a place for each individual to sign and print his or her name, and the address, city, and county at which he or she is registered to vote. [2003 c 111 § 610; 1984 c 142 § 5. Formerly RCW 29.15.060, 29.18.053.]

Intent—1984 c 142: See note following RCW 29A.24.050.

29A.24.110 Petitions—Rejection—Acceptance, canvass of signatures—Judicial review. (*Effective July 1, 2004.*) Nominating petitions may be rejected for the following reasons:

- (1) The petition is not in the proper form;
- (2) The petition clearly bears insufficient signatures;
- (3) The petition is not accompanied by a declaration of candidacy;
- (4) The time within which the petition and the declaration of candidacy could have been filed has expired.

If the petition is accepted, the officer with whom it is filed shall canvass the signatures contained on it and shall reject the signatures of those persons who are not registered voters and the signatures of those persons who are not registered to vote within the jurisdiction of the office for which the nominating petition is filed. He or she shall additionally reject any signature that appears on the nominating petitions of two or more candidates for the same office and shall also reject, each time it appears, the name of any person who signs the same petition more than once.

If the officer with whom the petition is filed refuses to accept the petition or refuses to certify the petition as bearing sufficient valid signatures, the person filing the petition may appeal that action to the superior court. The application for judicial review shall take precedence over other cases and matters and shall be speedily heard and determined. [2003 c 111 § 611. Prior: 1984 c 142 § 6. Formerly RCW 29.15.070, 29.18.055.]

Intent—1984 c 142: See note following RCW 29A.24.050.

29A.24.120 Date for withdrawal—Notice. (*Effective July 1, 2004.*) Each person who files a declaration of candidacy for an elected office of a city, town, or special district shall be given written notice of the date by which a candidate may withdraw his or her candidacy under RCW 29A.24.130. [2003 c 111 § 612. Prior: 1994 c 223 § 7. Formerly RCW 29.15.125.]

29A.24.130 Withdrawal of candidacy. (*Effective July 1, 2004.*) A candidate may withdraw his or her declaration of candidacy at any time before the close of business on the Thursday following the last day for candidates to file under RCW 29A.24.050 by filing, with the officer with whom the declaration of candidacy was filed, a signed request that his or her name not be printed on the ballot. There shall be no withdrawal period for declarations of candidacy filed during special filing periods held under this title. The filing officer may permit the withdrawal of a filing for the office of precinct committee officer at the request of the candidate at any time if no absentee ballots have been issued for that office and the general election ballots for that precinct have not been printed. The filing officer may permit the withdrawal of a filing for any elected office of a city, town, or special district at the request of the candidate at any time before a primary if the primary ballots for that city, town, or special district have not been ordered. No filing fee may be refunded to any candidate who withdraws under this section. Notice of the deadline for withdrawal of candidacy and that the filing fee is not refundable shall be given to each candidate at the time he or she files. [2003 c 111 § 613. Prior: 1994 c 223 § 6; 1990 c 59 § 86; 1984 c 142 § 7. Formerly RCW 29.15.120, 29.18.105.]

Intent—1984 c 142: See note following RCW 29A.24.050.

Vacancy on major party ticket: RCW 29A.28.010.

29A.24.140 Void in candidacy—Exception. (*Effective July 1, 2004.*) A void in candidacy for a nonpartisan office occurs when an election for such office, except for the short term, has been scheduled and no valid declaration of candidacy has been filed for the position or all persons filing such valid declarations of candidacy have died or been disqualified. [2003 c 111 § 614. Prior: 1975-'76 2nd ex.s. c 120 § 9; 1972 ex.s. c 61 § 1. Formerly RCW 29.15.160, 29.21.350.]

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29A.52.210.

Severability—1972 ex.s. c 61: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 61 § 8.]

29A.24.150 Notice of void in candidacy. (*Effective July 1, 2004.*) The election officer with whom declarations of candidacy are filed shall give notice of a void in candidacy for a nonpartisan office, by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law. The notice shall state the office, and the time and place for filing declarations of candidacy. [2003 c 111 § 615. Prior: 1972 ex.s. c 61 § 5. Formerly RCW 29.15.210, 29.21.390.]

Severability—1972 ex.s. c 61: See note following RCW 29A.24.140.

29A.24.160 Filings to fill void in candidacy—How made. (*Effective July 1, 2004.*) Filings to fill a void in candidacy for nonpartisan office must be made in the same manner and with the same official as required during the regular filing period for such office, except that nominating signature petitions that may be required of candidates filing for certain district offices during the normal filing period may not be

required of candidates filing during the special three-day filing period. [2003 c 111 § 616; 1972 ex.s. c 61 § 6. Formerly RCW 29.15.220, 29.21.400.]

Severability—1972 ex.s. c 61: See note following RCW 29A.24.140.

29A.24.170 Reopening of filing—Before sixth Tuesday before primary. (*Effective July 1, 2004.*) Filings for a nonpartisan office shall be reopened for a period of three normal business days, such three day period to be fixed by the election officer with whom such declarations of candidacy are filed and notice thereof given by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law whenever before the sixth Tuesday prior to a primary:

- (1) A void in candidacy occurs;
- (2) A vacancy occurs in any nonpartisan office leaving an unexpired term to be filled by an election for which filings have not been held; or
- (3) A nominee for judge of the superior court entitled to a certificate of election pursuant to Article 4, section 29, Amendment 41 of the state Constitution, dies or is disqualified.

Candidacies validly filed within said three-day period shall appear on the ballot as if made during the earlier filing period. [2003 c 111 § 617. Prior: 2001 c 46 § 1; 1975-'76 2nd ex.s. c 120 § 10; 1972 ex.s. c 61 § 2. Formerly RCW 29.15.170, 29.21.360.]

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29A.52.210.

Severability—1972 ex.s. c 61: See note following RCW 29A.24.140.

29A.24.180 Reopening of filing—After sixth Tuesday before primary. (*Effective July 1, 2004.*) Filings for a nonpartisan office (other than judge of the supreme court or superintendent of public instruction) shall be reopened for a period of three normal business days, such three day period to be fixed by the election officer with whom such declarations of candidacy are filed and notice thereof given by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law, when:

- (1) A void in candidacy for such nonpartisan office occurs on or after the sixth Tuesday prior to a primary but prior to the sixth Tuesday before an election; or
- (2) A nominee for judge of the superior court eligible after a contested primary for a certificate of election by Article 4, section 29, Amendment 41 of the state Constitution, dies or is disqualified within the ten day period immediately following the last day allotted for a candidate to withdraw; or
- (3) A vacancy occurs in any nonpartisan office on or after the sixth Tuesday prior to a primary but prior to the sixth Tuesday before an election leaving an unexpired term to be filled by an election for which filings have not been held.

The candidate receiving a plurality of the votes cast for that office in the general election shall be deemed elected. [2003 c 111 § 618. Prior: 2001 c 46 § 2; 1975-'76 2nd ex.s. c 120 § 11; 1972 ex.s. c 61 § 3. Formerly RCW 29.15.180, 29.21.370.]

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29A.24.140.

Severability—1972 ex.s. c 61: See note following RCW 29A.24.140.

29A.24.190 Scheduled election lapses, when. (*Effective July 1, 2004.*) A scheduled election shall be lapsed, the office deemed stricken from the ballot, no purported write-in votes counted, and no candidate certified as elected, when:

(1) In an election for judge of the supreme court or superintendent of public instruction, a void in candidacy occurs on or after the sixth Tuesday prior to a primary, public filings and the primary being an indispensable phase of the election process for such offices;

(2) Except as otherwise specified in RCW 29A.24.180, a nominee for judge of the superior court entitled to a certificate of election pursuant to Article 4, section 29, Amendment 41 of the state Constitution dies or is disqualified on or after the sixth Tuesday prior to a primary;

(3) In other elections for nonpartisan office a void in candidacy occurs or a vacancy occurs involving an unexpired term to be filled on or after the sixth Tuesday prior to an election. [2003 c 111 § 619; 2002 c 108 § 1; 1975-'76 2nd ex.s. c 120 § 12; 1972 ex.s. c 61 § 4. Formerly RCW 29.15.190, 29.21.380.]

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29A.52.210.

Severability—1972 ex.s. c 61: See note following RCW 29A.24.140.

29A.24.200 Lapse of election when no filing for single positions—Effect. (*Effective July 1, 2004.*) If after both the normal filing period and special three day filing period as provided by RCW 29A.24.170 and 29A.24.180 have passed, no candidate has filed for any single city, town, or district position to be filled, the election for such position shall be deemed lapsed, the office deemed stricken from the ballot and no write-in votes counted. In such instance, the incumbent occupying such position shall remain in office and continue to serve until a successor is elected at the next election when such positions are voted upon. [2003 c 111 § 620. Prior: 1994 c 223 § 8; 1975-'76 2nd ex.s. c 120 § 13. Formerly RCW 29.15.200, 29.21.385.]

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29A.52.210.

29A.24.210 Vacancy in partisan elective office—Special filing period. (*Effective July 1, 2004.*) Filings for a partisan elective office shall be opened for a period of three normal business days whenever, on or after the first day of the regular filing period and before the sixth Tuesday prior to a primary, a vacancy occurs in that office, leaving an unexpired term to be filled by an election for which filings have not been held.

Any such special three-day filing period shall be fixed by the election officer with whom declarations of candidacy for that office are filed. The election officer shall give notice of the special three-day filing period by notifying the press, radio, and television in the county or counties involved, and by such other means as may be required by law.

Candidacies validly filed within the special three-day filing period shall appear on the primary ballot as if filed during the regular filing period. [2003 c 111 § 621. Prior: 2001 c 46 § 3; 1981 c 180 § 2. Formerly RCW 29.15.230, 29.18.032.]

Severability—1981 c 180: See note following RCW 42.12.040.

Vacancy in partisan elective office, successor elected, when: RCW 42.12.040.

Vacancy in United States senate, special filing period in 1983: Chapter 1, Laws of 1983 3rd ex. sess. (uncodified).

Vacancy on major party ticket: RCW 29A.28.010.

WRITE-IN CANDIDATES

29A.24.310 Write-in voting—Candidates, declaration. (*Effective July 1, 2004.*) Any person who desires to be a write-in candidate and have such votes counted at a primary or election may file a declaration of candidacy with the officer designated in RCW 29A.24.070 not later than the day before the primary or election. Declarations of candidacy for write-in candidates must be accompanied by a filing fee in the same manner as required of other candidates filing for the office as provided in RCW 29A.24.090.

Votes cast for write-in candidates who have filed such declarations of candidacy and write-in votes for persons appointed by political parties pursuant to RCW 29A.28.020 need only specify the name of the candidate in the appropriate location on the ballot in order to be counted. Write-in votes cast for any other candidate, in order to be counted, must designate the office sought and position number or political party, if the manner in which the write-in is done does not make the office or position clear. In order for write-in votes to be valid in jurisdictions employing optical-scan mark sense ballot systems the voter must complete the proper mark next to the write-in line for that office.

No person may file as a write-in candidate where:

(1) At a general election, the person attempting to file either filed as a write-in candidate for the same office at the preceding primary or the person's name appeared on the ballot for the same office at the preceding primary;

(2) The person attempting to file as a write-in candidate has already filed a valid write-in declaration for that primary or election, unless one or the other of the two filings is for the office of precinct committee person;

(3) The name of the person attempting to file already appears on the ballot as a candidate for another office, unless one of the two offices for which he or she is a candidate is precinct committee person.

The declaration of candidacy shall be similar to that required by RCW 29A.24.030. No write-in candidate filing under this section may be included in any voter's pamphlet produced under chapter 29A.32 RCW unless that candidate qualifies to have his or her name printed on the general election ballot. The legislative authority of any jurisdiction producing a local voter's pamphlet under chapter 29A.32 RCW may provide, by ordinance, for the inclusion of write-in candidates in such pamphlets. [2003 c 111 § 622; 1999 c 157 § 1; 1995 c 158 § 1; 1990 c 59 § 100; 1988 c 181 § 1. Formerly RCW 29.04.180.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.24.320 Write-in candidates—Notice to auditors, ballot counters. (*Effective July 1, 2004.*) The secretary of state shall notify each county auditor of any declarations filed with the secretary under RCW 29A.24.310 for offices appearing on the ballot in that county. The county auditor

shall ensure that those persons charged with counting the ballots for a primary or election are notified of all valid write-in candidates before the tabulation of those ballots. [2003 c 111 § 623. Prior: 1988 c 181 § 2. Formerly RCW 29.04.190.]

Chapter 29A.28 RCW VACANCIES

Sections

29A.28.010	Major party ticket. (<i>Effective July 1, 2004.</i>)
29A.28.020	Death or disqualification—Correcting ballots—Counting votes already cast. (<i>Effective July 1, 2004.</i>)
29A.28.030	United States senate. (<i>Effective July 1, 2004.</i>)
29A.28.040	Congress—Special election. (<i>Effective July 1, 2004.</i>)
29A.28.050	Congress—Notices of special primary and election. (<i>Effective July 1, 2004.</i>)
29A.28.060	Congress—General, primary election laws to apply—Time deadlines, modifications. (<i>Effective July 1, 2004.</i>)
29A.28.070	Precinct committee officer. (<i>Effective July 1, 2004.</i>)

29A.28.010 Major party ticket. (*Effective July 1, 2004.*) If a place on the ticket of a major political party is vacant because no person has filed for nomination as the candidate of that major political party, after the last day allowed for candidates to withdraw as provided by RCW 29A.24.130, and if the vacancy is for a state or county office to be voted on solely by the electors of a single county, the county central committee of the major political party may select and certify a candidate to fill the vacancy. If the vacancy is for any other office the state central committee of the major political party may select and certify a candidate to fill the vacancy. The certificate must set forth the cause of the vacancy, the name of the person nominated, the office for which the person is nominated, and other pertinent information required in an ordinary certificate of nomination and be filed in the proper office no later than the first Friday after the last day allowed for candidates to withdraw, together with the candidate's fee applicable to that office and a declaration of candidacy. [2003 c 111 § 701; 1990 c 59 § 102; 1977 ex.s. c 329 § 12; 1965 c 9 § 29.18.150. Prior: 1961 c 130 § 17; prior: (i) 1933 c 21 § 1, part; 1919 c 163 § 24, part; RRS § 5200, part. (ii) 1889 p 404 § 12; RRS § 5176. Formerly RCW 29.18.150.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Certifying primary candidates: RCW 29A.36.010.

29A.28.020 Death or disqualification—Correcting ballots—Counting votes already cast. (*Effective July 1, 2004.*) A vacancy caused by the death or disqualification of any candidate or nominee of a major or minor political party may be filled at any time up to and including the day prior to the election for that position. For state partisan offices in any political subdivision voted on solely by electors of a single county, an individual shall be appointed to fill such vacancy by the county central committee in the case of a major political party or by the state central committee or comparable governing body in the case of a minor political party. For other partisan offices, including federal or statewide offices, an individual shall be appointed to fill such vacancy by the state central committee or comparable governing body of the appropriate political party.

If the vacancy occurs no later than the sixth Tuesday prior to the state primary or general election concerned and

the ballots have been printed, it shall be mandatory that they be corrected by the appropriate election officers. In making such correction, it shall not be necessary to reprint complete ballots if any other less expensive technique can be used and the resulting correction is reasonably clear.

If the vacancy occurs after the sixth Tuesday prior to the state primary or general election and time does not exist in which to correct ballots (including absentee ballots), either in total or in part, then the votes cast or recorded for the person who has died or become disqualified shall be counted for the person who has been named to fill such vacancy.

When the secretary of state is the person with whom the appointment by the major or minor political party is filed, the secretary shall, in certifying candidates or nominations to the various county officers insert the name of the person appointed to fill a vacancy.

If the secretary of state has already sent forth the certificate when the appointment to fill a vacancy is filed, the secretary shall forthwith certify to the county auditors of the proper counties the name and place of residence of the person appointed to fill a vacancy, the office for which the person is a candidate or nominee, the party the person represents, and all other pertinent facts pertaining to the vacancy. [2003 c 111 § 702; 2001 c 46 § 4; 1977 ex.s. c 329 § 13. Formerly RCW 29.18.160.]

29A.28.030 United States senate. (*Effective July 1, 2004.*) When a vacancy occurs in the representation of this state in the senate of the United States, the governor shall make a temporary appointment to that office until the people fill the vacancy by election as provided in this chapter. [2003 c 111 § 703. Prior: 1985 c 45 § 3; 1965 c 9 § 29.68.070; prior: 1921 c 33 § 1; RRS § 3798. Formerly RCW 29.68.070.]

Legislative intent—1985 c 45: See note following RCW 29A.04.420.

Special procedures for primary for United States senate vacancy in 1983: Chapter 1, Laws of 1983 3rd ex. sess. (uncodified).

Vacancies in public office, how caused: RCW 42.12.010.

29A.28.040 Congress—Special election. (*Effective July 1, 2004.*) (1) Whenever a vacancy occurs in the United States house of representatives or the United States senate from this state, the governor shall order a special election to fill the vacancy.

(2) Within ten days of such vacancy occurring, he or she shall issue a writ of election fixing a date for the special vacancy election not less than ninety days after the issuance of the writ, fixing a date for the primary for nominating candidates for the special vacancy election not less than thirty days before the day fixed for holding the special vacancy election, fixing the dates for the special filing period, and designating the term or part of the term for which the vacancy exists. If the vacancy is in the office of United States representative, the writ of election shall specify the congressional district that is vacant.

(3) If the vacancy occurs less than six months before a state general election and before the second Friday following the close of the filing period for that general election, the special primary and special vacancy elections shall be held in

concert with the state primary and state general election in that year.

(4) If the vacancy occurs on or after the first day for filing under RCW 29A.24.050 and on or before the second Friday following the close of the filing period, a special filing period of three normal business days shall be fixed by the governor and notice thereof given to all media, including press, radio, and television within the area in which the vacancy election is to be held, to the end that, insofar as possible, all interested persons will be aware of such filing period. The last day of the filing period shall not be later than the third Tuesday before the primary at which candidates are to be nominated. The names of candidates who have filed valid declarations of candidacy during this three-day period shall appear on the approaching primary ballot.

(5) If the vacancy occurs later than the second Friday following the close of the filing period, a special primary and special vacancy election to fill the position shall be held after the next state general election but, in any event, no later than the ninetieth day following the November election. [2003 c 111 § 704; 1990 c 59 § 105; 1985 c 45 § 4; 1973 2nd ex.s. c 36 § 3; 1965 c 9 § 29.68.080. Prior: 1915 c 60 § 1; 1909 ex.s. c 25 § 1; RRS § 3799. Formerly RCW 29.68.080.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Legislative intent—1985 c 45: See note following RCW 29A.04.420.

Vacancies in public office, how caused: RCW 42.12.010.

29A.28.050 Congress—Notices of special primary and election. (*Effective July 1, 2004.*) After calling a special primary and special vacancy election to fill a vacancy in the United States house of representatives or the United States senate from this state, the governor shall immediately notify the secretary of state who shall, in turn, immediately notify the county auditor of each county wholly or partly within which the vacancy exists.

Each county auditor shall publish notices of the special primary and the special vacancy election at least once in any legal newspaper published in the county, as provided by RCW 29A.52.310 and 29A.52.350 respectively. [2003 c 111 § 705; 1985 c 45 § 5; 1973 2nd ex.s. c 36 § 5; 1965 c 9 § 29.68.100. Prior: 1909 ex.s. c 25 § 2, part; RRS § 3800, part. Formerly RCW 29.68.100.]

Legislative intent—1985 c 45: See note following RCW 29A.04.420.

29A.28.060 Congress—General, primary election laws to apply—Time deadlines, modifications. (*Effective July 1, 2004.*) The general election laws and laws relating to partisan primaries shall apply to the special primaries and vacancy elections provided for in RCW 29A.28.040 through 29A.28.050 to the extent that they are not inconsistent with the provisions of these sections. Statutory time deadlines relating to availability of absentee ballots, certification, canvassing, and related procedures that cannot be met in a timely fashion may be modified for the purposes of a specific primary or vacancy election under this chapter by the secretary of state through emergency rules adopted under RCW 29A.04.610. [2003 c 111 § 706; 1985 c 45 § 7; 1965 c 9 § 29.68.130. Prior: 1909 ex.s. c 25 § 4; RRS § 3802. Formerly RCW 29.68.130.]

Legislative intent—1985 c 45: See note following RCW 29A.04.420.

29A.28.070 Precinct committee officer. (*Effective July 1, 2004.*) If a vacancy occurs in the office of precinct committee officer by reason of death, resignation, or disqualification of the incumbent, or because of failure to elect, the respective county chair of the county central committee shall fill the vacancy by appointment. However, in a legislative district having a majority of its precincts in a county with a population of one million or more, the appointment may be made only upon the recommendation of the legislative district chair. The person so appointed must have the same qualifications as candidates when filing for election to the office for that precinct. When a vacancy in the office of precinct committee officer exists because of failure to elect at a state general election, the vacancy may not be filled until after the organization meeting of the county central committee and the new county chair has been selected as provided by RCW 29A.80.030. [2003 c 111 § 707.]

Chapter 29A.32 RCW VOTERS' PAMPHLETS

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STATE VOTERS' PAMPHLET

29A.32.010 Printing and distribution. (*Effective July 1, 2004.*) The secretary of state shall, whenever at least one statewide measure or office is scheduled to appear on the general election ballot, print and distribute a voters' pamphlet.

The secretary of state shall distribute the voters' pamphlet to each household in the state, to public libraries, and to any other locations he or she deems appropriate. The secretary of state shall also produce taped or Braille transcripts of the voters' pamphlet, publicize their availability, and mail without charge a copy to any person who requests one.

The secretary of state may make the material required to be distributed by this chapter available to the public in elec-

tronic form. The secretary of state may provide the material in electronic form to computer bulletin boards, print and broadcast news media, community computer networks, and similar services at the cost of reproduction or transmission of the data. [2003 c 111 § 801. Prior: 1999 c 260 § 1. Formerly RCW 29.81.210.]

29A.32.020 Prohibition against deceptively similar campaign materials. (*Effective July 1, 2004.*) No person or entity may publish or distribute any campaign material that is deceptively similar in design or appearance to a voters' pamphlet that was published by the secretary of state during the ten-year period before the publication or distribution of the campaign material by the person or entity. The secretary of state shall take reasonable measures to prevent or to stop violations of this section. Such measures may include, among others, petitioning the superior court for a temporary restraining order or other appropriate injunctive relief. In addition, the secretary may request the superior court to impose a civil fine on a violator of this section. The court is authorized to levy on and recover from each violator a civil fine not to exceed the greater of: (1) Two dollars for each copy of the deceptive material distributed, or (2) one thousand dollars. In addition, the violator is liable for the state's legal expenses and other costs resulting from the violation. Any funds recovered under this section must be transmitted to the state treasurer for deposit in the general fund. [2003 c 111 § 802; 1984 c 41 § 1. Formerly RCW 29.04.035.]

29A.32.030 Contents. (*Effective July 1, 2004.*) The voters' pamphlet must contain:

(1) Information about each ballot measure initiated by or referred to the voters for their approval or rejection as required by RCW 29A.32.070;

(2) In even-numbered years, statements, if submitted, advocating the candidacies of nominees for the office of president and vice president of the United States, United States senator, United States representative, governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, commissioner of public lands, superintendent of public instruction, insurance commissioner, state senator, state representative, justice of the supreme court, judge of the court of appeals, or judge of the superior court. Candidates may also submit a campaign mailing address and telephone number and a photograph not more than five years old and of a size and quality that the secretary of state determines to be suitable for reproduction in the voters' pamphlet;

(3) In odd-numbered years, if any office voted upon statewide appears on the ballot due to a vacancy, then statements and photographs for candidates for any vacant office listed in subsection (2) of this section must appear;

(4) In even-numbered years, a section explaining how voters may participate in the election campaign process; the address and telephone number of the public disclosure commission established under RCW 42.17.350; and a summary of the disclosure requirements that apply when contributions are made to candidates and political committees;

(5) In even-numbered years the name, address, and telephone number of each political party with nominees listed in the pamphlet, if filed with the secretary of state by the state

committee of a major political party or the presiding officer of the convention of a minor political party;

(6) In each odd-numbered year immediately before a year in which a president of the United States is to be nominated and elected, information explaining the precinct caucus and convention process used by each major political party to elect delegates to its national presidential candidate nominating convention. The pamphlet must also provide a description of the statutory procedures by which minor political parties are formed and the statutory methods used by the parties to nominate candidates for president;

(7) In even-numbered years, a description of the office of precinct committee officer and its duties;

(8) An application form for an absentee ballot;

(9) A brief statement explaining the deletion and addition of language for proposed measures under RCW 29A.32.080;

(10) Any additional information pertaining to elections as may be required by law or in the judgment of the secretary of state is deemed informative to the voters. [2003 c 111 § 803. Prior: 1999 c 260 § 2. Formerly RCW 29.81.220.]

29A.32.040 Explanatory statements. (*Effective July 1, 2004.*) (1) Explanatory statements prepared by the attorney general under RCW 29A.32.070 (3) and (4) must be written in clear and concise language, avoiding legal and technical terms when possible, and filed with the secretary of state.

(2) When the explanatory statement for a measure initiated by petition is filed with the secretary of state, the secretary of state shall immediately provide the text of the explanatory statement to the person proposing the measure and any others who have made written request for notification of the exact language of the explanatory statement. When the explanatory statement for a measure referred to the ballot by the legislature is filed with the secretary of state, the secretary of state shall immediately provide the text of the explanatory statement to the presiding officer of the senate and the presiding officer of the house of representatives and any others who have made written request for notification of the exact language of the explanatory statement.

(3) A person dissatisfied with the explanatory statement may appeal to the superior court of Thurston County within five days of the filing date. A copy of the petition and a notice of the appeal must be served on the secretary of state and the attorney general. The court shall examine the measure, the explanatory statement, and objections, and may hear arguments. The court shall render its decision and certify to and file with the secretary of state an explanatory statement it determines will meet the requirements of this chapter.

The decision of the superior court is final, and its explanatory statement is the established explanatory statement. The appeal must be heard without costs to either party. [2003 c 111 § 804. Prior: 1999 c 260 § 3. Formerly RCW 29.81.230.]

29A.32.050 Notice of constitutional amendments and state measures—Explanatory statement. (*Effective July 1, 2004.*) The attorney general shall, by the first day of July preceding each general election, prepare the explanatory statements required in RCW 29A.52.340. Such statements shall be prepared in clear and concise language and shall

avoid the use of legal and other technical terms insofar as possible. Any person dissatisfied with the explanatory statement so prepared may at any time within ten days from the filing thereof in the office of the secretary of state appeal to the superior court of Thurston county by petition setting forth the proposed state measure, the explanatory statement prepared by the attorney general, and his or her objection thereto and praying for the amendment thereof. A copy of the petition and a notice of such appeal shall be served on the secretary of state and the attorney general. The court shall, upon filing of the petition, examine the proposed state measure, the explanatory statement, and the objections thereto and may hear argument thereon and shall, as soon as possible, render its decision and certify to and file with the secretary of state such explanatory statement as it determines will meet the requirement of RCW 29A.52.330, 29A.52.340, and this section. The decision of the superior court shall be final and its explanatory statement shall be the established explanatory statement. Such appeal shall be heard without costs to either party. [2003 c 111 § 805; 1967 c 96 § 3; 1965 c 9 § 29.27.076. Prior: 1961 c 176 § 3. Formerly RCW 29.27.076.]

29A.32.060 Arguments. (*Effective July 1, 2004.*) Committees shall write and submit arguments advocating the approval or rejection of each statewide ballot issue and rebuttals of those arguments. The secretary of state, the presiding officer of the senate, and the presiding officer of the house of representatives shall appoint the initial two members of each committee. In making these committee appointments the secretary of state and presiding officers of the senate and house of representatives shall consider legislators, sponsors of initiatives and referendums, and other interested groups known to advocate or oppose the ballot measure.

The initial two members may select up to four additional members, and the committee shall elect a chairperson. The remaining committee member or members may fill vacancies through appointment.

After the committee submits its initial argument statements to the secretary of state, the secretary of state shall transmit the statements to the opposite committee. The opposite committee may then prepare rebuttal arguments. Rebuttals may not interject new points.

The voters' pamphlet may contain only argument statements prepared according to this section. Arguments may contain graphs and charts supported by factual statistical data and pictures or other illustrations. Cartoons or caricatures are not permitted. [2003 c 111 § 806. Prior: 1999 c 260 § 4. Formerly RCW 29.81.240.]

29A.32.070 Format, layout, contents. (*Effective July 1, 2004.*) The secretary of state shall determine the format and layout of the voters' pamphlet. The secretary of state shall print the pamphlet in clear, readable type on a size, quality, and weight of paper that in the judgment of the secretary of state best serves the voters. The pamphlet must contain a table of contents. Federal and state offices must appear in the pamphlet in the same sequence as they appear on the ballot. Measures and arguments must be printed in the order specified by RCW 29A.72.290.

The voters' pamphlet must provide the following information for each statewide issue on the ballot:

- (1) The legal identification of the measure by serial designation or number;
- (2) The official ballot title of the measure;
- (3) A statement prepared by the attorney general explaining the law as it presently exists;
- (4) A statement prepared by the attorney general explaining the effect of the proposed measure if it becomes law;
- (5) The fiscal impact statement prepared under RCW 29.79.075;
- (6) The total number of votes cast for and against the measure in the senate and house of representatives, if the measure has been passed by the legislature;
- (7) An argument advocating the voters' approval of the measure together with any statement in rebuttal of the opposing argument;
- (8) An argument advocating the voters' rejection of the measure together with any statement in rebuttal of the opposing argument;
- (9) Each argument or rebuttal statement must be followed by the names of the committee members who submitted them, and may be followed by a telephone number that citizens may call to obtain information on the ballot measure;
- (10) The full text of each measure. [2003 c 111 § 807. Prior: 2002 c 139 § 2; 1999 c 260 § 5. Formerly RCW 29.81.250.]

29A.32.080 Amendatory style. (*Effective July 1, 2004.*) Statewide ballot measures that amend existing law must be printed in the voters' pamphlet so that language proposed for deletion is enclosed by double parentheses and has a line through it. Proposed new language must be underlined. A statement explaining the deletion and addition of language must appear as follows: "Any language in double parentheses with a line through it is existing state law and will be taken out of the law if this measure is approved by voters. Any underlined language does not appear in current state law but will be added to the law if this measure is approved by voters." [2003 c 111 § 808. Prior: 1999 c 260 § 6. Formerly RCW 29.81.260.]

29A.32.090 Arguments—Rejection, dispute. (*Effective July 1, 2004.*) (1) If in the opinion of the secretary of state any argument or statement offered for inclusion in the voters' pamphlet in support of or opposition to a measure or candidate contains obscene matter or matter that is otherwise prohibited by law from distribution through the mail, the secretary may petition the superior court of Thurston County for a judicial determination that the argument or statement may be rejected for publication or edited to delete the matter. The court shall not enter such an order unless it concludes that the matter is obscene or otherwise prohibited for distribution through the mail.

(2)(a) A person who believes that he or she may be defamed by an argument or statement offered for inclusion in the voters' pamphlet in support of or opposition to a measure or candidate may petition the superior court of Thurston County for a judicial determination that the argument or statement may be rejected for publication or edited to delete the defamatory statement.

(b) The court shall not enter such an order unless it concludes that the statement is untrue and that the petitioner has a very substantial likelihood of prevailing in a defamation action.

(c) An action under this subsection (2) must be filed and served no later than the tenth day after the deadline for the submission of the argument or statement to the secretary of state.

(d) If the secretary of state notifies a person named or identified in an argument or statement of the contents of the argument or statement within three days after the deadline for submission to the secretary, then neither the state nor the secretary is liable for damages resulting from publication of the argument or statement in violation of an order entered under this section. Nothing in this section creates a duty on the part of the secretary of state to identify, locate, or notify the person.

(3) Parties to a dispute under this section may agree to resolve the dispute by rephrasing the argument or statement, even if the deadline for submission to the secretary has elapsed, unless the secretary determines that the process of publication is too far advanced to permit the change. The secretary shall promptly provide any such revision to any committee entitled to submit a rebuttal argument. If that committee has not yet submitted its rebuttal, its deadline to submit a rebuttal is extended by five days. If it has submitted a rebuttal, it may revise it to address the change within five days of the filing of the revised argument with the secretary.

(4) In an action under this section the committee or candidate must be named as a defendant, and may be served with process by certified mail directed to the address contained in the secretary's records for that party. The secretary of state shall be a nominal party to an action brought under subsection (2) of this section, solely for the purpose of determining the content of the voters' pamphlet. The superior court shall give such an action priority on its calendar. [2003 c 111 § 809. Prior: 1999 c 260 § 8. Formerly RCW 29.81.280.]

29A.32.100 Arguments—Public inspection. (*Effective July 1, 2004.*) (1) An argument or statement submitted to the secretary of state for publication in the voters' pamphlet is not available for public inspection or copying until:

(a) In the case of candidate statements, (i) all statements by all candidates who have filed for a particular office have been received, except those who informed the secretary that they will not submit statements, or (ii) the deadline for submission of statements has elapsed;

(b) In the case of arguments supporting or opposing a measure, (i) the arguments on both sides have been received, unless a committee was not appointed for one side, or (ii) the deadline for submission of arguments has elapsed; and

(c) In the case of rebuttal arguments, (i) the rebuttals on both sides have been received, unless a committee was not appointed for one side, or (ii) the deadline for submission of arguments has elapsed.

(2) Nothing in this section prohibits the secretary from releasing information under RCW 29A.32.090(2)(d). [2003 c 111 § 810. Prior: 1999 c 260 § 9. Formerly RCW 29.81.290.]

29A.32.110 Photographs. (Effective July 1, 2004.)

All photographs of candidates submitted for publication must conform to standards established by the secretary of state by rule. No photograph may reveal clothing or insignia suggesting the holding of a public office. [2003 c 111 § 811. Prior: 1999 c 260 § 10. Formerly RCW 29.81.300.]

29A.32.120 Candidates' statements—Length. (Effective July 1, 2004.)

(1) The maximum number of words for statements submitted by candidates is as follows: State representative, one hundred words; state senator, judge of the superior court, judge of the court of appeals, justice of the supreme court, and all state offices voted upon throughout the state, except that of governor, two hundred words; president and vice president, United States senator, United States representative, and governor, three hundred words.

(2) Arguments written by committees under RCW 29A.32.060 may not exceed two hundred fifty words in length.

(3) Rebuttal arguments written by committees may not exceed seventy-five words in length.

(4) The secretary of state shall allocate space in the pamphlet based on the number of candidates or nominees for each office. [2003 c 254 § 6; 2003 c 111 § 812; 1999 c 260 § 11. Formerly RCW 29.81.310.]

Reviser's note: This section was amended by 2003 c 111 § 812 and by 2003 c 254 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

LOCAL VOTERS' PAMPHLET

29A.32.210 Authorization—Contents—Format. (Effective July 1, 2004.)

At least ninety days before any primary or general election, or at least forty days before any special election held under RCW 29A.04.320 or 29A.04.330, the legislative authority of any county or first-class or code city may adopt an ordinance authorizing the publication and distribution of a local voters' pamphlet. The pamphlet shall provide information on all measures within that jurisdiction and may, if specified in the ordinance, include information on candidates within that jurisdiction. If both a county and a first-class or code city within that county authorize a local voters' pamphlet for the same election, the pamphlet shall be produced jointly by the county and the first-class or code city. If no agreement can be reached between the county and first-class or code city, the county and first-class or code city may each produce a pamphlet. Any ordinance adopted authorizing a local voters' pamphlet may be for a specific primary, special election, or general election or for any future primaries or elections. The format of any local voters' pamphlet shall, whenever applicable, comply with the provisions of this chapter regarding the publication of the state candidates' and voters' pamphlets. [2003 c 111 § 813; 1984 c 106 § 3. Formerly RCW 29.81A.010.]

29A.32.220 Notice of production—Local governments' decision to participate. (Effective July 1, 2004.)

(1) Not later than ninety days before the publication and distribution of a local voters' pamphlet by a county, the county auditor shall notify each city, town, or special taxing district

located wholly within that county that a pamphlet will be produced.

(2) If a voters' pamphlet is published by the county for a primary or general election, the pamphlet shall be published for the elective offices and ballot measures of the county and for the elective offices and ballot measures of each unit of local government located entirely within the county which will appear on the ballot at that primary or election. However, the offices and measures of a first class or code city shall not be included in the pamphlet if the city publishes and distributes its own voters' pamphlet for the primary or election for its offices and measures. The offices and measures of any other town or city are not required to appear in the county's pamphlet if the town or city is obligated by ordinance or charter to publish and distribute a voters' pamphlet for the primary or election for its offices and measures and it does so.

If the required appearance in a county's voters' pamphlet of the offices or measures of a unit of local government would create undue financial hardship for the unit of government, the legislative authority of the unit may petition the legislative authority of the county to waive this requirement. The legislative authority of the county may provide such a waiver if it does so not later than sixty days before the publication of the pamphlet and it finds that the requirement would create such hardship.

(3) If a city, town, or district is located within more than one county, the respective county auditors may enter into an interlocal agreement to permit the distribution of each county's local voters' pamphlet into those parts of the city, town, or district located outside of that county.

(4) If a first-class or code city authorizes the production and distribution of a local voters' pamphlet, the city clerk of that city shall notify any special taxing district located wholly within that city that a pamphlet will be produced. Notification shall be provided in the manner required or provided for in subsection (1) of this section.

(5) A unit of local government located within a county and the county may enter into an interlocal agreement for the publication of a voters' pamphlet for offices or measures not required by subsection (2) of this section to appear in a county's pamphlet. [2003 c 111 § 814; 1994 c 191 § 1; 1984 c 106 § 4. Formerly RCW 29.81A.020.]

29A.32.230 Administrative rules. (Effective July 1, 2004.)

The county auditor or, if applicable, the city clerk of a first-class or code city shall, in consultation with the participating jurisdictions, adopt and publish administrative rules necessary to facilitate the provisions of any ordinance authorizing production of a local voters' pamphlet. Any amendment to such a rule shall also be adopted and published. Copies of the rules shall identify the date they were adopted or last amended and shall be made available to any person upon request. One copy of the rules adopted by a county auditor and one copy of any amended rules shall be submitted to the county legislative authority. One copy of the rules adopted by a city clerk and one copy of any amended rules shall be submitted to the city legislative authority. These rules shall include but not be limited to the following:

(1) Deadlines for decisions by cities, towns, or special taxing districts on being included in the pamphlet;

(2) Limits on the length and deadlines for submission of arguments for and against each measure;

(3) The basis for rejection of any explanatory or candidates' statement or argument deemed to be libelous or otherwise inappropriate. Any statements by a candidate shall be limited to those about the candidate himself or herself;

(4) Limits on the length and deadlines for submission of candidates' statements;

(5) An appeal process in the case of the rejection of any statement or argument. [2003 c 111 § 815. Prior: 1984 c 106 § 5. Formerly RCW 29.81A.030.]

29A.32.240 Contents. (*Effective July 1, 2004.*) The local voters' pamphlet shall include but not be limited to the following:

(1) Appearing on the cover, the words "official local voters' pamphlet," the name of the jurisdiction producing the pamphlet, and the date of the election or primary;

(2) A list of jurisdictions that have measures or candidates in the pamphlet;

(3) Information on how a person may register to vote and obtain an absentee ballot;

(4) The text of each measure accompanied by an explanatory statement prepared by the prosecuting attorney for any county measure or by the attorney for the jurisdiction submitting the measure if other than a county measure. All explanatory statements for city, town, or district measures not approved by the attorney for the jurisdiction submitting the measure shall be reviewed and approved by the county prosecuting attorney or city attorney, when applicable, before inclusion in the pamphlet;

(5) The arguments for and against each measure submitted by committees selected pursuant to RCW 29A.32.280. [2003 c 111 § 816; 1984 c 106 § 6. Formerly RCW 29.81A.040.]

29A.32.250 Candidates, when included. (*Effective July 1, 2004.*) If the legislative authority of a county or first-class or code city provides for the inclusion of candidates in the local voters' pamphlet, the pamphlet shall include the statements from candidates and may also include those candidates' photographs. [2003 c 111 § 817. Prior: 1984 c 106 § 7. Formerly RCW 29.81A.050.]

29A.32.260 Mailing. (*Effective July 1, 2004.*) As soon as practicable before the primary, special election, or general election, the county auditor, or if applicable, the city clerk of a first-class or code city, as appropriate, shall mail the local voters' pamphlet to every residence in each jurisdiction that has included information in the pamphlet. The county auditor or city clerk, as appropriate, may choose to mail the pamphlet to each registered voter in each jurisdiction that has included information in the pamphlet, if in his or her judgment, a more economical and effective distribution of the pamphlet would result. If the county or city chooses to mail the pamphlet to each residence, no notice of election otherwise required by RCW 29A.52.350 need be published. [2003 c 111 § 818. Prior: 1984 c 106 § 8. Formerly RCW 29.81A.060.]

29A.32.270 Cost. (*Effective July 1, 2004.*) The cost of a local voters' pamphlet shall be considered an election cost to those local jurisdictions included in the pamphlet and shall be prorated in the manner provided in RCW 29A.04.410. [2003 c 111 § 819. Prior: 1984 c 106 § 9. Formerly RCW 29.81A.070.]

29A.32.280 Arguments advocating approval or disapproval—Preparation by committees. (*Effective July 1, 2004.*) For each measure from a unit of local government that is included in a local voters' pamphlet, the legislative authority of that jurisdiction shall, not later than forty-five days before the publication of the pamphlet, formally appoint a committee to prepare arguments advocating voters' approval of the measure and shall formally appoint a committee to prepare arguments advocating voters' rejection of the measure. The authority shall appoint persons known to favor the measure to serve on the committee advocating approval and shall, whenever possible, appoint persons known to oppose the measure to serve on the committee advocating rejection. Each committee shall have not more than three members, however, a committee may seek the advice of any person or persons. If the legislative authority of a unit of local government fails to make such appointments by the prescribed deadline, the county auditor shall whenever possible make the appointments. [2003 c 111 § 820. Prior: 1994 c 191 § 2; 1984 c 106 § 10. Formerly RCW 29.81A.080.]

Chapter 29A.36 RCW

BALLOTS AND OTHER VOTING FORMS

Sections

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29A.36.220 Expense of printing and distributing ballot materials. (Effective July 1, 2004.)

29A.36.010 Certifying primary candidates. (Effective July 1, 2004.) On or before the day following the last day for political parties to fill vacancies in the ticket as provided by RCW 29A.28.010, the secretary of state shall certify to each county auditor a list of the candidates who have filed declarations of candidacy in his or her office for the primary. For each office, the certificate shall include the name of each candidate, his or her address, and his or her party designation, if any. [2003 c 111 § 901. Prior: 1990 c 59 § 8; 1965 ex.s. c 103 § 4; 1965 c 9 § 29.27.020; prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part. Formerly RCW 29.27.020.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.36.020 Constitutional measures—Ballot title—Formulation, ballot display, certification. (Effective July 1, 2004.) (1) When a proposed constitutional amendment is to be submitted to the people of the state for statewide popular vote, the ballot title consists of: (a) A statement of the subject of the amendment; (b) a concise description of the amendment; and (c) a question in the form prescribed in this section. The statement of the subject of a constitutional amendment must be sufficiently broad to reflect the nature of the amendment, sufficiently precise to give notice of the amendment's subject matter, and not exceed ten words. The concise description must contain no more than thirty words, give a true and impartial description of the amendment's essential contents, clearly identify the amendment to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the amendment.

The ballot title for a proposed constitutional amendment must be displayed on the ballot substantially as follows:

"The legislature has proposed a constitutional amendment on (statement of subject). This amendment would (concise description). Should this constitutional amendment be:

Approved
Rejected

(2) When a proposed new constitution is submitted to the people of the state by a constitutional convention for statewide popular vote, the ballot title consists of: (a) A concise description of the new constitution; and (b) a question in the form prescribed in this section. The concise description must contain no more than thirty words, give a true and impartial description of the new constitution's essential contents, clearly identify the proposed constitution to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the new constitution.

The ballot title for a proposed new constitution must be displayed on the ballot substantially as follows:

"The constitutional convention approved a new proposed state constitution that (concise description). Should this proposed constitution be:

Approved

Rejected

(3) The legislature may specify the statement of subject or concise description, or both, in a constitutional amendment that it submits to the people. If the legislature fails to specify the statement of subject or concise description, or both, the attorney general shall prepare the material that was not specified. The statement of subject and concise description as so provided must be included as part of the ballot title unless changed on appeal.

The attorney general shall specify the concise description for a proposed new constitution that is submitted to the people by a constitutional convention, and the concise description as so provided must be included as part of the ballot title unless changed on appeal.

(4) The secretary of state shall certify to the county auditors the ballot title for a proposed constitution, constitutional amendment, or other statewide question at the same time and in the same manner as the ballot titles to initiatives and referendums. [2003 c 111 § 902. Prior: 2000 c 197 § 7. Formerly RCW 29.27.057.]

Part headings not law—2000 c 197: See note following RCW 29A.72.050.

29A.36.030 Constitutional measures—Ballot title—Filing. (Effective July 1, 2004.) The ballot title for a constitutional amendment or proposed constitution must be filed with the secretary of state in the same manner as the ballot title and summary for a state initiative or referendum are filed. [2003 c 111 § 903. Prior: 2000 c 197 § 8. Formerly RCW 29.27.061.]

Part headings not law—2000 c 197: See note following RCW 29A.72.050.

29A.36.040 Constitutional, statewide questions—Notice of ballot title and summary. (Effective July 1, 2004.) Upon the filing of a ballot title under RCW 29A.36.020 or 29A.36.050, the secretary of state shall provide notice of the exact language of the ballot title and summary to the chief clerk of the house of representatives, the secretary of the senate, and the prime sponsor of measure. [2003 c 111 § 904. Prior: 2000 c 197 § 9; 1993 c 256 § 11; 1965 c 9 § 29.27.065; prior: 1953 c 242 § 3. Formerly RCW 29.27.065.]

Part headings not law—2000 c 197: See note following RCW 29A.72.050.

Severability—Effective date—1993 c 256: See notes following RCW 29A.84.280.

29A.36.050 Statewide question—Ballot title—Formulation, ballot display. (Effective July 1, 2004.) (1) If the legislature submits a question to the people for a statewide popular vote that is not governed by RCW 29A.72.050 or 29A.36.020, the ballot title on the question consists of: (a) A description of the subject; and (b) a question in the form prescribed in this section. The statement of the subject of the question must be sufficiently broad to reflect the subject of the question, sufficiently precise to give notice of the question's subject matter, and not exceed ten words. The question must contain no more than thirty words.

The ballot title for such a question must be displayed on the ballot substantially as follows:

"The following question concerning (description of subject) has been submitted to the voters: (Question as submitted).

Yes
No

(2) The legislature may specify the statement of subject for a question and shall specify the question that it submits to the people. If the legislature fails to specify the statement of subject, the attorney general shall prepare the statement of subject. The statement of subject and question as so provided must be included as part of the ballot title unless changed on appeal. [2003 c 111 § 905. Prior: 2000 c 197 § 10. Formerly RCW 29.27.0653.]

Part headings not law—2000 c 197: See note following RCW 29A.72.050.

29A.36.060 Constitutional, statewide questions—Ballot title—Appeal. (Effective July 1, 2004.) If any persons are dissatisfied with the ballot title for a proposed constitution, constitutional amendment, or question submitted under RCW 29A.36.050, they may at any time within ten days from the time of the filing of the ballot title and summary, not including Saturdays, Sundays, or legal holidays, appeal to the superior court of Thurston county by petition setting forth the measure, the ballot title objected to, their objections to it, and praying for amendment of the ballot title. The time of the filing of the ballot title, as used in this section for establishing the time for appeal, is the time the ballot title is first filed with the secretary of state.

A copy of the petition on appeal together with a notice that an appeal has been taken must be served upon the secretary of state, the attorney general, the chief clerk of the house of representatives, and the secretary of the senate. Upon the filing of the petition on appeal, the court shall immediately, or at the time to which a hearing may be adjourned by consent of the appellants, examine the proposed measure, the ballot title filed, and the objections to it and may hear arguments on it, and shall as soon as possible render its decision and certify to and file with the secretary of state a ballot title that it determines will meet the requirements of this chapter. The decision of the superior court is final, and the ballot title so certified will be the established ballot title. The appeal must be heard without cost to either party. [2003 c 111 § 906. Prior: 2000 c 197 § 11. Formerly RCW 29.27.0655.]

Part headings not law—2000 c 197: See note following RCW 29A.72.050.

29A.36.070 Local measures—Ballot title—Formulation—Advertising. (Effective July 1, 2004.) (1) Except as provided to the contrary in RCW 82.14.036, 82.46.021, or 82.80.090, the ballot title of any referendum filed on an enactment or portion of an enactment of a local government and any other question submitted to the voters of a local government consists of three elements: (a) An identification of the enacting legislative body and a statement of the subject matter; (b) a concise description of the measure; and (c) a question. The ballot title must conform with the require-

ments and be displayed substantially as provided under RCW 29A.72.050, except that the concise description must not exceed seventy-five words. If the local governmental unit is a city or a town, the concise statement shall be prepared by the city or town attorney. If the local governmental unit is a county, the concise statement shall be prepared by the prosecuting attorney of the county. If the unit is a unit of local government other than a city, town, or county, the concise statement shall be prepared by the prosecuting attorney of the county within which the majority area of the unit is located.

(2) A referendum measure on the enactment of a unit of local government shall be advertised in the manner provided for nominees for elective office.

(3) Subsection (1) of this section does not apply if another provision of law specifies the ballot title for a specific type of ballot question or proposition. [2003 c 111 § 907. Prior: 2000 c 197 § 12; 1993 c 256 § 7. Formerly RCW 29.27.066, 29.79.055.]

Part headings not law—2000 c 197: See note following RCW 29A.72.050.

Severability—Effective date—1993 c 256: See notes following RCW 29A.84.280.

29A.36.080 Local measures—Ballot title—Notice. (Effective July 1, 2004.) Upon the filing of a ballot title of a question to be submitted to the people of a county or municipality, the county auditor shall provide notice of the exact language of the ballot title to the persons proposing the measure, the county or municipality, and to any other person requesting a copy of the ballot title. [2003 c 111 § 908. Prior: 2000 c 197 § 13. Formerly RCW 29.27.0665.]

Part headings not law—2000 c 197: See note following RCW 29A.72.050.

29A.36.090 Local measures—Ballot title—Appeal. (Effective July 1, 2004.) If any persons are dissatisfied with the ballot title for a local ballot measure that was formulated by the city attorney or prosecuting attorney preparing the same, they may at any time within ten days from the time of the filing of the ballot title, not including Saturdays, Sundays, and legal holidays, appeal to the superior court of the county where the question is to appear on the ballot, by petition setting forth the measure, the ballot title objected to, their objections to it, and praying for amendment of it. The time of the filing of the ballot title, as used in this section in determining the time for appeal, is the time the ballot title is first filed with the county auditor.

A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the county auditor and the official preparing the ballot title. Upon the filing of the petition on appeal, the court shall immediately, or at the time to which a hearing may be adjourned by consent of the appellants, examine the proposed measure, the ballot title filed, and the objections to it and may hear arguments on it, and shall as soon as possible render its decision and certify to and file with the county auditor a ballot title that it determines will meet the requirements of this chapter. The decision of the superior court is final, and the ballot title or statement so certified will be the established ballot title. The appeal must be heard without cost to either party. [2003 c 111 § 909. Prior: 2000 c 197 § 14; 1993 c 256 § 12; 1965 c

9 § 29.27.067; prior: 1953 c 242 § 4. Formerly RCW 29.27.067.]

Part headings not law—2000 c 197: See note following RCW 29A.72.050.

Severability—Effective date—1993 c 256: See notes following RCW 29A.84.280.

29A.36.100 Names on primary ballot. (Effective July 1, 2004.) Except for the candidates for the positions of president and vice president or for a partisan or nonpartisan office for which no primary is required, the names of all candidates who, under this title, filed a declaration of candidacy, were certified as a candidate to fill a vacancy on a major party ticket, or were nominated as an independent or minor party candidate will appear on the appropriate ballot at the primary throughout the jurisdiction in which they are to be nominated. [2003 c 111 § 910; 1990 c 59 § 93. Formerly RCW 29.30.005.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.36.110 Uniformity, arrangement, contents required. (Effective July 1, 2004.) Every ballot for a single combination of issues and offices shall be uniform within a precinct and shall identify the type of primary or election, the county, and the date of the primary or election, and the ballot or voting device shall contain instructions on the proper method of recording a vote, including write-in votes. Each position, together with the names of the candidates for that office, shall be clearly separated from other offices or positions in the same jurisdiction. The offices in each jurisdiction shall be clearly separated from each other. No paper ballot or ballot card may be marked in any way that would permit the identification of the person who voted that ballot. [2003 c 111 § 911. Prior: 1990 c 59 § 10; 1986 c 167 § 10; 1977 ex.s. c 361 § 51; 1965 c 9 § 29.30.010; prior: (i) 1935 c 26 § 2, part; 1933 c 95 § 2, part; 1917 c 71 § 1, part; 1909 c 82 § 3, part; 1907 c 209 § 10, part; RRS § 5187, part. (ii) 1909 c 82 § 5, part; 1907 c 209 § 13, part; RRS § 5190, part. Formerly RCW 29.30.010.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Severability—1986 c 167: See note following RCW 29A.04.049.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.36.120 Order of offices and issues—Party indication. (Effective July 1, 2004.) (1) The positions or offices on a primary ballot shall be arranged in substantially the following order: United States senator; United States representative; governor; lieutenant governor; secretary of state; state treasurer; state auditor; attorney general; commissioner of public lands; superintendent of public instruction; insurance commissioner; state senator; state representative; county officers; justices of the supreme court; judges of the court of appeals; judges of the superior court; and judges of the district court. For all other jurisdictions on the primary ballot, the offices in each jurisdiction shall be grouped together and be in the order of the position numbers assigned to those offices, if any.

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(2) The order of the positions or offices on an election ballot shall be substantially the same as on a primary ballot except that the offices of president and vice president of the United States shall precede all other offices on a presidential election ballot. State ballot issues shall be placed before all offices on an election ballot. The positions on a ballot to be assigned to ballot measures regarding local units of government shall be established by the secretary of state by rule.

(3) The political party or independent candidacy of each candidate for partisan office shall be indicated next to the name of the candidate on the primary and election ballot. A candidate shall file a written notice with the filing officer within three business days after the close of the filing period designating the political party to be indicated next to the candidate's name on the ballot if either: (a) The candidate has been nominated by two or more minor political parties or independent conventions; or (b) the candidate has both filed a declaration of candidacy declaring an affiliation with a major political party and been nominated by a minor political party or independent convention. If no written notice is filed the filing officer shall give effect to the party designation shown upon the first document filed. A candidate may be deemed nominated by a minor party or independent convention only if all documentation required by chapter 29A.20 RCW has been timely filed. [2003 c 111 § 912. Prior: 2001 c 30 § 5; 1990 c 59 § 11; 1977 ex.s. c 361 § 52; 1971 c 81 § 76; 1965 c 9 § 29.30.020; prior: 1935 c 26 § 2, part; 1933 c 95 § 2, part; 1917 c 71 § 1, part; 1909 c 82 § 3, part; 1907 c 209 § 10, part; RRS § 5187, part. Formerly RCW 29.30.020.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.36.130 Order of candidates on ballots. (Effective July 1, 2004.) After the close of business on the last day for candidates to file for office, the filing officer shall, from among those filings made in person and by mail, determine by lot the order in which the names of those candidates will appear on all sample and absentee ballots. In the case of candidates for city, town, and district office, this procedure shall also determine the order for candidate names on the official primary ballot used at the polling place. The determination shall be done publicly and may be witnessed by the media and by any candidate. If no primary is required for any nonpartisan office under RCW 29A.52.010 or 29A.52.220, the names shall appear on the general election ballot in the order determined by lot. [2003 c 111 § 913. Prior: 1990 c 59 § 80. Formerly RCW 29.30.025.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.36.140 Primaries—Rotating names of candidates. (Effective July 1, 2004.) At primaries, the names of candidates for federal, state, and county partisan offices, for the office of superintendent of public instruction, and for judicial offices shall, for each office or position, be arranged initially in the order determined under RCW 29A.36.130. Additional sets of ballots shall be prepared in which the positions of the names of all candidates for each office or position shall be changed as many times as there are candidates in the

office or position in which there are the greatest number of names. As nearly as possible an equal number of ballots shall be prepared after each change. In making the changes of position between each set of ballots, the candidates for each such office in the first position under the office heading shall be moved to the last position under that office heading, and each other name shall be moved up to the position immediately above its previous position under that office heading. The effect of this rotation of the order of the names shall be that the name of each candidate for an office or position shall appear first, second, and so forth for that office or position on the ballots of a nearly equal number of registered voters in that jurisdiction. In a precinct using voting devices, the names of the candidates for each office shall appear in only one sequence in that precinct. The names of candidates for city, town, and district office on the ballot at the primary shall not be rotated. [2003 c 111 § 914. Prior: 1990 c 59 § 94; 1977 ex.s. c 361 § 54; 1965 c 9 § 29.30.040; prior: 1909 c 82 § 5, part; 1907 c 209 § 13, part; RRS § 5190, part. Formerly RCW 29.30.040.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.36.150 Sample ballots. (Effective July 1, 2004.)

Except in each county with a population of one million or more, on or before the fifteenth day before a primary or election, the county auditor shall prepare a sample ballot which shall be made readily available to members of the public. The secretary of state shall adopt rules governing the preparation of sample ballots in counties with a population of one million or more. The rules shall permit, among other alternatives, the preparation of more than one sample ballot by a county with a population of one million or more for a primary or election, each of which lists a portion of the offices and issues to be voted on in that county. The position of precinct committee officer shall be shown on the sample ballot for the general election, but the names of candidates for the individual positions need not be shown. [2003 c 111 § 915. Prior: 1991 c 363 § 33; 1990 c 59 § 12; 1987 c 295 § 3; 1986 c 120 § 3; 1977 ex.s. c 361 § 55; 1965 c 9 § 29.30.060; prior: (i) 1935 c 26 § 2, part; 1933 c 95 § 2, part; 1917 c 71 § 1, part; 1909 c 82 § 3, part; 1907 c 209 § 10, part; RRS § 5187, part. (ii) 1909 c 82 § 5, part; 1907 c 209 § 13, part; RRS § 5190, part. Formerly RCW 29.30.060.]

Effective dates—1991 c 363 §§ 28, 29, 33, 47, 131: See note following RCW 28A.343.660.

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

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.36.160 Arrangement of instructions, measures, offices—Order of candidates—Numbering of ballots. (Effective July 1, 2004.) (1) On the top of each ballot there will be printed instructions directing the voters how to mark the ballot, including write-in votes. After the instructions and before the offices, the questions of adopting constitutional

amendments or any other state measure authorized by law to be submitted to the voters at that election will be placed.

(2) The candidate or candidates of the major political party that received the highest number of votes from the electors of this state for the office of president of the United States at the last presidential election will appear first following the appropriate office heading, the candidate or candidates of the other major political parties will follow according to the votes cast for their nominees for president at the last presidential election, and independent candidates and the candidate or candidates of all other parties will follow in the order of their qualification with the secretary of state.

(3) The names of candidates for president and vice president for each political party must be grouped together with a single response position for a voter to indicate his or her choice.

(4) All paper ballots and ballot cards used at a polling place must be sequentially numbered in such a way to permit removal of such numbers without leaving any identifying marks on the ballot. [2003 c 111 § 916; 1990 c 59 § 13; 1986 c 167 § 11; 1982 c 121 § 1; 1977 ex.s. c 361 § 60. Formerly RCW 29.30.081.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Severability—1986 c 167: See note following RCW 29A.04.049.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.36.170 Nonpartisan candidates qualified for general election. (Effective July 1, 2004.) (1) Except as provided in RCW 29A.36.180 and in subsection (2) of this section, on the ballot at the general election for a nonpartisan office for which a primary was held, only the names of the candidate who received the greatest number of votes and the candidate who received the next greatest number of votes for that office shall appear under the title of that office, and the names shall appear in that order. If a primary was conducted, no candidate's name may be printed on the subsequent general election ballot unless he or she receives at least one percent of the total votes cast for that office at the preceding primary. On the ballot at the general election for any other nonpartisan office for which no primary was held, the names of the candidates shall be listed in the order determined under RCW 29A.36.130.

(2) On the ballot at the general election for the office of justice of the supreme court, judge of the court of appeals, judge of the superior court, or state superintendent of public instruction, if a candidate in a contested primary receives a majority of all the votes cast for that office or position, only the name of that candidate may be printed under the title of the office for that position. [2003 c 111 § 917. Prior: 1992 c 181 § 2; 1990 c 59 § 95. Formerly RCW 29.30.085.]

Effective date—1992 c 181: See note following RCW 29A.36.180.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.36.180 Disqualified candidates in nonpartisan elections—Special procedures for conduct of election. (Effective July 1, 2004.) This section applies if a candidate for an elective office of a city, town, or special purpose district would, under this chapter, otherwise qualify to have his

or her name printed on the general election ballot for the office, but the candidate has been declared to be unqualified to hold the office by a court of competent jurisdiction.

(1) In a case in which a primary is conducted for the office:

(a) If ballots for the general election for the office have not been ordered by the county auditor, the candidate who received the third greatest number of votes for the office at the primary shall qualify as a candidate for general election and that candidate's name shall be printed on the ballot for the office in lieu of the name of the disqualified candidate.

(b) If general election ballots for the office have been so ordered, votes cast for the disqualified candidate at the general election for the office shall not be counted for that office.

(2) In a case in which a primary is not conducted for the office:

(a) If ballots for the general election for the office have not been ordered by the county auditor, the name of the disqualified candidate shall not appear on the general election ballot for the office.

(b) If general election ballots for the office have been so ordered, votes cast for the disqualified candidate at the general election for the office shall not be counted for that office.

(3) If the disqualified candidate is the only candidate to have filed for the office during a regular or special filing period for the office, a void in candidacy for the office exists. [2003 c 111 § 918. Prior: 1992 c 181 § 1. Formerly RCW 29.30.086.]

Effective date—1992 c 181: "This act shall take effect July 1, 1992." [1992 c 181 § 3.]

29A.36.190 Partisan candidates qualified for general election. (Effective July 1, 2004.) The name of a candidate for a partisan office for which a primary was conducted shall not be printed on the ballot for that office at the subsequent general election unless the candidate receives a number of votes equal to at least one percent of the total number cast for all candidates for that position sought and a plurality of the votes cast for the candidates of his or her party for that office at the preceding primary. [2003 c 111 § 919. Prior: 1990 c 59 § 96. Formerly RCW 29.30.095.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.36.200 Names qualified to appear on election ballot. (Effective July 1, 2004.) The names of the persons certified as nominees by the secretary of state or the county canvassing board shall be printed on the ballot at the ensuing election.

No name of any candidate whose nomination at a primary is required by law shall be placed upon the ballot at a general or special election unless it appears upon the certificate of either (1) the secretary of state, or (2) the county canvassing board, or (3) a minor party convention or the state or county central committee of a major political party to fill a vacancy on its ticket under RCW 29A.28.020.

Excluding the office of precinct committee officer or a temporary elected position such as a charter review board member or freeholder, a candidate's name shall not appear more than once upon a ballot for a position regularly nominated or elected at the same election. [2003 c 111 § 920.

Prior: 1999 c 298 § 11; 1990 c 59 § 14; 1987 c 295 § 4; 1977 ex.s. c 361 § 58. Formerly RCW 29.30.101.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.36.210 Property tax levies—Ballot form. (Effective July 1, 2004.) (1) The ballot proposition authorizing a taxing district to impose the regular property tax levies authorized in RCW 36.69.145, 67.38.130, or 84.52.069 shall contain in substance the following:

"Shall the (insert the name of the taxing district) be authorized to impose regular property tax levies of (insert the maximum rate) or less per thousand dollars of assessed valuation for each of (insert the maximum number of years allowable) consecutive years?

Yes '
No ' "

Each voter shall indicate either "Yes" or "No" on his or her ballot in accordance with the procedures established under this title.

(2) The ballot proposition authorizing a taxing district to impose a permanent regular tax levy under RCW 84.52.069 shall contain the following:

"Shall the (insert the name of the taxing district) be authorized to impose a PERMANENT regular property levy of (insert the maximum rate) or less per thousand dollars of assessed valuation?

Yes '
No ' "

[2003 c 111 § 921. Prior: 1999 c 224 § 2; 1984 c 131 § 3. Formerly RCW 29.30.111.]

Application—1999 c 224: See note following RCW 84.52.069.

Purpose—1984 c 131 §§ 3-9: "The purpose of sections 3 through 6 of this act is to clarify requirements necessary for voters to authorize certain local governments to impose regular property tax levies for a series of years. Sections 3 through 9 of this act only clarify the existing law to avoid credence being given to an erroneous opinion that has been rendered by the attorney general. As cogently expressed in Attorney General Opinion, Number 14, Addendum, opinions rendered by the attorney general are advisory only and are merely a "prediction of the outcome if the matter were to be litigated." Nevertheless, confusion has arisen from this erroneous opinion." [1984 c 131 § 2.]

29A.36.220 Expense of printing and distributing ballot materials. (Effective July 1, 2004.) The cost of printing ballots, ballot cards, and instructions and the delivery of this material to the precinct election officers shall be an election cost that shall be borne as determined under RCW 29A.04.410 and 29A.04.420, as appropriate. [2003 c 111 § 922. Prior: 1990 c 59 § 16; 1965 c 9 § 29.30.130; prior: 1889 p 400 § 1; RRS § 5269. Formerly RCW 29.30.130.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Chapter 29A.40 RCW
ABSENTEE VOTING

Sections

- 29A.40.010 When permitted. (Effective July 1, 2004.)
- 29A.40.020 Request for single ballot. (Effective July 1, 2004.)

29A.40.030	Request on behalf of family member. (<i>Effective July 1, 2004.</i>)
29A.40.040	Ongoing status—Request—Termination. (<i>Effective July 1, 2004.</i>)
29A.40.050	Special ballots. (<i>Effective July 1, 2004.</i>)
29A.40.060	Issuance of ballot and other materials. (<i>Effective July 1, 2004.</i>)
29A.40.070	Date ballots available, mailed. (<i>Effective July 1, 2004.</i>)
29A.40.080	Delivery of ballot, qualifications for. (<i>Effective July 1, 2004.</i>)
29A.40.090	Envelopes and instructions. (<i>Effective July 1, 2004.</i>)
29A.40.100	Observers. (<i>Effective July 1, 2004.</i>)
29A.40.110	Processing incoming ballots. (<i>Effective July 1, 2004.</i>)
29A.40.120	Report of count. (<i>Effective July 1, 2004.</i>)
29A.40.130	Record of requests—Public access. (<i>Effective July 1, 2004.</i>)
29A.40.140	Challenges. (<i>Effective July 1, 2004.</i>)
29A.40.150	Out-of-state, overseas, service voters. (<i>Effective July 1, 2004.</i>)

29A.40.010 When permitted. (*Effective July 1, 2004.*)

Any registered voter of the state or any out-of-state voter, overseas voter, or service voter may vote by absentee ballot in any general election, special election, or primary in the manner provided in this chapter. Out-of-state voters, overseas voters, and service voters are authorized to cast the same ballots, including those for special elections, as a registered voter of the state would receive under this chapter. [2003 c 111 § 1001. Prior: 2001 c 241 § 1; 1991 c 81 § 29; 1987 c 346 § 9; 1986 c 167 § 14; 1985 c 273 § 1; 1984 c 27 § 1; 1977 ex.s. c 361 § 76; 1974 ex.s. c 35 § 1; 1971 ex.s. c 202 § 37; 1965 c 9 § 29.36.010; prior: 1963 ex.s. c 23 § 1; 1955 c 167 § 2; prior: (i) 1950 ex.s. c 8 § 1; 1943 c 72 § 1; 1933 ex.s. c 41 § 1; 1923 c 58 § 1; 1921 c 143 § 1; 1917 c 159 § 1; 1915 c 189 § 1; Rem. Supp. 1943 § 5280. (ii) 1933 ex.s. c 41 § 2, part; 1923 c 58 § 2, part; 1921 c 143 § 2, part; 1917 c 159 § 2, part; 1915 c 189 § 2, part; RRS § 5281, part. Formerly RCW 29.36.210, 29.36.010.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

Legislative intent—1987 c 346: "By this act the legislature intends to combine and unify the laws and procedures governing absentee voting. These amendments are intended: (1) To clarify and incorporate into a single chapter of the Revised Code of Washington the preexisting statutes under which electors of this state qualify for absentee ballots under state law, federal law, or a combination of both state and federal law, and (2) to insure uniformity in the application, issuance, receipt, and canvassing of these absentee ballots. Nothing in this act is intended to impose any new requirement on the ability of the registered voters or electors of this state to qualify for, receive, or cast absentee ballots in any primary or election." [1987 c 346 § 1.]

Effective date—1987 c 346: "This act shall take effect on January 1, 1988." [1987 c 346 § 25.]

Severability—1986 c 167: See note following RCW 29A.04.049.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.40.020 Request for single ballot. (*Effective July 1, 2004.*) (1) Except as otherwise provided by law, a registered voter or out-of-state voter, overseas voter, or service voter desiring to cast an absentee ballot at a single election or primary must request the absentee ballot from his or her county auditor no earlier than ninety days nor later than the day before the election or primary at which the person seeks to vote. Except as otherwise provided by law, the request may be made orally in person, by telephone, electronically, or in writing. An application or request for an absentee ballot made under the authority of a federal statute or regulation

will be considered and given the same effect as a request for an absentee ballot under this chapter.

(2) A voter requesting an absentee ballot for a primary may also request an absentee ballot for the following general election. A request by an out-of-state voter, overseas voter, or service voter for an absentee ballot for a primary election will be considered as a request for an absentee ballot for the following general election.

(3) In requesting an absentee ballot, the voter shall state the address to which the absentee ballot should be sent. A request for an absentee ballot from an out-of-state voter, overseas voter, or service voter must include the address of the last residence in the state of Washington and either a written application or the oath on the return envelope must include a declaration of the other qualifications of the applicant as an elector of this state. A request for an absentee ballot from any other voter must state the address at which that voter is currently registered to vote in the state of Washington or the county auditor shall verify that information from the voter registration records of the county.

(4) A request for an absentee ballot from a registered voter who is within this state must be made directly to the auditor of the county in which the voter is registered. An absentee ballot request from a registered voter who is temporarily outside this state or from an out-of-state voter, overseas voter, or service voter may be made either to the appropriate county auditor or to the secretary of state, who shall promptly forward the request to the appropriate county auditor.

(5) No person, organization, or association may distribute absentee ballot applications within this state that contain a return address other than that of the appropriate county auditor. [2003 c 111 § 1002; 2001 c 241 § 2. Formerly RCW 29.36.220.]

29A.40.030 Request on behalf of family member. (*Effective July 1, 2004.*) A member of a registered voter's family may request an absentee ballot on behalf of and for use by the voter. As a means of ensuring that a person who requests an absentee ballot is requesting the ballot for only that person or a member of the person's immediate family, an auditor may require a person who requests an absentee ballot to identify the date of birth of the voter for whom the ballot is requested and deny a request that is not accompanied by this information. [2003 c 111 § 1003. Prior: 2001 c 241 § 3. Formerly RCW 29.36.230.]

29A.40.040 Ongoing status—Request—Termination. (*Effective July 1, 2004.*) Any registered voter may apply, in writing, for status as an ongoing absentee voter. Each qualified applicant shall automatically receive an absentee ballot for each ensuing election or primary for which the voter is entitled to vote and need not submit a separate request for each election. Ballots received from ongoing absentee voters shall be validated, processed, and tabulated in the same manner as other absentee ballots.

Status as an ongoing absentee voter shall be terminated upon any of the following events:

- (1) The written request of the voter;
- (2) The death or disqualification of the voter;
- (3) The cancellation of the voter's registration record;

(4) The return of an ongoing absentee ballot as undeliverable; or

(5) Upon placing a voter on inactive status under RCW 29A.08.620. [2003 c 111 § 1004. Prior: 2001 c 241 § 4; 1999 c 298 § 12; 1993 c 418 § 1; 1991 c 81 § 30; 1987 c 346 § 10; 1986 c 22 § 1; 1985 c 273 § 2. Formerly RCW 29.36.240, 29.36.013.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.40.050 Special ballots. (Effective July 1, 2004.)

(1) As provided in this section, county auditors shall provide special absentee ballots to be used for state primary or state general elections. An auditor shall provide a special absentee ballot only to a registered voter who completes an application stating that she or he will be unable to vote and return a regular absentee ballot by normal mail delivery within the period provided for regular absentee ballots.

The application for a special absentee ballot may not be filed earlier than ninety days before the applicable state primary or general election. The special absentee ballot will list the offices and measures, if known, scheduled to appear on the state primary or general election ballot. The voter may use the special absentee ballot to write in the name of any eligible candidate for each office and vote on any measure.

(2) With any special absentee ballot issued under this section, the county auditor shall include a listing of any candidates who have filed before the time of the application for offices that will appear on the ballot at that primary or election and a list of any issues that have been referred to the ballot before the time of the application.

(3) Write-in votes on special absentee ballots must be counted in the same manner provided by law for the counting of other write-in votes. The county auditor shall process and canvass the special absentee ballots provided under this section in the same manner as other absentee ballots under this chapter and chapter 29A.60 RCW.

(4) A voter who requests a special absentee ballot under this section may also request an absentee ballot under RCW 29A.40.020(4). If the regular absentee ballot is properly voted and returned, the special absentee ballot is void, and the county auditor shall reject it in whole when special absentee ballots are canvassed. [2003 c 111 § 1005; 2001 c 241 § 5; 1991 c 81 § 35; 1987 c 346 § 21. Formerly RCW 29.36.250, 29.36.170.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.40.060 Issuance of ballot and other materials. (Effective July 1, 2004.)

(1) The county auditor shall issue an absentee ballot for the primary or election for which it was requested, or for the next occurring primary or election when ongoing absentee status has been requested if the information contained in a request for an absentee ballot or ongoing absentee status received by the county auditor is complete and correct and the applicant is qualified to vote under federal or state law. Otherwise, the county auditor shall notify the applicant of the reason or reasons why the request cannot be accepted. Whenever two or more candidates have filed for

the position of precinct committee officer for the same party in the same precinct at a general election held in an even-numbered year, the contest for that position must be presented to absentee voters from that precinct by either including the contest on the regular absentee ballot or a separate absentee ballot. The ballot must provide space designated for writing in the name of additional candidates.

(2) A registered voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The voter may obtain the ballot by telephone request, by mail, electronically, or in person. The county auditor shall keep a record of each replacement ballot provided under this subsection.

(3) A copy of the state voters' pamphlet must be sent to registered voters temporarily outside the state, out-of-state voters, overseas voters, and service voters along with the absentee ballot if such a pamphlet has been prepared for the primary or election and is available to the county auditor at the time of mailing. The county auditor shall mail all absentee ballots and related material to voters outside the territorial limits of the United States and the District of Columbia under 39 U.S.C. 3406. [2003 c 111 § 1006; 2001 c 241 § 6; 1991 c 81 § 31. Prior: 1987 c 346 § 11; 1987 c 295 § 9; 1977 ex.s. c 361 § 77; 1974 ex.s. c 73 § 1; 1965 c 9 § 29.36.030; prior: 1963 ex.s. c 23 § 3; 1955 c 167 § 4; prior: (i) 1933 ex.s. c 41 § 2, part; 1923 c 58 § 2, part; 1921 c 143 § 2, part; 1917 c 159 § 2, part; 1915 c 189 § 2, part; RRS § 5281, part. (ii) 1933 ex.s. c 41 § 3, part; 1923 c 58 § 3, part; 1921 c 143 § 3, part; 1917 c 159 § 3, part; 1915 c 189 § 3, part; RRS § 5282, part. Formerly RCW 29.36.260, 29.36.030.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.40.070 Date ballots available, mailed. (Effective July 1, 2004.)

(1) Except where a recount or litigation under RCW 29A.68.010 is pending, the county auditor shall have sufficient absentee ballots available for absentee voters of that county at least twenty days before any primary, general election, or special election. The county auditor must mail absentee ballots to each voter for whom the county auditor has received a request nineteen days before the primary or election at least eighteen days before the primary or election. For a request for an absentee ballot received after the nineteenth day before the primary or election, the county auditor shall make every effort to mail ballots within one business day, and shall mail the ballots within two business days.

(2) The county auditor shall make every effort to mail ballots to overseas and service voters earlier than eighteen days before a primary or election.

(3) Each county auditor shall certify to the office of the secretary of state the dates the ballots prescribed in subsection (1) of this section were available and mailed.

(4) If absentee ballots will not be available or mailed as prescribed in subsection (1) of this section, the county auditor shall immediately certify to the office of the secretary of state when absentee ballots will be available and mailed. Copies of this certification must be provided to the county canvass-

ing board, the press, jurisdictions with issues on the ballot in the election, and any candidates.

(5) If absentee ballots were not available or mailed as prescribed in subsection (1) of this section, for a reason other than a recount or litigation, the county auditor, in consultation with the certification and training program of the office of the secretary of state, shall submit a report to the office of the secretary of state outlining why the deadline was missed and what corrective actions will be taken in future elections to ensure that absentee ballots are available and mailed as prescribed in subsection (1) of this section.

(6) Failure to have absentee ballots available and mailed as prescribed in subsection (1) of this section does not by itself provide a basis for an election contest or other legal challenge to the results of a primary, general election, or special election. [2003 c 162 § 2; 2003 c 111 § 1007. Prior: 1987 c 54 § 1; 1977 ex.s. c 361 § 56; 1965 ex.s. c 103 § 5; 1965 c 9 § 29.30.075; prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part. Formerly RCW 29.36.270, 29.30.075.]

Reviser's note: This section was amended by 2003 c 111 § 1007 and by 2003 c 162 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Policy—2003 c 162: "It is the policy of the state of Washington that individuals voting absentee and mail ballots receive their ballots in a timely and consistent manner before each election. Since many voters in Washington state have come to rely upon absentee and mail voting, mailing the ballots in a timely manner is critical in order to maximize participation by every eligible voter." [2003 c 162 § 1.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.40.080 Delivery of ballot, qualifications for. (*Effective July 1, 2004.*) The delivery of an absentee ballot for any primary or election shall be subject to the following qualifications:

(1) Only the registered voter personally, or a member of the registered voter's immediate family may pick up an absentee ballot for the voter at the office of the issuing officer unless the voter is a resident of a health care facility, as defined by RCW 70.37.020(3), on election day and applies by messenger for an absentee ballot. In this latter case, the messenger may pick up the voter's absentee ballot.

(2) Except as noted in subsection (1) of this section, the issuing officer shall mail or deliver the absentee ballot directly to each applicant. [2003 c 111 § 1008. Prior: 2001 c 241 § 7; 1984 c 27 § 2; 1965 c 9 § 29.36.035; prior: 1963 ex.s. c 23 § 4. Formerly RCW 29.36.280, 29.36.035.]

29A.40.090 Envelopes and instructions. (*Effective July 1, 2004.*) The county auditor shall send each absentee voter a ballot, a security envelope in which to seal the ballot after voting, a larger envelope in which to return the security envelope, and instructions on how to mark the ballot and how to return it to the county auditor. The larger return envelope must contain a declaration by the absentee voter reciting his or her qualifications and stating that he or she has not voted in any other jurisdiction at this election, together with a summary of the penalties for any violation of any of the provisions of this chapter. The return envelope must provide space

for the voter to indicate the date on which the ballot was voted and for the voter to sign the oath. A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. For out-of-state voters, overseas voters, and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. The voter must be instructed to either return the ballot to the county auditor by whom it was issued or attach sufficient first class postage, if applicable, and mail the ballot to the appropriate county auditor no later than the day of the election or primary for which the ballot was issued.

If the county auditor chooses to forward absentee ballots, he or she must include with the ballot a clear explanation of the qualifications necessary to vote in that election and must also advise a voter with questions about his or her eligibility to contact the county auditor. This explanation may be provided on the ballot envelope, on an enclosed insert, or printed directly on the ballot itself. If the information is not included, the envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed. [2003 c 111 § 1009. Prior: 2001 c 241 § 8; 1987 c 346 § 12. Formerly RCW 29.36.290, 29.36.045.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.40.100 Observers. (*Effective July 1, 2004.*) County auditors must request that observers be appointed by the major political parties to be present during the processing of absentee ballots. The absence of the observers will not prevent the processing of absentee ballots if the county auditor has requested their presence. [2003 c 111 § 1010. Prior: 2001 c 241 § 9. Formerly RCW 29.36.300.]

29A.40.110 Processing incoming ballots. (*Effective July 1, 2004.*) (1) The opening and subsequent processing of return envelopes for any primary or election may begin on or after the tenth day before the primary or election. The tabulation of absentee ballots must not commence until after 8:00 p.m. on the day of the primary or election.

(2) After opening the return envelopes, the county canvassing board shall place all of the ballots in secure storage until after 8:00 p.m. of the day of the primary or election. Absentee ballots that are to be tabulated on an electronic vote tallying system may be taken from the inner envelopes and all the normal procedural steps may be performed to prepare these ballots for tabulation.

(3) Before opening a returned absentee ballot, the canvassing board, or its designated representatives, shall examine the postmark, statement, and signature on the return envelope that contains the security envelope and absentee ballot. They shall verify that the voter's signature on the return envelope is the same as the signature of that voter in the registration files of the county. For registered voters casting absentee ballots, the date on the return envelope to which the voter has attested determines the validity, as to the time of voting for that absentee ballot if the postmark is missing or is illegi-

ble. For out-of-state voters, overseas voters, and service voters, the date on the return envelope to which the voter has attested determines the validity as to the time of voting for that absentee ballot. For any absentee ballot, a variation between the signature of the voter on the return envelope and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same. [2003 c 111 § 1011. Prior: 2001 c 241 § 10; 1991 c 81 § 32; 1987 c 346 § 14; 1977 ex.s. c 361 § 78; 1973 c 140 § 1; 1965 c 9 § 29.36.060; prior: 1963 ex.s. c 23 § 5; 1955 c 167 § 7; 1955 c 50 § 2; prior: 1933 ex.s. c 41 § 5, part; 1921 c 143 § 6, part; 1917 c 159 § 4, part; 1915 c 189 § 4, part; RRS § 5285, part. Formerly RCW 29.36.310, 29.36.060.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

County canvassing board, meeting to process absentee ballots, canvass returns: RCW 29A.60.160.

29A.40.120 Report of count. (Effective July 1, 2004.)

The absentee ballots must be reported at a minimum on a congressional and legislative district basis. Absentee ballots may be counted by congressional or legislative district or by individual precinct, except as required under RCW 29A.60.230(2).

These returns must be added to the total of the votes cast at the polling places. [2003 c 111 § 1012. Prior: 2001 c 241 § 11; 1990 c 262 § 2; 1987 c 346 § 15; 1974 ex.s. c 73 § 2; 1965 c 9 § 29.36.070; prior: 1955 c 50 § 3; prior: 1933 ex.s. c 41 § 5, part; 1921 c 143 § 6, part; 1917 c 159 § 4, part; 1915 c 189 § 4, part; RRS § 5285, part. Formerly RCW 29.36.320, 29.36.070.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.40.130 Record of requests—Public access. (Effective July 1, 2004.) Each county auditor shall maintain in his or her office, open for public inspection, a record of the requests he or she has received for absentee ballots under this chapter.

The information from the requests shall be recorded and lists of this information shall be available no later than twenty-four hours after their receipt.

This information about absentee voters shall be available according to the date of the requests and by legislative district. It shall include the name of each applicant, the address and precinct in which the voter maintains a voting residence, the date on which an absentee ballot was issued to this voter, if applicable, the type of absentee ballot, and the address to which the ballot was or is to be mailed, if applicable.

The auditor shall make copies of these records available to the public for the actual cost of production or copying. [2003 c 111 § 1013. Prior: 1991 c 81 § 33; 1987 c 346 § 17; 1973 1st ex.s. c 61 § 1. Formerly RCW 29.36.340, 29.36.097.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

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29A.40.140 Challenges. (Effective July 1, 2004.) The qualifications of any absentee voter may be challenged at the time the signature on the return envelope is verified and the ballot is processed by the canvassing board. The board has the authority to determine the legality of any absentee ballot challenged under this section. Challenged ballots must be handled in accordance with chapter 29A.08 RCW. [2003 c 111 § 1014. Prior: 2001 c 241 § 13; 1987 c 346 § 18; 1965 c 9 § 29.36.100; prior: 1917 c 159 § 5; 1915 c 189 § 5; RRS § 5286. Formerly RCW 29.36.350, 29.36.100.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.40.150 Out-of-state, overseas, service voters. (Effective July 1, 2004.) The secretary of state shall produce and furnish envelopes and instructions for out-of-state voters, overseas voters, and service voters to the county auditors. [2003 c 111 § 1015; 1993 c 417 § 7; 1987 c 346 § 19; 1983 1st ex.s. c 71 § 8. Formerly RCW 29.36.360, 29.36.150.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

Chapter 29A.44 RCW

POLLING PLACE ELECTIONS AND POLL WORKERS

Sections

GENERAL PROVISIONS

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29A.44.020	List of who has and who has not voted. (Effective July 1, 2004.)
29A.44.030	Taking papers into voting booth. (Effective July 1, 2004.)
29A.44.040	Official ballots—Vote only once—Incorrectly marked ballots. (Effective July 1, 2004.)
29A.44.050	Ballot pick up, delivery, and transportation. (Effective July 1, 2004.)
29A.44.060	Voting booths. (Effective July 1, 2004.)
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PROCEDURES

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29A.44.210	Signature required—Procedure if voter unable to sign name. (Effective July 1, 2004.)
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29A.44.240	Disabled voters. (Effective July 1, 2004.)
29A.44.250	Tabulation of paper ballots before close of polls. (Effective July 1, 2004.)
29A.44.260	Voters in polling place at closing time. (Effective July 1, 2004.)
29A.44.270	Unused ballots. (Effective July 1, 2004.)
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29A.44.290	Return of precinct lists after election—Public records. (Effective July 1, 2004.)

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29A.44.310	Initialization. (Effective July 1, 2004.)
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- 29A.44.320 Delivery and sealing. (*Effective July 1, 2004.*)
 29A.44.330 Memory packs. (*Effective July 1, 2004.*)
 29A.44.340 Incorrectly marked ballots. (*Effective July 1, 2004.*)
 29A.44.350 Failure of device. (*Effective July 1, 2004.*)

POLL WORKERS

- 29A.44.410 Appointment of judges and inspector. (*Effective July 1, 2004.*)
 29A.44.420 Appointment of clerks—Party representation—Hour to report. (*Effective July 1, 2004.*)
 29A.44.430 Nomination. (*Effective July 1, 2004.*)
 29A.44.440 Vacancies—How filled—Inspector's authority. (*Effective July 1, 2004.*)
 29A.44.450 One set of precinct election officers, exceptions—Counting board—Receiving board. (*Effective July 1, 2004.*)
 29A.44.460 Duties—Generally. (*Effective July 1, 2004.*)
 29A.44.470 Application to other primaries or elections. (*Effective July 1, 2004.*)
 29A.44.480 Inspector as chair—Authority. (*Effective July 1, 2004.*)
 29A.44.490 Oaths of officers required. (*Effective July 1, 2004.*)
 29A.44.500 Oath of inspectors, form. (*Effective July 1, 2004.*)
 29A.44.510 Oath of judges, form. (*Effective July 1, 2004.*)
 29A.44.520 Oath of clerks, form. (*Effective July 1, 2004.*)
 29A.44.530 Compensation. (*Effective July 1, 2004.*)

GENERAL PROVISIONS

29A.44.010 Interference with voter prohibited. (*Effective July 1, 2004.*) No person may interfere with a voter in any way within the polling place. This does not prevent the voter from receiving assistance in preparing his or her ballot as provided in RCW 29A.44.240. [2003 c 111 § 1101. Prior: 1990 c 59 § 39; 1965 c 9 § 29.51.010; prior: 1907 c 130 § 2, part; 1889 p 408 § 21, part; RRS § 5278, part. Formerly RCW 29.51.010.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.44.020 List of who has and who has not voted. (*Effective July 1, 2004.*) At any election, general or special, or at any primary, any political party or committee may designate a person other than a precinct election officer, for each polling place to check a list of registered voters of the precinct to determine who has and who has not voted. The lists must be furnished by the party or committee concerned. [2003 c 111 § 1102; 1977 ex.s. c 361 § 83; 1965 c 9 § 29.51.125. Prior: 1963 ex.s. c 24 § 1. Formerly RCW 29.51.125.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

"Major political party" defined: RCW 29A.04.085.

Poll books—As public records—Copies to representatives of major political parties: RCW 29A.08.720.

29A.44.030 Taking papers into voting booth. (*Effective July 1, 2004.*) Any voter may take into the voting booth or voting device any printed or written material to assist in casting his or her vote. The voter shall not use this material to electioneer and shall remove the material when he or she leaves the polls. [2003 c 111 § 1103. Prior: 1990 c 59 § 47; 1965 c 9 § 29.51.180; prior: 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part. Formerly RCW 29.51.180.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.44.040 Official ballots—Vote only once—Incorrectly marked ballots. (*Effective July 1, 2004.*) No ballots

may be used in any polling place other than those prepared by the county auditor. No voter is entitled to vote more than once at a primary or a general or special election, except that if a voter incorrectly marks a ballot, he or she may return it and be issued a new ballot. The precinct election officers shall void the incorrectly marked ballot and return it to the county auditor. [2003 c 111 § 1104. Prior: 1990 c 59 § 48; 1965 c 9 § 29.51.190; prior: (i) 1889 p 410 § 25; RRS § 5290. (ii) 1935 c 26 § 3, part; 1921 c 177 § 1, part; 1919 c 163 § 15, part; 1917 c 71 § 2, part; 1909 c 82 § 4, part; 1907 c 209 § 12, part; RRS § 5189, part. (iii) 1895 c 156 § 7, part; 1889 p 409 § 22, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5279, part. (iv) 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part. (v) 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part. Formerly RCW 29.51.190.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.44.050 Ballot pick up, delivery, and transportation. (*Effective July 1, 2004.*) (1) At the direction of the county auditor, a team or teams composed of a representative of at least two major political parties shall stop at designated polling places and pick up the sealed containers of voted, untallied ballots for delivery to the counting center. There may be more than one delivery from each polling place. Two precinct election officials, representing two major political parties, shall seal the voted ballots in containers furnished by the county auditor and properly identified with his or her address with uniquely prenumbered seals.

(2) At the counting center or the collection stations where the sealed ballot containers are delivered by the designated representatives of the major political parties, the county auditor or a designated representative of the county auditor shall receive the sealed ballot containers, record the time, date, precinct name or number, and seal number of each ballot container. [2003 c 111 § 1105. Prior: 1999 c 158 § 10; 1990 c 59 § 31; 1977 ex.s. c 361 § 72. Formerly RCW 29.54.037, 29.34.157.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.44.060 Voting booths. (*Effective July 1, 2004.*) The county auditor shall provide in each polling place a sufficient number of voting booths or voting devices along with any supplies necessary to enable the voter to mark or register his or her choices on the ballot and within which the voters may cast their votes in secrecy. [2003 c 111 § 1106. Prior: 1999 c 158 § 4; 1994 c 57 § 51; 1990 c 59 § 35; 1965 c 9 § 29.48.010; prior: 1907 c 130 § 2, part; 1889 p 408 § 21, part; RRS § 5278, part. Formerly RCW 29.48.010.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.44.070 Opening and closing polls. (*Effective July 1, 2004.*) At all primaries and elections, general or special, in all counties the polls must be kept open from seven o'clock a.m. to eight o'clock p.m. All qualified electors who

are at the polling place at eight o'clock p.m., shall be allowed to cast their votes. [2003 c 111 § 1107. Prior: 1973 c 78 § 1; 1965 ex.s. c 101 § 13; 1965 c 9 § 29.13.080; prior: (i) 1921 c 61 § 7; RRS § 5149. (ii) 1921 c 170 § 5; RRS § 5154. (iii) 1921 c 178 § 7; 1907 c 235 § 1; 1889 p 413 § 35; RRS § 5319. (iv) 1919 c 163 § 16, part; 1907 c 209 § 17, part; RRS § 5194, part. Formerly RCW 29.13.080.]

District elections, hours, see particular districts.

Employer's duty to provide time to vote: RCW 49.28.120.

29A.44.080 Polls open continuously—Announcement of closing. (Effective July 1, 2004.) The polls for a precinct shall remain open continuously until the time specified under RCW 29A.44.070. At that time, the precinct election officers shall announce that the polls for that precinct are closed. [2003 c 111 § 1108. Prior: 1990 c 59 § 50; 1965 c 9 § 29.51.240; prior: 1919 c 163 § 16, part; 1907 c 209 § 17, part; RRS § 5194, part. Formerly RCW 29.51.240.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.44.090 Double voting prohibited. (Effective July 1, 2004.) A registered voter shall not be allowed to vote in the precinct in which he or she is registered at any election or primary for which that voter has cast an absentee ballot. A registered voter who has requested an absentee ballot for a primary or special or general election but chooses to vote at the voter's precinct polling place in that primary or election shall cast a provisional ballot. The canvassing board shall not count the ballot if it finds that the voter has also voted by absentee ballot in that primary or election. [2003 c 111 § 1109; 1987 c 346 § 13; 1965 c 9 § 29.36.050. Prior: 1955 c 167 § 6; prior: 1933 ex.s. c 41 § 4; 1921 c 143 § 5; RRS § 5284. Formerly RCW 29.51.185, 29.36.050.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

PROCEDURES

29A.44.110 Delivery of supplies. (Effective July 1, 2004.) No later than the day before a primary or election, the county auditor shall provide to the inspector or one of the judges of each precinct or to one of the inspectors of a polling place where more than one precinct will be voting, all of the ballots, precinct lists of registered voters, and other supplies necessary for conducting the election or primary. [2003 c 111 § 1110. Prior: 1990 c 59 § 36; 1977 ex.s. c 361 § 81; 1971 ex.s. c 202 § 40; 1965 c 9 § 29.48.030; prior: (i) 1921 c 178 § 8; Code 1881 § 3078; 1865 p 34 § 3; RRS § 5322. (ii) 1919 c 163 § 20, part; 1895 c 156 § 9, part; 1889 p 411 § 28, part; RRS § 5293, part. (iii) 1907 c 209 § 20; RRS § 5196. (iv) 1913 c 138 § 29, part; RRS § 5425, part. (v) 1915 c 124 § 1; 1895 c 156 § 5; 1893 c 91 § 1; 1889 p 407 § 18; RRS § 5275. (vi) 1921 c 68 § 1, part; RRS § 5320, part. (vii) 1895 c 156 § 6, part; 1889 p 407 § 20; RRS § 5277, part. (viii) 1895 c 156 § 2, part; Code 1881 § 3074; 1865 p 32 § 8; RRS § 5164, part. (ix) 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part. (x) 1935 c 20 § 5, part; 1921 c 178 § 6, part; 1915 c 114 § 2, part; 1913 c 58 § 7, part; RRS § 5306, part. (xi) 1854 p 67 § 16; No RRS. (xii) 1854 p 67 § 17, part; No RRS. (xiii) 1915 c 114 § 7, part; 1913 c 58 § 13, part;

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RRS § 5313, part. (xiv) 1915 c 14 § 6, part; 1913 c 58 § 11, part; RRS § 5311, part. (xv) 1933 c 1 § 10, part; RRS § 5114-10, part. (xvi) Code 1881 § 3093, part; RRS § 5338, part. (xvii) 1903 c 85 § 1, part; RRS § 3339, part. Formerly RCW 29.48.030.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.44.120 Delivery of precinct lists to polls. (Effective July 1, 2004.) Upon closing of the registration files preceding an election, the county auditor shall deliver the precinct lists of registered voters to the inspector or one of the judges of each precinct or group of precincts located at the polling place before the polls open. [2003 c 111 § 1111. Prior: 1994 c 57 § 19; 1971 ex.s. c 202 § 21; 1965 c 9 § 29.07.170; prior: 1957 c 251 § 8; prior: 1933 c 1 § 10, part; RRS § 5114-10, part; prior: 1919 c 163 § 11, part; 1915 c 16 § 13, part; 1905 c 171 § 4, part; 1889 p 417 § 13, part; RRS § 5131, part. Formerly RCW 29.07.170.]

Severability—1994 c 57: See note following RCW 10.64.021.

29A.44.130 Additional supplies for paper ballots. (Effective July 1, 2004.) In precincts where votes are cast on paper ballots, the following supplies, in addition to those specified in RCW 29A.44.110, must be provided:

(1) Two tally books in which the names of the candidates will be listed in the order in which they appear on the sample ballots and in each case have the proper party designation at the head thereof;

(2) Two certificates or two sample ballots prepared as blanks, for recording of the unofficial results by the precinct election officers. [2003 c 111 § 1112; 1977 ex.s. c 361 § 82. Formerly RCW 29.48.035.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.44.140 Voting and registration instructions and information. (Effective July 1, 2004.) (1) Each county auditor shall provide voting and registration instructions, printed in large type, to be conspicuously displayed at each polling place and permanent registration facility.

(2) The county auditor shall make information available for deaf persons throughout the state by telecommunications. [2003 c 111 § 1113. Prior: 1999 c 298 § 17; 1985 c 205 § 9. Formerly RCW 29.57.130.]

Effective dates—1985 c 205: See note following RCW 29A.16.140.

29A.44.150 Time for arrival of officers. (Effective July 1, 2004.) The precinct election officers for each precinct shall meet at the designated polling place at the time set by the county auditor. [2003 c 111 § 1114. Prior: 1977 ex.s. c 361 § 80; 1965 c 9 § 29.48.020; prior: 1957 c 195 § 6; prior: 1913 c 58 § 12, part; RRS § 5312, part. Formerly RCW 29.48.020.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.44.160 Inspection of voting equipment. (Effective July 1, 2004.) Before opening the polls for a precinct,

the voting equipment shall be inspected to determine if it has been properly prepared for voting. If the voting equipment is capable of direct tabulation of each voter's choices, the precinct election officers shall verify that no votes have been registered for any issue or office to be voted on at that primary or election. Any ballot box shall be carefully examined by the judges of election to determine that it is empty. The ballot box shall then be sealed or locked. The ballot box shall not be opened before the certification of the primary or election except in the manner and for the purposes provided under this title. [2003 c 111 § 1115. Prior: 1990 c 59 § 37; 1965 c 9 § 29.48.070; prior: 1854 p 67 § 17, part; No RRS. Formerly RCW 29.48.070.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.44.170 Flag. (Effective July 1, 2004.) At all primaries and elections the flag of the United States shall be conspicuously displayed in front of each polling place. [2003 c 111 § 1116. Prior: 1965 c 9 § 29.48.090; prior: 1921 c 68 § 1, part; RRS § 5320, part. Formerly RCW 29.48.090.]

29A.44.180 Opening the polls. (Effective July 1, 2004.) The precinct election officers, immediately before they start to issue ballots or permit a voter to vote, shall announce at the place of voting that the polls for that precinct are open. [2003 c 111 § 1117. Prior: 1990 c 59 § 38; 1965 c 9 § 29.48.100; prior: Code 1881 § 3077; 1865 p 34 § 2; RRS § 5321. Formerly RCW 29.48.100.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.44.190 Voting devices—Periodic examination. (Effective July 1, 2004.) The precinct election officers shall periodically examine the voting devices to determine if they have been tampered with. [2003 c 111 § 1118. Prior: 1990 c 59 § 45; 1965 c 9 § 29.51.150; prior: 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part. Formerly RCW 29.51.150.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.44.200 Issuing ballot to voter—Challenge. (Effective July 1, 2004.) A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the inspector's poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter must be issued a ballot or permitted to enter a voting booth or to operate a voting device. The number of the ballot or the voter must be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that voter. [2003 c 111 § 1119; 1990 c 59 § 40; 1965 c 9 § 29.51.050. Prior: (i) 1895 c 156 § 7, part; 1889 p 409 § 22, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5279, part. (ii) 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part. Formerly RCW 29.51.050.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.44.210 Signature required—Procedure if voter unable to sign name. (Effective July 1, 2004.) Any person desiring to vote at any primary or election is required to sign his or her name on the appropriate precinct list of registered voters. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter.

The precinct election officers shall then record the voter's name. [2003 c 111 § 1120; 1990 c 59 § 41; 1971 ex.s. c 202 § 41; 1967 ex.s. c 109 § 9; 1965 ex.s. c 156 § 5; 1965 c 9 § 29.51.060. Prior: 1933 c 1 § 24; RRS § 5114-24. Formerly RCW 29.51.060.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Forms, secretary of state to design—Availability to public: RCW 29A.08.850.

Poll books—As public records—Copies furnished, uses restricted: RCW 29A.08.720.

29A.44.220 Casting vote. (Effective July 1, 2004.) On signing the precinct list of registered voters or being issued a ballot, the voter shall, without leaving the polling place, proceed to one of the voting booths or voting devices to cast his or her vote. When the voter has finished, he or she shall either (1) remove the numbered stub from the ballot, place the ballot in the ballot box, and return the number to the precinct election officers, or (2) deliver the entire ballot to the precinct election officers, who shall remove the numbered stub from the ballot and place the ballot in the ballot box. [2003 c 111 § 1121; 1990 c 59 § 43; 1988 c 181 § 4; 1965 ex.s. c 101 § 15; 1965 c 9 § 29.51.100. Prior: (i) 1947 c 77 § 2, part; 1895 c 156 § 8, part; 1889 p 409 § 23, part; Rem. Supp. 1947 § 5288, part. (ii) 1889 p 410 § 24, part; RRS § 5289, part. Formerly RCW 29.51.100.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.44.230 Record of participation. (Effective July 1, 2004.) As each voter casts his or her vote, the precinct election officers shall insert in the poll books or precinct list of registered voters opposite that voter's name, a notation to credit the voter with having participated in that primary or election. The precinct election officers shall record the voter's name so that a separate record is kept. [2003 c 111 § 1122. Prior: 1990 c 59 § 42; 1971 ex.s. c 202 § 42; 1965 c 9 § 29.51.070; prior: (i) 1895 c 156 § 7, part; 1889 p 409 § 22, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5279, part. (ii) 1933 c 1 § 25; RRS § 5114-25. (iii) 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part. Formerly RCW 29.51.070.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.44.240 Disabled voters. (Effective July 1, 2004.) (1) Voting shall be secret except to the extent necessary to assist sensory or physically disabled voters.

(2) If any voter declares in the presence of the election officers that because of sensory or physical disability he or she is unable to register or record his or her vote, he or she may designate a person of his or her choice or two election officers from opposite political parties to enter the voting

machine booth with him or her and record his or her vote as he or she directs.

(3) A person violating this section is guilty of a misdemeanor. [2003 c 111 § 1123; 2003 c 53 § 180; 1981 c 34 § 1; 1965 ex.s. c 101 § 17; 1965 c 9 § 29.51.200. Prior: (i) 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part. (ii) 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. Former law: 1901 c 135 § 6; 1889 p 410 § 26. Formerly RCW 29.51.200.]

Reviser's note: This section was amended by 2003 c 53 § 180 and by 2003 c 111 § 1123, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Disabled voters, accessibility of polling places: Chapter 29A.16 RCW.

29A.44.250 Tabulation of paper ballots before close of polls. (Effective July 1, 2004.) (1) Paper ballots may be tabulated at the precinct polling place before the closing of the polls. The tabulation of ballots, paper or otherwise, shall be open to the public, but no persons except those employed and authorized by the county auditor may touch a ballot card or ballot container or operate vote tallying equipment.

(2) The results of the tabulation of paper ballots at the polls shall be delivered to the county auditor as soon as the tabulation is complete. [2003 c 111 § 1124; 1990 c 59 § 54. Formerly RCW 29.54.018.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Divulging ballot count: RCW 29A.84.730.

29A.44.260 Voters in polling place at closing time. (Effective July 1, 2004.) If at the time of closing the polls, there are any voters in the polling place who have not voted, they shall be allowed to vote after the polls have been closed. [2003 c 111 § 1125. Prior: 1990 c 59 § 51; 1965 c 9 § 29.51.250; prior: 1919 c 163 § 16, part; 1907 c 209 § 17, part; RRS § 5194, part. Formerly RCW 29.51.250.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.44.270 Unused ballots. (Effective July 1, 2004.) At each precinct immediately after the last qualified voter has cast his or her vote, the precinct election officers shall render unusable and secure in a container all unused ballots for that precinct and return them to the county auditor. [2003 c 111 § 1126; 1990 c 59 § 52; 1977 ex.s. c 361 § 84; 1965 ex.s. c 101 § 6; 1965 c 9 § 29.54.010. Prior: 1893 c 91 § 2; RRS § 5332. Formerly RCW 29.54.010.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.44.280 Duties of election officers after unused ballots secure. (Effective July 1, 2004.) Immediately after the unused ballots are secure, the precinct election officers shall count the number of voted ballots and make a record of any discrepancy between this number and the number of voters who signed the poll book for that precinct or polling

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place, complete the certifications in the poll book, prepare the ballots for transfer to the counting center if necessary, and seal the voting devices. [2003 c 111 § 1127; 1990 c 59 § 53. Formerly RCW 29.54.015.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.44.290 Return of precinct lists after election—Public records. (Effective July 1, 2004.) The precinct list of registered voters for each precinct or group of precincts delivered to the precinct election officers for use on the day of an election held in that precinct shall be returned by them to the county auditor upon the completion of the count of the votes cast in the precinct at that election. While in possession of the county auditor they shall be open to public inspection under such reasonable rules and regulations as may be prescribed therefor. [2003 c 111 § 1128. Prior: 1994 c 57 § 20; 1971 ex.s. c 202 § 22; 1965 c 9 § 29.07.180; prior: 1933 c 1 § 8, part; RRS § 5114-8, part; prior: 1919 c 163 § 7, part; 1915 c 16 § 7, part; 1905 c 171 § 3, part; 1901 c 135 § 3, part; 1893 c 45 § 2, part; 1889 p 415 § 7, part; RRS § 5125, part. Formerly RCW 29.07.180.]

Severability—1994 c 57: See note following RCW 10.64.021.

POLL-SITE BALLOT COUNTING DEVICES

29A.44.310 Initialization. (Effective July 1, 2004.) In precincts where poll-site ballot counting devices are used the election officers, before initializing the device for voting, shall proceed as follows:

(1) They shall see that the device is placed where it can be conveniently attended by the election officers and conveniently operated by the voters;

(2) They shall see whether the number or other designating mark on the device's seal agrees with the control number provided by the elections department. If they do not agree they shall at once notify the elections department and delay initializing the device. The polls may be opened pending reexamination of the device;

(3) If the numbers do agree, they shall proceed to initialize the device and see whether the public counter registers "000." If the counter is found to register a number other than "000," one of the judges shall at once set the counter at "000" and confirm that the ballot box is empty;

(4) Before processing any ballots through a poll-site ballot counting device a zero report must be produced. The inspector and at least one of the judges shall carefully verify that zero ballots have been run through the poll-site ballot counting device and that all vote totals for each office are zero. If the totals are not zero, the inspector shall either reset the device to zero or contact the elections department to reset the device and allow voting to continue using the auxiliary or emergency device. [2003 c 111 § 1129. Prior: 1999 c 158 § 6; 1965 c 9 § 29.48.080; prior: 1957 c 195 § 7; prior: 1913 c 58 § 12, part; RRS § 5312, part. Formerly RCW 29.48.080.]

29A.44.320 Delivery and sealing. (Effective July 1, 2004.) Whenever poll-site ballot counting devices are used, the devices may either be included with the supplies required in RCW 29A.44.110 or they may be delivered to the polling place separately. All poll-site ballot counting devices must

be sealed with a unique numbered seal at the time of final preparation and logic and accuracy testing. A log must be made of all seal numbers and device numbers used. [2003 c 111 § 1130. Prior: 1999 c 158 § 5. Formerly RCW 29.48.045.]

29A.44.330 Memory packs. (Effective July 1, 2004.)

The programmed memory pack for each poll-site ballot counting device must be sealed into the device during final preparation and logic and accuracy testing. Except in the case of a device breakdown, the memory pack must remain sealed in the device until after the polls have closed and all reports and telephonic or electronic transfer of results are completed. After all reporting is complete the precinct election officers responsible for transferring the sealed voted ballots under RCW 29A.60.110 shall ensure that the memory pack is returned to the elections department. If the entire poll-site ballot counting device is returned, the memory pack must remain sealed in the device. If the poll-site ballot counting device is to remain at the polling place, the precinct election officer shall break the seal on the device and remove the memory pack and seal and return it along with the irregularly voted ballots and special ballots to the elections department on election day. [2003 c 111 § 1131. Prior: 1999 c 158 § 11. Formerly RCW 29.54.093.]

Results from poll-site ballot counting devices: RCW 29A.60.060.

29A.44.340 Incorrectly marked ballots. (Effective July 1, 2004.)

Each poll-site ballot counting device must be programmed to return all blank ballots and overvoted ballots to the voter for private reexamination. The election officer shall take whatever steps are necessary to ensure that the secrecy of the ballot is maintained. The precinct election officer shall provide information and instruction on how to properly mark the ballot. The voter may remark the original ballot, may request a new ballot under RCW 29A.44.040, or may choose to complete a special ballot envelope and return the ballot as a special ballot. [2003 c 111 § 1132. Prior: 1999 c 158 § 7. Formerly RCW 29.51.115.]

29A.44.350 Failure of device. (Effective July 1, 2004.)

If a poll-site ballot counting device fails to operate at any time during polling hours, voting must continue, and the ballots must be deposited for later tabulation in a secure ballot compartment separate from the tabulated ballots. [2003 c 111 § 1133. Prior: 1999 c 158 § 8. Formerly RCW 29.51.155.]

POLL WORKERS

29A.44.410 Appointment of judges and inspector. (Effective July 1, 2004.)

(1) At least ten days prior to any primary or election, general or special, the county auditor shall appoint one inspector and two judges of election for each precinct (or each combination of precincts temporarily consolidated as a single precinct for that primary or election), other than those precincts designated as vote-by-mail precincts pursuant to RCW 29A.48.010. Except as provided in subsection (3) of this section, the persons appointed shall be among those whose names are contained on the lists fur-

nished under RCW 29A.44.430 by the chairpersons of the county central committees of the political parties entitled to representation thereon. Such precinct election officers, whenever possible, should be residents of the precinct in which they serve.

(2) The county auditor may delete from the lists of names submitted to the auditor by the chairpersons of the county central committees under RCW 29A.44.430: (a) The names of those persons who indicate to the auditor that they cannot or do not wish to serve as precinct election officers for the primary or election or who otherwise cannot so serve; and (b) the names of those persons who lack the ability to conduct properly the duties of an inspector or judge of election after training in that proper conduct has been made available to them by the auditor. The lists which are submitted to the auditor in a timely manner under RCW 29A.44.430, less the deletions authorized by this subsection, constitute the official nomination lists for inspectors and judges of election.

(3) If the number of persons whose names are on the official nomination list for a political party is not sufficient to satisfy the requirements of subsection (4) of this section as it applies to that political party or is otherwise insufficient to provide the number of precinct election officials required from that political party, the auditor shall notify the chair of the party's county central committee regarding the deficiency. The chair may, within five business days of being notified by the auditor, add to the party's nomination list the names of additional persons belonging to that political party who are qualified to serve on the election boards. To the extent that, following this procedure, the number of persons whose names appear on the official nomination lists of the political parties is insufficient to provide the number of election inspectors and judges required for a primary or election, the auditor may appoint a properly trained person whose name does not appear on such a list as an inspector or judge of election for a precinct.

(4) The county auditor shall designate the inspector and one judge in each precinct from that political party which polled the highest number of votes in the county for its candidate for president at the last preceding presidential election and one judge from that political party polling the next highest number of votes in the county for its candidate for president at the same election. The provisions of this subsection apply only if the number of names on the official nomination list for inspectors and judges of election for a political party is sufficient to satisfy the requirements imposed by this subsection.

(5) Except as provided in RCW 29A.44.440 for the filling of vacancies, this shall be the exclusive method for the appointment of inspectors and judges to serve as precinct election officers at any primary or election, general or special, and shall supersede the provisions of any and all other statutes, whether general or special in nature, having different requirements. [2003 c 111 § 1134; 1991 c 106 § 1; 1983 1st ex.s. c 71 § 7; 1965 ex.s. c 101 § 1; 1965 c 9 § 29.45.010. Prior: (i) 1935 c 165 § 2, part; RRS § 5147-1, part. (ii) Code 1881 § 3068, part; 1865 p 30 § 2, part; RRS § 5158, part. (iii) 1907 c 209 § 15, part; RRS § 5192, part. (iv) 1895 c 156 § 6, part; 1889 p 407 § 20, part; RRS § 5277, part. (v) 1947 c 182 § 1, part; Rem. Supp. 1947 § 5166-10, part; prior: 1945 c 164 § 3, part; 1941 c 180 § 1, part; 1935 c 5 § 1, part; 1933 ex.s. c

29 § 1, part; prior: 1933 c 79 § 1, part; 1927 c 279 § 2, part; 1923 c 53 § 3, part; 1921 c 61 § 5, part; Rem. Supp. 1945 § 5147, part. Formerly RCW 29.45.010.]

29A.44.420 Appointment of clerks—Party representation—Hour to report. (*Effective July 1, 2004.*) At the same time the officer having jurisdiction of the election appoints the inspector and two judges as provided in RCW 29A.44.410, he or she may appoint one or more persons to act as clerks if in his or her judgment such additional persons are necessary, except that in precincts in which voting machines are used, the judges of election shall perform the duties required to be performed by clerks.

Each clerk appointed shall represent a major political party. The political party representation of a single set of precinct election officers shall, whenever possible, be equal but, in any event, no single political party shall be represented by more than a majority of one at each polling place.

The election officer having jurisdiction of the election may designate at what hour the clerks shall report for duty. The hour may vary among the precincts according to the judgment of the appointing officer. [2003 c 111 § 1135; 1965 ex.s. c 101 § 2; 1965 c 9 § 29.45.020. Prior: 1955 c 168 § 4; prior: (i) 1915 c 114 § 4, part; 1913 c 58 § 9, part; RRS § 5308, part. (ii) 1895 c 156 § 1, part; Code 1881 § 3069, part; 1865 p 31 § 3, part; RRS § 5159, part. Formerly RCW 29.45.020.]

29A.44.430 Nomination. (*Effective July 1, 2004.*) The precinct committee officer of each major political party shall certify to the officer's county chair a list of those persons belonging to the officer's political party qualified to act upon the election board in the officer's precinct.

By the first day of June each year, the chair of the county central committee of each major political party shall certify to the officer having jurisdiction of the election a list of those persons belonging to the county chair's political party in each precinct who are qualified to act on the election board therein.

The county chair shall compile this list from the names certified by the various precinct committee officers unless no names or not a sufficient number of names have been certified from a precinct, in which event the county chair may include therein the names of qualified members of the county chair's party selected by the county chair. The county chair shall also have the authority to substitute names of persons recommended by the precinct committee officers if in the judgment of the county chair such persons are not qualified to serve as precinct election officers. [2003 c 111 § 1136; 1991 c 106 § 2; 1987 c 295 § 16; 1965 ex.s. c 101 § 3; 1965 c 9 § 29.45.030. Prior: (i) 1907 c 209 § 15, part; RRS § 5192, part. (ii) 1935 c 165 § 2, part; RRS § 5147-1, part. Formerly RCW 29.45.030.]

29A.44.440 Vacancies—How filled—Inspector's authority. (*Effective July 1, 2004.*) If no election officers have been appointed for a precinct, or if at the hour for opening the polls none of those appointed is present at the polling place therein, the voters present may appoint the election board for that precinct. One of the judges may perform the

duties of clerk of election. The inspector shall have the power to fill any vacancy that may occur in the board of judges, or by absence or refusal to serve of either of the clerks after the polls shall have been opened. [2003 c 111 § 1137. Prior: 1965 c 9 § 29.45.040; prior: (i) Code 1881 § 3075, part; 1865 p 32 § 9, part; RRS § 5165, part. (ii) Code 1881 § 3068, part; 1865 p 30 § 2, part; RRS § 5158, part. (iii) 1907 c 209 § 15, part; RRS § 5192, part. Formerly RCW 29.45.040.]

29A.44.450 One set of precinct election officers, exceptions—Counting board—Receiving board. (*Effective July 1, 2004.*) There shall be but one set of election officers at any one time in each precinct except as provided in this section.

In every precinct using paper ballots having two hundred or more registered voters there shall be appointed, and in every precinct having less than two hundred registered voters there may be appointed, at a state primary or state general election, two or more sets of precinct election officers as provided in RCW 29A.04.215 and 29A.44.410. The officer in charge of the election may appoint one or more counting boards at his or her discretion, when he or she decides that because of a long or complicated ballot or because of the number of expected voters, there is need of additional counting board or boards to improve the speed and accuracy of the count.

In making such appointments, one or more sets of precinct election officers shall be designated as the counting board or boards, the first of which shall consist of an inspector, two judges, and a clerk and the second set, if activated, shall consist of two judges and two clerks. The duties of the counting board or boards shall be the count of ballots cast and the return of the election records and supplies to the officer having jurisdiction of the election.

One set of precinct election officers shall be designated as the receiving board which shall have all other powers and duties imposed by law for such elections. Nothing in this section prevents the county auditor from appointing relief or replacement precinct election officers at any time during election day. Relief or replacement precinct election officers must be of the same political party as the officer they are relieving or replacing. [2003 c 111 § 1138; 1994 c 223 § 91; 1973 c 102 § 2; 1965 ex.s. c 101 § 4; 1965 c 9 § 29.45.050. Prior: 1955 c 148 § 2; prior: (i) 1923 c 53 § 4, part; 1921 c 61 § 6, part; RRS § 5148, part. (ii) 1921 c 170 § 4, part; RRS § 5153, part. Formerly RCW 29.45.050.]

29A.44.460 Duties—Generally. (*Effective July 1, 2004.*) The inspector and judges of election in each precinct shall conduct the elections therein and receive, deposit, and count the ballots cast thereat and make returns to the proper canvassing board or officer except that when two or more sets of precinct election officers are appointed as provided in RCW 29A.44.450, the ballots shall be counted by the counting board or boards as provided in RCW 29A.44.250, 29A.44.280, and 29A.84.730. [2003 c 111 § 1139. Prior: 1990 c 59 § 74; 1973 c 102 § 3; 1965 ex.s. c 101 § 5; 1965 c 9 § 29.45.060; prior: 1955 c 148 § 3; prior: (i) 1923 c 53 § 4, part; 1921 c 61 § 6, part; RRS § 5148, part. (ii) 1921 c 170 § 4, part; RRS § 5153, part. Formerly RCW 29.45.060.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.44.470 Application to other primaries or elections. (*Effective July 1, 2004.*) All of the provisions of RCW 29A.44.450 and 29A.44.460 relating to counting boards may be applied on an optional basis to any other primary or election, regular or special, at the discretion of the officer in charge of the election. [2003 c 111 § 1140. Prior: 1973 c 102 § 5. Formerly RCW 29.45.065.]

29A.44.480 Inspector as chair—Authority. (*Effective July 1, 2004.*) The inspector shall be the chair of the board and after its organization administer all necessary oaths that may be required in the progress of the election. [2003 c 111 § 1141; 1965 c 9 § 29.45.070. Prior: Code 1881 § 3075, part; 1865 p 32 § 9, part; RRS § 5165, part. Formerly RCW 29.45.070.]

29A.44.490 Oaths of officers required. (*Effective July 1, 2004.*) The inspector, judges, and clerks of election, before entering upon the duties of their offices, shall take and subscribe the prescribed oath or affirmation which shall be administered to them by any person authorized to administer oaths and verified under the hand of the person by whom such oath or affirmation is administered. If no such person is present, the inspector shall administer the same to the judges and clerks, and one of the judges shall administer the oath to the inspector.

The county auditor shall furnish two copies of the proper form of oath to each precinct election officer, one copy thereof, after execution, to be placed and transmitted with the election returns. [2003 c 111 § 1142. Prior: 1965 c 9 § 29.45.080; prior: (i) Code 1881 § 3070; 1865 p 31 § 4; RRS § 5160. (ii) 1895 c 156 § 2, part; Code 1881 § 3074, part; 1865 p 32 § 8, part; RRS § 5164, part. Formerly RCW 29.45.080.]

29A.44.500 Oath of inspectors, form. (*Effective July 1, 2004.*) The following shall be the form of the oath or affirmation to be taken by each inspector:

"I, A B, do swear (or affirm) that I will duly attend to the ensuing election, during the continuance thereof, as an inspector, and that I will not receive any ballot or vote from any person other than such as I firmly believe to be entitled to vote at such election, without requiring such evidence of the right to vote as is directed by law; nor will I vexatiously delay the vote of, or refuse to receive, a ballot from any person whom I believe to be entitled to vote; but that I will in all things truly, impartially, and faithfully perform my duty therein to the best of my judgment and abilities; and that I am not, directly nor indirectly, interested in any bet or wager on the result of this election." [2003 c 111 § 1143. Prior: 1965 c 9 § 29.45.090; prior: Code 1881 § 3071; 1865 p 31 § 5; RRS § 5161. Formerly RCW 29.45.090.]

29A.44.510 Oath of judges, form. (*Effective July 1, 2004.*) The following shall be the oath or affirmation of each judge:

"We, A B, do swear (or affirm) that we will as judges duly attend the ensuing election, during the continuance

thereof, and faithfully assist the inspector in carrying on the same; that we will not give our consent to the receipt of any vote or ballot from any person, other than one whom we firmly believe to be entitled to vote at such election; and that we will make a true and perfect return of the said election and will in all things truly, impartially, and faithfully perform our duty respecting the same to the best of our judgment and abilities; and that we are not directly nor indirectly interested in any bet or wager on the result of this election." [2003 c 111 § 1144. Prior: 1965 c 9 § 29.45.100; prior: Code 1881 § 3072; 1865 p 31 § 6; RRS § 5162. Formerly RCW 29.45.100.]

29A.44.520 Oath of clerks, form. (*Effective July 1, 2004.*) The following shall be the form of the oath to be taken by the clerks:

"We, and each of us, A B, do swear (or affirm) that we will impartially and truly write down the name of each elector who votes at the ensuing election, and also the name of the county and precinct wherein the elector resides; that we will carefully and truly write down the number of votes given for each candidate at the election as often as his name is read to us by the inspector and in all things truly and faithfully perform our duty respecting the same to the best of our judgment and abilities, and that we are not directly nor indirectly interested in any bet or wager on the result of this election." [2003 c 111 § 1145. Prior: 1965 c 9 § 29.45.110; prior: Code 1881 § 3073; 1865 p 32 § 7; RRS § 5163. Formerly RCW 29.45.110.]

29A.44.530 Compensation. (*Effective July 1, 2004.*) The fees of officers of election shall be as follows:

To the judges and clerks of an election not less than the minimum hourly wage per hour as provided under RCW 49.46.020, the exact amount to be fixed by the respective boards of county commissioners for each county. To inspectors, the rate paid to judges and clerks plus an additional two hours' compensation. The precinct election officer picking up the election supplies and returning the election returns to the county auditor shall be entitled to additional compensation, the exact amount to be determined by the respective boards of county commissioners for each county. [2003 c 111 § 1146; 1971 ex.s. c 124 § 2; 1965 c 9 § 29.45.120. Prior: 1961 c 43 § 1; 1951 c 67 § 1; 1945 c 186 § 1; 1919 c 163 § 13; 1895 c 20 § 1; Code 1881 § 3151; 1866 p 8 § 9; 1865 p 52 § 12; Rem. Supp. 1945 § 5166. See also 1907 c 209 § 15; RRS § 5192. Formerly RCW 29.45.120.]

Severability—1971 ex.s. c 124: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 124 § 3.]

Chapter 29A.48 RCW

VOTE BY MAIL BALLOTS

Sections

29A.48.010	Mail ballot precincts. (<i>Effective July 1, 2004.</i>)
29A.48.020	Special elections. (<i>Effective July 1, 2004.</i>)
29A.48.030	Odd-year primaries. (<i>Effective July 1, 2004.</i>)
29A.48.040	Depositing ballots—Replacement ballots. (<i>Effective July 1, 2004.</i>)
29A.48.050	Return of voted ballot. (<i>Effective July 1, 2004.</i>)
29A.48.060	Ballot contents—Counting. (<i>Effective July 1, 2004.</i>)

29A.48.010 Mail ballot precincts. (*Effective July 1, 2004.*) The county auditor may designate any precinct having fewer than two hundred active registered voters at the time of closing of voter registration as provided in RCW 29A.08.140 as a mail ballot precinct. The county auditor shall notify each registered voter by mail that for all future primaries and elections the voting in his or her precinct will be by mail ballot only. In determining the number of registered voters in a precinct for the purposes of this section, persons who are ongoing absentee voters under RCW 29A.40.040 shall not be counted. Nothing in this section may be construed as altering the vote tallying requirements of RCW 29A.60.230.

The auditor shall mail each active voter a ballot at least eighteen days before a primary, general election, or special election. The auditor shall send each inactive voter either a ballot or an application to receive a ballot at least eighteen days before a primary, general election, or special election. The auditor shall determine which of the two is to be sent. If the inactive voter returns a voted ballot, the ballot shall be counted and the voter's status restored to active. If the inactive voter completes and returns an application, a ballot shall be sent and the voter's status restored to active. The requirements regarding certification, reporting, and the mailing of overseas and military ballots in RCW 29.36.270 apply to mail ballot precincts.

If the precinct exceeds two hundred registered voters, or the auditor determines to return to a polling place election environment, the auditor shall notify each registered voter, by mail, of this and shall provide the address of the polling place to be used. [2003 c 162 § 3; 2003 c 111 § 1201. Prior: 2001 c 241 § 15; prior: 1994 c 269 § 1; 1994 c 57 § 48; 1993 c 417 § 1; 1983 1st ex.s. c 71 § 1; 1974 ex.s. c 35 § 2; 1967 ex.s. c 109 § 6. Formerly RCW 29.38.010, 29.36.120.]

Reviser's note: This section was amended by 2003 c 111 § 1201 and by 2003 c 162 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Policy—2003 c 162: See note following RCW 29.36.270.

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

29A.48.020 Special elections. (*Effective July 1, 2004.*) At any nonpartisan special election not being held in conjunction with a state primary or general election, the county, city, town, or district requesting the election pursuant to RCW 29A.04.320 or 29A.04.330 may also request that the special election be conducted by mail ballot. The county auditor may honor the request or may determine that the election is not to be conducted by mail ballot. The decision of the county auditor in this regard is final.

For all special elections not being held in conjunction with a state primary or state general election where voting is conducted by mail ballot, the county auditor shall, not less than eighteen days before the date of such election, mail to each registered voter a mail ballot. The auditor shall handle inactive voters in the same manner as inactive voters in mail ballot precincts. The requirements regarding certification, reporting, and the mailing of overseas and military ballots in RCW 29.36.270 apply to mail ballot elections. [2003 c 162 §

4; 2003 c 111 § 1202. Prior: 2001 c 241 § 16; 1994 c 57 § 49; 1993 c 417 § 2. Formerly RCW 29.38.020, 29.36.121.]

Reviser's note: This section was amended by 2003 c 111 § 1202 and by 2003 c 162 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Policy—2003 c 162: See note following RCW 29.36.270.

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

29A.48.030 Odd-year primaries. (*Effective July 1, 2004.*) In an odd-numbered year, the county auditor may conduct a primary or a special election by mail ballot concurrently with the primary:

(1) For an office or ballot measure of a special purpose district that is entirely within the county;

(2) For an office or ballot measure of a special purpose district that lies in the county and one or more other counties if the auditor first secures the concurrence of the county auditors of those other counties to conduct the primary in this manner district-wide; and

(3) For a ballot measure or nonpartisan office of a county, city, or town if the auditor first secures the concurrence of the legislative authority of the county, city, or town involved.

The county auditor shall notify an election jurisdiction for which a primary is to be held that the primary will be conducted by mail ballot.

A primary in an odd-numbered year may not be conducted by mail ballot in a precinct with two hundred or more active registered voters if a partisan office or state office or state ballot measure is to be voted upon at that primary in the precinct.

To the extent they are not inconsistent with other provisions of law, the laws governing the conduct of mail ballot special elections apply to nonpartisan primaries conducted by mail ballot. [2003 c 111 § 1203. Prior: 2001 c 241 § 17. Formerly RCW 29.38.030.]

29A.48.040 Depositing ballots—Replacement ballots. (*Effective July 1, 2004.*) (1) If a county auditor conducts an election by mail, the county auditor shall designate one or more places for the deposit of ballots not returned by mail. The places designated under this section shall be open on the date of the election for a period of thirteen hours, beginning at 7:00 a.m. and ending at 8:00 p.m.

(2) A registered voter may obtain a replacement ballot as provided in this subsection. A voter may request a replacement mail ballot in person, by mail, by telephone, or by other electronic transmission for himself or herself and for any member of his or her immediate family. The request must be received by the auditor before 8:00 p.m. on election day. The county auditor shall keep a record of each replacement ballot issued, including the date of the request. Replacement mail ballots may be counted in the final tabulation of ballots only if the original ballot is not received by the county auditor and the replacement ballot meets all requirements for tabulation necessary for the tabulation of regular mail ballots. [2003 c 111 § 1204; 2001 c 241 § 18; 1983 1st ex.s. c 71 § 3. Formerly RCW 29.38.040, 29.36.124.]

29A.48.050 Return of voted ballot. (*Effective July 1, 2004.*) The voter shall return the ballot to the county auditor in the return identification envelope. If mailed, a ballot must be postmarked not later than the date of the primary or election. Otherwise, the ballot must be deposited at the office of the county auditor or the designated place of deposit not later than 8:00 p.m. on the date of the primary or election. [2003 c 111 § 1205. Prior: 2001 c 241 § 19; 1993 c 417 § 4; 1983 1st ex.s. c 71 § 4. Formerly RCW 29.38.050, 29.36.126.]

29A.48.060 Ballot contents—Counting. (*Effective July 1, 2004.*) All mail ballots authorized by RCW 29A.48.010, 29A.48.020, or 29A.48.030 must contain the same offices, names of nominees or candidates, and propositions to be voted upon, including precinct offices, as if the ballot had been voted in person at the polling place. Except as otherwise provided by law, mail ballots must be treated in the same manner as absentee ballots issued at the request of the voter. If electronic vote tallying devices are used, political party observers must be given the opportunity to be present, and a test of the equipment must be performed as required by RCW 29A.12.130 before tabulating ballots. Political party observers may select at random ballots to be counted manually as provided by RCW 29A.60.170. [2003 c 111 § 1206; 2001 c 241 § 20; 1993 c 417 § 5; 1990 c 59 § 76; 1983 1st ex.s. c 71 § 5; 1967 ex.s. c 109 § 7. Formerly RCW 29.38.060, 29.36.130.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

**Chapter 29A.52 RCW
PRIMARIES AND ELECTIONS**

Sections

GENERAL

29A.52.010 Elections to fill unexpired term—No primary, when. (*Effective July 1, 2004.*)

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NOTICES AND CERTIFICATES

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29A.52.360 Certificates of election to officers elected in single county or less. (*Effective July 1, 2004.*)
29A.52.370 Certificates of election to other officers. (*Effective July 1, 2004.*)

GENERAL

29A.52.010 Elections to fill unexpired term—No primary, when. (*Effective July 1, 2004.*) Whenever it shall be necessary to hold a special election in an odd-numbered year to fill an unexpired term of any office which is scheduled to be voted upon for a full term in an even-numbered year, no September primary election shall be held in the odd-numbered year if, after the last day allowed for candidates to withdraw, either of the following circumstances exist:

(1) No more than one candidate of each qualified political party has filed a declaration of candidacy for the same partisan office to be filled; or

(2) No more than two candidates have filed a declaration of candidacy for a single nonpartisan office to be filled.

In either event, the officer with whom the declarations of candidacy were filed shall immediately notify all candidates concerned and the names of the candidates that would have been printed upon the September primary ballot, but for the provisions of this section, shall be printed as nominees for the positions sought upon the November general election ballot. [2003 c 111 § 1301. Prior: 1973 c 4 § 3. Formerly RCW 29.15.150, 29.13.075.]

PARTISAN PRIMARIES

29A.52.110 Application of chapter. (*Effective July 1, 2004.*) Candidates for the following offices shall be nominated at partisan primaries held pursuant to the provisions of this chapter:

(1) Congressional offices;

(2) All state offices except (a) judicial offices and (b) the office of superintendent of public instruction;

(3) All county offices except (a) judicial offices and (b) those offices where a county home rule charter provides otherwise. [2003 c 111 § 1302. Prior: 1990 c 59 § 78; 1965 c 9 § 29.18.010; prior: 1911 c 101 § 2; 1909 c 82 § 1; 1907 c 209 § 2; RRS § 5178. Formerly RCW 29.18.010.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.52.120 General election laws govern primaries. (*Effective July 1, 2004.*) So far as applicable, the provisions of this title relating to conducting general elections shall govern the conduct of primaries. [2003 c 111 § 1303. Prior: 1990 c 59 § 87; 1971 ex.s. c 112 § 1; 1965 c 9 § 29.18.120; prior: (i) 1907 c 209 § 14; RRS § 5191. (ii) 1921 c 178 § 5; 1907 c 209 § 21; RRS § 5197. (iii) 1909 c 82 § 10; 1907 c 209 § 33; RRS § 5208. Formerly RCW 29.18.120.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.52.130 Blanket primary authorized. (*Effective July 1, 2004.*) Except as provided otherwise in chapter 29A.56 RCW, all properly registered voters may vote for their choice at any primary held under this title, for any candidate for each office, regardless of political affiliation and without a declaration of political faith or adherence on the part of the voter. [2003 c 111 § 1304. Prior: 1990 c 59 § 88; 1965 c 9 § 29.18.200; prior: 1935 c 26 § 5, part; No RRS. Formerly RCW 29.18.200.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

NONPARTISAN PRIMARIES

29A.52.210 Local primaries. (Effective July 1, 2004.)

All city and town primaries shall be nonpartisan. Primaries for special purpose districts, except those districts that require ownership of property within the district as a prerequisite to voting, shall be nonpartisan. City, town, and district primaries shall be held as provided in RCW 29A.04.310.

The purpose of this section is to establish the holding of a primary, subject to the exemptions in RCW 29A.52.220, as a uniform procedural requirement to the holding of city, town, and district elections. These provisions supersede any and all other statutes, whether general or special in nature, having different election requirements. [2003 c 111 § 1305. Prior: 1990 c 59 § 89; 1977 c 53 § 3; 1975-'76 2nd ex.s. c 120 § 1; 1965 c 123 § 7; 1965 c 9 § 29.21.010; prior: 1951 c 257 § 7; 1949 c 161 § 3; Rem. Supp. 1949 § 5179-1. Formerly RCW 29.21.010.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Severability—1975-'76 2nd ex.s. c 120: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 120 § 16.]

29A.52.220 When no local primary permitted—Procedure. (Effective July 1, 2004.) (1) No primary may be held for any single position in any city, town, district, or district court, as required by RCW 29A.52.210, if, after the last day allowed for candidates to withdraw, there are no more than two candidates filed for the position. The county auditor shall, as soon as possible, notify all the candidates so affected that the office for which they filed will not appear on the primary ballot.

(2) No primary may be held for the office of commissioner of a park and recreation district or for the office of cemetery district commissioner.

(3) Names of candidates for offices that do not appear on the primary ballot shall be printed upon the general election ballot in the manner specified by RCW 29A.36.130. [2003 c 111 § 1306. Prior: 1998 c 19 § 1; 1996 c 324 § 1; 1990 c 59 § 90; 1975-'76 2nd ex.s. c 120 § 2; 1965 c 9 § 29.21.015; prior: 1955 c 101 § 2; 1955 c 4 § 1. Formerly RCW 29.21.015.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29A.52.210.

29A.52.230 Nonpartisan offices specified. (Effective July 1, 2004.) The offices of superintendent of public instruction, justice of the supreme court, judge of the court of appeals, judge of the superior court, and judge of the district court shall be nonpartisan and the candidates therefor shall be nominated and elected as such.

All city, town, and special purpose district elective offices shall be nonpartisan and the candidates therefor shall be nominated and elected as such. [2003 c 111 § 1307. Prior: 1990 c 59 § 91; 1987 c 202 § 193; 1971 c 81 § 75; 1965 c 9 §

29.21.070; prior: (i) 1927 c 155 § 1, part; 1925 ex.s. c 68 § 1, part; 1921 c 116 § 1, part; 1919 c 85 § 1, part; 1911 c 101 § 1, part; 1909 c 82 § 11, part; 1907 c 209 § 38, part; RRS § 5212, part. (ii) 1933 c 85 § 1, part; RRS § 5213-1, part. Formerly RCW 29.21.070.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

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

Eligibility of judges: State Constitution Art. 4 § 17.

29A.52.240 Special election to fill unexpired term. (Effective July 1, 2004.) Whenever it is necessary to hold a special election to fill an unexpired term of an elective office of any city, town, or district, the special election must be held in concert with the next general election that is to be held by the respective city, town, or district concerned for the purpose of electing officers to full terms. This section does not apply to any city of the first class whose charter provision relating to elections to fill unexpired terms are inconsistent with this section. [2003 c 111 § 1308; 1972 ex.s. c 61 § 7. Formerly RCW 29.21.410]

Severability—1972 ex.s. c 61: See note following RCW 29A.24.140.

NOTICES AND CERTIFICATES

29A.52.310 Notice of primary. (Effective July 1, 2004.) Not more than ten nor less than three days before the primary the county auditor shall publish notice of such primary in one or more newspapers of general circulation within the county. The notice must contain the proper party designations, the names and addresses of all persons who have filed a declaration of candidacy to be voted upon at that primary, the hours during which the polls will be open, and the polling places for each precinct, giving the address of each polling place. The names of all candidates for nonpartisan offices must be published separately with designation of the offices for which they are candidates but without party designation. This is the only notice required for the holding of any primary. [2003 c 111 § 1309; 1965 c 9 § 29.27.030. Prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part. Formerly RCW 29.27.030.]

29A.52.320 Certification of nominees. (Effective July 1, 2004.) No later than the day following the certification of the returns of any primary, the secretary of state shall certify to the appropriate county auditors, the names of all persons nominated for offices, the returns of which have been canvassed by the secretary of state. [2003 c 111 § 1310. Prior: 1990 c 59 § 9; 1965 ex.s. c 103 § 7; 1965 c 9 § 29.27.050; prior: 1961 c 130 § 19; 1889 p 403 § 9; RRS § 5173. Formerly RCW 29.27.050.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.52.330 Constitutional amendments and state measures—Notice method. (Effective July 1, 2004.) Subject to the availability of funds appropriated specifically for that purpose, the secretary of state shall publish notice of the proposed constitutional amendments and other state mea-

tures that are to be submitted to the people at a state general election up to four times during the four weeks immediately preceding that election in every legal newspaper in the state. The secretary of state shall supplement this publication with an equivalent amount of radio and television advertisements. [2003 c 111 § 1311. Prior: 1997 c 405 § 1; 1967 c 96 § 1; 1965 c 9 § 29.27.072; prior: 1961 c 176 § 1. Formerly RCW 29.27.072.]

29A.52.340 Constitutional amendments and state measures—Notice contents. (*Effective July 1, 2004.*) The newspaper and broadcast notice required by Article XXIII, section 1, of the state Constitution and RCW 29A.52.330 may set forth all or some of the following information:

- (1) A legal identification of the state measure to be voted upon.
- (2) The official ballot title of such state measure.
- (3) A brief statement explaining the constitutional provision or state law as it presently exists.
- (4) A brief statement explaining the effect of the state measure should it be approved.
- (5) The total number of votes cast for and against the measure in both the state senate and house of representatives.

No individual candidate or incumbent public official may be referred to or identified in these notices or advertisements. [2003 c 111 § 1312. Prior: 1997 c 405 § 2; 1967 c 96 § 2; 1965 c 9 § 29.27.074; prior: 1961 c 176 § 2. Formerly RCW 29.27.074.]

29A.52.350 Election—Certification of measures. (*Effective July 1, 2004.*) Except as provided in RCW 29A.32.260, notice for any state, county, district, or municipal election, whether special or general, must be given by at least one publication not more than ten nor less than three days before the election by the county auditor or the officer conducting the election as the case may be, in one or more newspapers of general circulation within the county. The legal notice must contain the title of each office under the proper party designation, the names and addresses of all officers who have been nominated for an office to be voted upon at that election, together with the ballot titles of all measures, the hours during which the polls will be open, and the polling places for each precinct, giving the address of each polling place. The names of all candidates for nonpartisan offices must be published separately with designation of the offices for which they are candidates but without party designation. This is the only notice required for a state, county, district, or municipal general or special election and supercedes the provisions of any and all other statutes, whether general or special in nature, having different requirements for the giving of notice of any general or special elections. [2003 c 111 § 1313; 1999 c 4 § 1; 1984 c 106 § 12; 1980 c 35 § 8; 1965 c 9 § 29.27.080. Prior: 1955 c 153 § 1; 1951 c 101 § 7; 1949 c 161 § 11; Rem. Supp. 1949 § 5148-3a. Formerly RCW 29.27.080.]

Effective date—1999 c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [January 29, 1999]." [1999 c 4 § 2.]

Severability—1980 c 35: See note following RCW 28A.343.300.

29A.52.360 Certificates of election to officers elected in single county or less. (*Effective July 1, 2004.*) Immediately after the ascertainment of the result of an election for an office to be filled by the voters of a single county, or of a precinct, or of a constituency within a county for which the county auditor serves as supervisor of elections, the county auditor shall notify the person elected, and issue to the person a certificate of election. [2003 c 111 § 1314; 1965 c 9 § 29.27.100. Prior: 1961 c 130 § 8; prior: Code 1881 § 3096, part; 1866 p 6 § 2, part; 1865 p 39 § 7, part; RRS § 5343, part. Formerly RCW 29.27.100.]

Tie votes in final election: RCW 29A.60.220.

29A.52.370 Certificates of election to other officers. (*Effective July 1, 2004.*) Except as provided in the state Constitution, the governor shall issue certificates of election to those elected as senator or representative in the Congress of the United States and to state offices. The secretary of state shall issue certificates of election to those elected to the office of judge of the superior court in judicial districts comprising more than one county and to those elected to either branch of the state legislature in legislative districts comprising more than one county. [2003 c 111 § 1315; 1965 c 9 § 29.27.110. Prior: (i) 1933 c 92 § 1; RRS § 5343-1. (ii) Code 1881 § 3100, part; No RRS. Formerly RCW 29.27.110.]

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Chapter 29A.56 RCW

SPECIAL CIRCUMSTANCES ELECTIONS

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PRESIDENTIAL PRIMARY

29A.56.010 Intent. (Effective July 1, 2004.) The people of the state of Washington declare that:

(1) The current presidential nominating caucus system in Washington state is unnecessarily restrictive of voter participation in that it discriminates against the elderly, the infirm, women, the disabled, evening workers, and others who are unable to attend caucuses and therefore unable to fully participate in this most important quadrennial event that occurs in our democratic system of government.

(2) It is the intent of this chapter to make the presidential selection process more open and representative of the will of the people of our state.

(3) A presidential primary will afford the maximum opportunity for voter access at regular polling places during the daytime and evening hours convenient to the most people.

(4) This state's participation in the selection of presidential candidates shall be in accordance with the will of the people as expressed in a presidential preference primary.

(5) It is the intent of this chapter, to the maximum extent practicable, to continue to reserve to the political parties the right to conduct their delegate selection as prescribed by party rules insofar as it reflects the will of the people as expressed in a presidential primary election conducted every four years in the manner described by this chapter. [2003 c 111 § 1401; 1989 c 4 § 1 (Initiative Measure No. 99). Formerly RCW 29.19.010]

29A.56.020 Date. (Effective July 1, 2004.) (1) On the fourth Tuesday in May of each year in which a president of the United States is to be nominated and elected, a presidential primary shall be held at which voters may vote for the

nominee of a major political party for the office of president. The secretary of state may propose an alternative date for the primary no later than the first day of August of the year before the year in which a president is to be nominated and elected.

(2) No later than the first day of September of the year before the year in which a presidential nominee is selected, the state committee of any major political party that will use the primary results for candidates of that party may propose an alternative date for that primary.

(3) If an alternative date is proposed under subsection (1) or (2) of this section, a committee consisting of the chair and the vice-chair of the state committee of each major political party, the secretary of state, the majority leader and minority leader of the senate, and the speaker and the minority leader of the house of representatives shall meet and, if affirmed by a two-thirds vote of the members of the committee, the date of the primary shall be changed. The committee shall meet and decide on the proposed alternate date not later than the first day of October of the year before the year in which a presidential nominee is selected. The secretary of state shall convene and preside over the meeting of the committee. A committee member other than a legislator may appoint, in writing, a designee to serve on his or her behalf. A legislator who is a member of the committee may appoint, in writing, another legislator to serve on his or her behalf.

(4) If an alternate date is approved under this section, the secretary of state shall adopt rules under RCW 29A.04.620 to adjust the deadlines in RCW 29A.56.030 and related provisions of this chapter to correspond with the date that has been approved. [2003 c 111 § 1402. Prior: 1995 1st sp.s. c 20 § 1; 1989 c 4 § 2 (Initiative Measure No. 99). Formerly RCW 29.19.020.]

Effective date—1995 1st sp.s. c 20: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 1995]." [1995 1st sp.s. c 20 § 7.]

29A.56.030 Ballot—Names included. (Effective July 1, 2004.) The name of any candidate for a major political party nomination for president of the United States shall be printed on the presidential preference primary ballot of a major political party only:

(1) By direction of the secretary of state, who in the secretary's sole discretion has determined that the candidate's candidacy is generally advocated or is recognized in national news media; or

(2) If members of the political party of the candidate have presented a petition for nomination of the candidate that has attached to the petition a sheet or sheets containing the signatures of at least one thousand registered voters who declare themselves in the petition as being affiliated with the same political party as the presidential candidate. The petition shall be filed with the secretary of state not later than the thirty-ninth day before the presidential preference primary. The signature sheets shall also contain the residence address and name or number of the precinct of each registered voter whose signature appears thereon and shall be certified in the manner prescribed in RCW 29A.72.230 and 29A.72.240.

The secretary of state shall place the name of the candidate on the ballot unless the candidate, at least thirty-five

days before the presidential preference primary, executes and files with the secretary of state an affidavit stating without qualification that he or she is not now and will not become a candidate for the office of president of the United States at the forthcoming presidential election. The secretary of state shall certify the names of all candidates who will appear on the presidential preference primary ballot to the respective county auditors on or before the fourth Tuesday in April of each presidential election year. [2003 c 111 § 1403. Prior: 1989 c 4 § 3 (Initiative Measure No. 99). Formerly RCW 29.19.030.]

29A.56.040 Procedures—Ballot form and arrangement. (*Effective July 1, 2004.*) (1) Except where necessary to accommodate the national or state rules of a major political party or where this chapter specifically provides otherwise, the presidential primary must be conducted in substantially the same manner as a state partisan primary under this title.

(2) Except as provided under this chapter or by rule of the secretary of state adopted under RCW 29A.04.620, the arrangement and form of presidential primary ballots must be substantially as provided for a partisan primary under this title. Whenever requested by a major political party, a separate ballot containing only the candidates of that party who have qualified under RCW 29A.56.030 must be provided for a voter who requests a ballot of that party. A primary ballot, containing the names of all the candidates who have qualified for a place on the ballot under RCW 29A.56.030, must be provided for nonaffiliated voters.

(3) The ballot must list alphabetically the names of all candidates for the office of president. The ballot must indicate the political party of each candidate adjacent to the name of that candidate. Each ballot must include a blank space to allow the voter to write in the name of any other candidate.

(4) A presidential primary ballot with votes for more than one candidate is void, and notice to this effect, stated in clear, simple language and printed in large type, must appear on the face of each presidential primary ballot or on or about each voting device. [2003 c 111 § 1404. Prior: 1995 1st sp.s. c 20 § 2. Formerly RCW 29.19.045.]

Effective date—1995 1st sp.s. c 20: See note following RCW 29A.56.020.

29A.56.050 Allocation of delegates—Party declarations. (*Effective July 1, 2004.*) (1) A major political party may, under national or state party rules, base the allocation of delegates from this state to the national nominating convention of that party in whole or in part on the participation in precinct caucuses and conventions conducted under the rules of that party.

(2) If requested by a major political party, the secretary of state shall adopt rules under RCW 29A.04.620 to provide for any declaration required by that party.

(3) Voters who subscribe to a specific political party declaration under this section must be given ballots that are readily distinguishable from those given to other voters. Votes cast by persons making these declarations must be tabulated and reported separately from other votes cast at the primary and may be used by a major political party in its allocation of delegates under the rules of that party.

(4) For a political party that requires a specific voter declaration under this section, the secretary of state shall prescribe rules for providing, to the state and county committees of that political party, a copy of the declarations or a list of the voters who participated in the presidential nominating process of that party. [2003 c 111 § 1405. Prior: 1995 1st sp.s. c 20 § 3. Formerly RCW 29.19.055.]

Effective date—1995 1st sp.s. c 20: See note following RCW 29A.56.020.

29A.56.060 Costs. (*Effective July 1, 2004.*) Subject to available funds specifically appropriated for this purpose, whenever a presidential primary is held as provided by this chapter, the state of Washington shall assume all costs of holding the primary if it is held alone. If any other election or elections are held at the same time, the state is liable only for a prorated share of the costs. The county auditor shall determine the costs, including the state's prorated share, if applicable, in the same manner as provided under RCW 29A.04.410 and shall file a certified claim with the secretary of state. The secretary of state shall include in his or her biennial budget requests sufficient funds to carry out this section. Reimbursements for primary costs must be from appropriations specifically provided by law for that purpose. [2003 c 111 § 1406. Prior: 1995 1st sp.s. c 20 § 5; 1989 c 4 § 8 (Initiative Measure No. 99). Formerly RCW 29.19.080]

Effective date—1995 1st sp.s. c 20: See note following RCW 29A.56.020.

RECALL

29A.56.110 Initiating proceedings—Statement—Contents—Verification—Definitions. (*Effective July 1, 2004.*) Whenever any legal voter of the state or of any political subdivision thereof, either individually or on behalf of an organization, desires to demand the recall and discharge of any elective public officer of the state or of such political subdivision, as the case may be, under the provisions of sections 33 and 34 of Article 1 of the Constitution, the voter shall prepare a typewritten charge, reciting that such officer, naming him or her and giving the title of the office, has committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, or has violated the oath of office, or has been guilty of any two or more of the acts specified in the Constitution as grounds for recall. The charge shall state the act or acts complained of in concise language, give a detailed description including the approximate date, location, and nature of each act complained of, be signed by the person or persons making the charge, give their respective post office addresses, and be verified under oath that the person or persons believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based.

For the purposes of this chapter:

(1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;

(a) Additionally, "misfeasance" in office means the performance of a duty in an improper manner; and

(b) Additionally, "malfeasance" in office means the commission of an unlawful act;

(2) "Violation of the oath of office" means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law. [2003 c 111 § 1407; 1984 c 170 § 1; 1975-'76 2nd ex.s. c 47 § 1; 1965 c 9 § 29.82.010. Prior: 1913 c 146 § 1; RRS § 5350. Former part of section: 1913 c 146 § 2; RRS § 5351, now codified in RCW 29.82.015. Formerly RCW 29.82.010.]

Severability—1975-'76 2nd ex.s. c 47: "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 47 § 3.]

29A.56.120 Petition—Where filed. (Effective July 1, 2004.) Any person making a charge shall file it with the elections officer whose duty it is to receive and file a declaration of candidacy for the office concerning the incumbent of which the recall is to be demanded. The officer with whom the charge is filed shall promptly (1) serve a copy of the charge upon the officer whose recall is demanded, and (2) certify and transmit the charge to the preparer of the ballot synopsis provided in RCW 29A.56.130. The manner of service shall be the same as for the commencement of a civil action in superior court. [2003 c 111 § 1408. Prior: 1984 c 170 § 2; 1975-'76 2nd ex.s. c 47 § 2; 1965 c 9 § 29.82.015; prior: 1913 c 146 § 2; RRS § 5351. Formerly RCW 29.82.010, part. Formerly RCW 29.82.015.]

Severability—1975-'76 2nd ex.s. c 47: See note following RCW 29A.56.110.

29A.56.130 Ballot synopsis. (Effective July 1, 2004.) (1) Within fifteen days after receiving a charge, the officer specified below shall formulate a ballot synopsis of the charge of not more than two hundred words.

(a) Except as provided in (b) of this subsection, if the recall is demanded of an elected public officer whose political jurisdiction encompasses an area in more than one county, the attorney general shall be the preparer, except if the recall is demanded of the attorney general, the chief justice of the supreme court shall be the preparer.

(b) If the recall is demanded of an elected public officer whose political jurisdiction lies wholly in one county, or if the recall is demanded of an elected public officer of a district whose jurisdiction encompasses more than one county but whose declaration of candidacy is filed with a county auditor in one of the counties, the prosecuting attorney of that county shall be the preparer, except that if the prosecuting attorney is the officer whose recall is demanded, the attorney general shall be the preparer.

(2) The synopsis shall set forth the name of the person charged, the title of the office, and a concise statement of the elements of the charge. Upon completion of the ballot synopsis, the preparer shall certify and transmit the exact language of the ballot synopsis to the persons filing the charge and the officer subject to recall. The preparer shall additionally certify and transmit the charges and the ballot synopsis to the superior court of the county in which the officer subject to recall resides and shall petition the superior court to approve the synopsis and to determine the sufficiency of the charges. [2003 c 111 § 1409; 1984 c 170 § 3. Formerly RCW 29.82.021.]

29A.56.140 Determination by superior court—Correction of ballot synopsis. (Effective July 1, 2004.) Within fifteen days after receiving the petition, the superior court shall have conducted a hearing on and shall have determined, without cost to any party, (1) whether or not the acts stated in the charge satisfy the criteria for which a recall petition may be filed, and (2) the adequacy of the ballot synopsis. The clerk of the superior court shall notify the person subject to recall and the person demanding recall of the hearing date. Both persons may appear with counsel. The court may hear arguments as to the sufficiency of the charges and the adequacy of the ballot synopsis. The court shall not consider the truth of the charges, but only their sufficiency. An appeal of a sufficiency decision shall be filed in the supreme court as specified by RCW 29A.56.270. The superior court shall correct any ballot synopsis it deems inadequate. Any decision regarding the ballot synopsis by the superior court is final. The court shall certify and transmit the ballot synopsis to the officer subject to recall, the person demanding the recall, and either the secretary of state or the county auditor, as appropriate. [2003 c 111 § 1410. Prior: 1984 c 170 § 4. Formerly RCW 29.82.023.]

29A.56.150 Filing supporting signatures—Time limitations. (Effective July 1, 2004.) (1) The sponsors of a recall demanded of any public officer shall stop circulation of and file all petitions with the appropriate elections officer not less than six months before the next general election in which the officer whose recall is demanded is subject to reelection.

(2) The sponsors of a recall demanded of an officer elected to a statewide position shall have a maximum of two hundred seventy days, and the sponsors of a recall demanded of any other officer shall have a maximum of one hundred eighty days, in which to obtain and file supporting signatures after the issuance of a ballot synopsis by the superior court. If the decision of the superior court regarding the sufficiency of the charges is not appealed, the one hundred eighty or two hundred seventy day period for the circulation of signatures begins on the sixteenth day following the decision of the superior court. If the decision of the superior court regarding the sufficiency of the charges is appealed, the one hundred eighty or two hundred seventy day period for the circulation of signatures begins on the day following the issuance of the decision by the supreme court. [2003 c 111 § 1411; 1984 c 170 § 5; 1971 ex.s. c 205 § 2. Formerly RCW 29.82.025.]

Severability—1971 ex.s. c 205: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 205 § 6.]

29A.56.160 Petition—Form. (Effective July 1, 2004.) Recall petitions must be printed on single sheets of paper of good writing quality (including but not limited to newsprint) not less than eleven inches in width and not less than fourteen inches in length. No petition may be circulated or signed prior to the first day of the one hundred eighty or two hundred seventy day period established by RCW 29A.56.150 for that recall petition. The petitions must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

Petition for the recall of (here insert the name of the office and of the person whose recall is petitioned for) to the Honorable (here insert the name and title of the officer with whom the charge is filed).

We, the undersigned citizens and legal voters of (the state of Washington or the political subdivision in which the recall is to be held), respectfully direct that a special election be called to determine whether or not (here insert the name of the person charged and the office which he or she holds) be recalled and discharged from his or her office, for and on account of (his or her having committed the act or acts of malfeasance or misfeasance while in office, or having violated his or her oath of office, as the case may be), in the following particulars: (here insert the synopsis of the charge); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington in the precinct and city (or town) and county written after my name, and my residence address is correctly stated, and to my knowledge, have signed this petition only once.

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote. [2003 c 111 § 1412; 1984 c 170 § 6; 1971 ex.s. c 205 § 4; 1965 c 9 § 29.82.030. Prior: 1913 c 146 § 4; RRS § 5353. Formerly RCW 29.82.030.]

Severability—1971 ex.s. c 205: See note following RCW 29A.56.150.

29A.56.170 Petition—Size. (Effective July 1, 2004.) Each recall petition at the time of circulating, signing, and filing with the officer with whom it is to be filed, must consist of not more than five sheets with numbered lines for not more than twenty signatures on each sheet, with the prescribed warning, title, and form of petition on each sheet, and a full, true, and correct copy of the original statement of the charges against the officer referred to therein, printed on sheets of paper of like size and quality as the petition, firmly fastened together. [2003 c 111 § 1413; 1965 c 9 § 29.82.040. Prior: 1913 c 146 § 6; RRS § 5355. Formerly RCW 29.82.040.]

29A.56.180 Number of signatures required. (Effective July 1, 2004.) When the person, committee, or organization demanding the recall of a public officer has secured sufficient signatures upon the recall petition the person, committee, or organization may submit the same to the officer with whom the charge was filed for filing in his or her office. The number of signatures required shall be as follows:

(1) In the case of a state officer, an officer of a city of the first class, a member of a school board in a city of the first class, or a county officer of a county with a population of forty thousand or more—signatures of legal voters equal to twenty-five percent of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election.

(2) In the case of an officer of any political subdivision, city, town, township, precinct, or school district other than those mentioned in subsection (1) of this section, and in the case of a state senator or representative—signatures of legal voters equal to thirty-five percent of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding elec-

tion. [2003 c 111 § 1414. Prior: 1991 c 363 § 36; 1965 c 9 § 29.82.060; prior: 1913 c 146 § 8, part; RRS § 5357, part. Formerly RCW 29.82.060.]

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

Recall of elective officers—Percentages required: State Constitution Art. I § 34 (Amendment 8).

29A.56.190 Canvassing signatures—Time of—Notice. (Effective July 1, 2004.) Upon the filing of a recall petition, the officer with whom the charge was filed shall stamp on each petition the date of filing, and shall notify the persons filing them and the officer whose recall is demanded of the date when the petitions will be canvassed, which date must be not less than five or more than ten days from the date of its filing. [2003 c 111 § 1415; 1965 c 9 § 29.82.080. Prior: 1913 c 146 § 9, part; RRS § 5358, part. Formerly RCW 29.82.080.]

29A.56.200 Verification and canvass of signatures—Procedure—Statistical sampling. (Effective July 1, 2004.)

(1) Upon the filing of a recall petition, the elections officer shall proceed to verify and canvass the names of legal voters on the petition.

(2) The verification and canvass of signatures on the petition may be observed by persons representing the advocates and opponents of the proposed recall so long as they make no record of the names, addresses, or other information on the petitions or related records during the verification process except upon the order of the superior court. The elections officer may limit the number of observers to not fewer than two on each side, if in his or her opinion a greater number would cause undue delay or disruption of the verification process. Any such limitation shall apply equally to both sides. If the elections officer finds the same name signed to more than one petition, he or she shall reject all but the first such valid signature.

(3) Where the recall of a statewide elected official is sought, the secretary of state may use any statistical sampling techniques for verification and canvassing which have been adopted by rule for canvassing initiative petitions under RCW 29A.72.230. No petition will be rejected on the basis of any statistical method employed. No petition will be accepted on the basis of any statistical method employed if such method indicates that the petition contains less than the number of signatures of legal voters required by Article I, section 33 (Amendment 8) of the state Constitution. [2003 c 111 § 1416. Prior: 1984 c 170 § 7; 1977 ex.s. c 361 § 107; 1965 c 9 § 29.82.090; prior: 1913 c 146 § 9, part; RRS § 5358, part. Formerly RCW 29.82.090.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.56.210 Fixing date for recall election—Notice. (Effective July 1, 2004.) If, at the conclusion of the verification and canvass, it is found that a petition for recall bears the required number of signatures of certified legal voters, the officer with whom the petition is filed shall promptly certify the petitions as sufficient and fix a date for the special election to determine whether or not the officer charged shall be recalled and discharged from office. The special election

shall be held not less than forty-five nor more than sixty days from the certification and, whenever possible, on one of the dates provided in RCW 29A.04.330, but no recall election may be held between the date of the primary and the date of the general election in any calendar year. Notice shall be given in the manner as required by law for special elections in the state or in the political subdivision, as the case may be. [2003 c 111 § 1417. Prior: 1984 c 170 § 8; 1977 ex.s. c 361 § 108; 1971 ex.s. c 205 § 5; 1965 c 9 § 29.82.100; prior: 1913 c 146 § 9, part; RRS § 5358, part. Formerly RCW 29.82.100.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

Severability—1971 ex.s. c 205: See note following RCW 29A.56.150.

29A.56.220 Response to petition charges. (Effective July 1, 2004.) When a date for a special recall election is set the certifying officer shall serve a notice of the date of the election to the officer whose recall is demanded and the person demanding recall. The manner of service shall be the same as for the commencement of a civil action in superior court. After having been served a notice of the date of the election and the ballot synopsis, the officer whose recall is demanded may submit to the certifying officer a response, not to exceed two hundred fifty words in length, to the charge contained in the ballot synopsis. Such response shall be submitted by the seventh consecutive day after service of the notice. The certifying officer shall promptly send a copy of the response to the person who filed the petition. [2003 c 111 § 1418. Prior: 1984 c 170 § 9; 1980 c 42 § 1. Formerly RCW 29.82.105.]

29A.56.230 Destruction of insufficient recall petition. (Effective July 1, 2004.) If it is found that the recall petition does not contain the requisite number of signatures of certified legal voters, the officer shall so notify the persons filing the petition, and at the expiration of thirty days from the conclusion of the count the officer shall destroy the petitions unless prevented therefrom by the injunction or mandate of a court. [2003 c 111 § 1419; 1965 c 9 § 29.82.110. Prior: 1913 c 146 § 9, part; RRS § 5358, part. Formerly RCW 29.82.110.]

29A.56.240 Fraudulent names—Record of. (Effective July 1, 2004.) The officer making the canvass of a recall petition shall keep a record of all names appearing on it that are not certified to be legal voters of the state or of the political subdivision, as the case may be, and of all names appearing more than once, and shall report the same to the prosecuting attorneys of the respective counties where the names appear to have been signed, to the end that prosecutions may be had for the violation of this chapter. [2003 c 111 § 1420; 1965 c 9 § 29.82.120. Prior: 1913 c 146 § 10; RRS § 5359. Formerly RCW 29.82.120.]

29A.56.250 Conduct of election—Contents of ballot. (Effective July 1, 2004.) The special election for the recall of an officer shall be conducted in the same manner as a special election for that jurisdiction. The county auditor shall conduct the recall election. The ballots at any recall election

shall contain a full, true, and correct copy of the ballot synopsis of the charge and the officer's response to the charge if one has been filed. [2003 c 111 § 1421. Prior: 1990 c 59 § 71; 1980 c 42 § 2; 1965 c 9 § 29.82.130; prior: 1913 c 146 § 11; RRS § 5360. See also RCW 29.48.040. Formerly RCW 29.82.130.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.56.260 Ascertaining the result—When recall effective. (Effective July 1, 2004.) The votes on a recall election must be counted, canvassed, and the results certified in the manner provided by law for counting, canvassing, and certifying the results of an election for the office from which the officer is being recalled. However, if the officer whose recall is demanded is the officer to whom, under the law, returns of elections are made, the returns must be made to the officer with whom the charge is filed, and who called the special election. In the case of an election for the recall of a state officer, the county canvassing boards of the various counties shall canvass and return the result of the election to the officer calling the special election. If a majority of all votes cast at the recall election is for the recall of the officer charged, the officer is thereupon recalled and discharged from the office, and the office thereupon is vacant. [2003 c 111 § 1422; 1977 ex.s. c 361 § 109; 1965 c 9 § 29.82.140. Prior: 1913 c 146 § 12; RRS § 5361. Formerly RCW 29.82.140.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

Canvassing the returns: Chapter 29A.60 RCW.

29A.56.270 Enforcement provisions—Mandamus—Appellate review. (Effective July 1, 2004.) The superior court of the county in which the officer subject to recall resides has original jurisdiction to compel the performance of any act required of any public officer or to prevent the performance by any such officer of any act in relation to the recall not in compliance with law.

The supreme court has like original jurisdiction in relation to state officers and revisory jurisdiction over the decisions of the superior courts. Any proceeding to compel or prevent the performance of any such act shall be begun within ten days from the time the cause of complaint arises, and shall be considered an emergency matter of public concern and take precedence over other cases, and be speedily heard and determined. Appellate review of a decision of any superior court shall be begun and perfected within fifteen days after its decision in a recall election case and shall be considered an emergency matter of public concern by the supreme court, and heard and determined within thirty days after the decision of the superior court. [2003 c 111 § 1423. Prior: 1988 c 202 § 30; 1984 c 170 § 10; 1965 c 9 § 29.82.160; prior: 1913 c 146 § 14; RRS § 5363. Formerly RCW 29.82.160.]

Rules of court: *Writ procedure superseded by RAP 2.1(b), 16.2, 18.22.*

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

PRESIDENTIAL ELECTORS

29A.56.310 Date of election—Number. (*Effective July 1, 2004.*) On the Tuesday after the first Monday of November in the year in which a president of the United States is to be elected, there shall be elected as many electors of president and vice president of the United States as there are senators and representatives in Congress allotted to this state. [2003 c 111 § 1424; 1965 c 9 § 29.71.010. Prior: 1891 c 148 § 1; RRS § 5138. Formerly RCW 29.71.010.]

29A.56.320 Nomination—Pledge by electors—What names on ballots—How counted. (*Effective July 1, 2004.*) In the year in which a presidential election is held, each major political party and each minor political party or independent candidate convention held under chapter 29A.20 RCW that nominates candidates for president and vice president of the United States shall nominate presidential electors for this state. The party or convention shall file with the secretary of state a certificate signed by the presiding officer of the convention at which the presidential electors were chosen, listing the names and addresses of the presidential electors. Each presidential elector shall execute and file with the secretary of state a pledge that, as an elector, he or she will vote for the candidates nominated by that party. The names of presidential electors shall not appear on the ballots. The votes cast for candidates for president and vice president of each political party shall be counted for the candidates for presidential electors of that political party. [2003 c 111 § 1425. Prior: 1990 c 59 § 69; 1977 ex.s. c 238 § 1; 1965 c 9 § 29.71.020; prior: 1935 c 20 § 1; RRS § 5138-1. Formerly RCW 29.71.020.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.56.330 Counting and canvassing the returns. (*Effective July 1, 2004.*) The votes for candidates for president and vice president must be canvassed under chapter 29A.60 RCW. The secretary of state shall prepare three lists of names of electors elected and affix the seal of the state. The lists must be signed by the governor and secretary of state and by the latter delivered to the college of electors at the hour of their meeting. [2003 c 111 § 1426; 1965 c 9 § 29.71.030. Prior: 1935 c 20 § 2; RRS § 5139; prior: 1891 c 148 § 2. Formerly RCW 29.71.030.]

29A.56.340 Meeting—Time—Procedure—Voting for nominee of other party, penalty. (*Effective July 1, 2004.*) The electors of the president and vice president shall convene at the seat of government on the day fixed by federal statute, at the hour of twelve o'clock noon of that day. If there is any vacancy in the office of an elector occasioned by death, refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed to fill it by voice vote, and plurality of votes. When all of the electors have appeared and the vacancies have been filled they shall constitute the college of electors of the state of Washington, and shall proceed to perform the duties required of them by the Constitution and laws of the United States. Any elector who votes for a person or persons not nominated by the party of which he or she is an elector is subject to a civil penalty of up to one thou-

sand dollars. [2003 c 111 § 1427; 1977 ex.s. c 238 § 2; 1965 c 9 § 29.71.040. Prior: 1909 c 22 § 1; 1891 c 148 § 3; RRS § 5140. Formerly RCW 29.71.040.]

29A.56.350 Compensation. (*Effective July 1, 2004.*) Every presidential elector who attends at the time and place appointed, and gives his or her vote for president and vice president, is entitled to receive from this state, five dollars for each day's attendance at the meeting of the college of electors, and ten cents per mile for travel by the usually traveled route in going to and returning from the place where the electors meet. [2003 c 111 § 1428; 1965 c 9 § 29.71.050. Prior: 1891 c 148 § 4; RRS § 5141. Formerly RCW 29.71.050.]

29A.56.360 Slate of presidential electors. (*Effective July 1, 2004.*) In a year in which the president and vice president of the United States are to be elected, the secretary of state shall include in the certification prepared under RCW 29A.52.320 the names of all candidates for president and vice president who, at least fifty days before the general election, have certified a slate of electors to the secretary of state under RCW 29A.56.320 and have been nominated either (1) by a major political party, as certified by the appropriate authority under party rules, or (2) by a minor party or as independent candidates under chapter 29A.20 RCW. Major or minor political parties or independent presidential candidates may substitute a different candidate for vice president for the one whose name appears on the party's certification or nominating petition at any time before forty-five days before the general election, by certifying the change to the secretary of state. Substitutions must not be permitted to delay the printing of either ballots or a voters' pamphlet. Substitutions are valid only if submitted under oath and signed by the same individual who originally certified the nomination, or his or her documented successor, and only if the substitute candidate consents in writing. [2003 c 111 § 1429. Prior: 2001 c 30 § 1. Formerly RCW 29.27.140.]

CONSTITUTIONAL AMENDMENT CONVENTIONS

29A.56.410 Governor's proclamation calling convention—When. (*Effective July 1, 2004.*) Within thirty days after the state is officially notified that the Congress of the United States has submitted to the several states a proposed amendment to the Constitution of the United States to be ratified or rejected by a convention, the governor shall issue a proclamation fixing the time and place for holding the convention and fixing the time for holding an election to elect delegates to the convention. [2003 c 111 § 1430; 1965 c 9 § 29.74.010. Prior: 1933 c 181 § 1, part; RRS § 5249-1, part. Formerly RCW 29.74.010.]

29A.56.420 Governor's proclamation calling convention—Publication. (*Effective July 1, 2004.*) The proclamation shall be published once each week for two successive weeks in one newspaper published and of general circulation in each of the congressional districts of the state. The first publication of the proclamation shall be within thirty days of the receipt of official notice by the state of the submission of the amendment. [2003 c 111 § 1431. Prior: 1965 c 9 §

29.74.020; prior: 1933 c 181 § 1, part; RRS § 5249-1, part. Formerly RCW 29.74.020.]

29A.56.430 Election of convention delegates—Date. (*Effective July 1, 2004.*) The date for holding the election of delegates must be not less than one month nor more than six weeks before the date of holding the convention. If a general election is to be held not more than six months nor less than three months from the date of official notice of submission to the state of the proposed amendment, the governor must fix the date of the general election as the date for the election of delegates to the convention. [2003 c 111 § 1432; 1965 c 9 § 29.74.030. Prior: (i) 1933 c 181 § 1, part; RRS § 5249-1, part. (ii) 1933 c 181 § 9; RRS § 5249-9. Formerly RCW 29.74.030.]

29A.56.440 Time and place for convention. (*Effective July 1, 2004.*) The convention shall be held not less than five nor more than eight months from the date of the first publication of the proclamation provided for in RCW 29A.56.420. It shall be held in the chambers of the state house of representatives unless the governor shall select some other place at the state capitol. [2003 c 111 § 1433. Prior: 1965 c 9 § 29.74.040; prior: 1933 c 181 § 1, part; RRS § 5249-1, part. Formerly RCW 29.74.040.]

29A.56.450 Delegates—Number and qualifications. (*Effective July 1, 2004.*) Each state representative district shall be entitled to as many delegates in the convention as it has members in the house of representatives of the state legislature. No person shall be qualified to act as a delegate in said convention who does not possess the qualifications required of representatives in the state legislature from the same district. [2003 c 111 § 1434. Prior: 1965 c 9 § 29.74.050; prior: 1933 c 181 § 2; RRS § 5249-2. Formerly RCW 29.74.050.]

Qualifications of legislators: State Constitution Art. 2 § 7.

Subversive activities, disqualification from holding public office: RCW 9.81.040.

29A.56.460 Delegates—Declarations of candidacy. (*Effective July 1, 2004.*) Anyone desiring to file as a candidate for election as a delegate to the convention shall, not less than thirty nor more than sixty days before the date fixed for holding the election, file a declaration of candidacy with the secretary of state. Filing must be made on a form to be prescribed by the secretary of state and include a sworn statement of the candidate as being either for or against the amendment that will be submitted to a vote of the convention and that the candidate will, if elected as a delegate, vote in accordance with the declaration. The form must be so worded that the candidate must give a plain unequivocal statement of his or her views as either for or against the proposal upon which he or she will, if elected, be called upon to vote. No candidate may in any such filing make any statement or declaration as to party politics or political faith or beliefs. The fee for filing as a candidate is ten dollars and must be transmitted to the secretary of state with the filing papers and be by the secretary of state transmitted to the state treasurer for the use of the general fund. [2003 c 111 § 1435;

1965 c 9 § 29.74.060. Prior: 1933 c 181 § 3; RRS § 5249-3. Formerly RCW 29.74.060.]

29A.56.470 Election of delegates—Administration. (*Effective July 1, 2004.*) The election of delegates to the convention must as far as practicable, be administered, except as otherwise provided in this chapter, in the same manner as a general election under the election laws of this state. [2003 c 111 § 1436; 1965 c 9 § 29.74.070. Prior: 1933 c 181 § 4, part; RRS § 5249-4, part. Formerly RCW 29.74.070.]

29A.56.480 Election of delegates—Ballots. (*Effective July 1, 2004.*) The issue shall be identified as, "Delegates to a convention for ratification or rejection of a proposed amendment to the United States Constitution, relating (stating briefly the substance of amendment proposed for adoption or rejection)." The names of all candidates who have filed in a district shall be printed on the ballots for that district in two separate groups under the headings, "For the amendment" and "Against the amendment." The names of the candidates in each group shall be printed in alphabetical order. [2003 c 111 § 1437. Prior: 1990 c 59 § 70; 1965 c 9 § 29.74.080; prior: 1933 c 181 § 4, part; RRS § 5249-4, part. Formerly RCW 29.74.080.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Ballots: Chapter 29A.36 RCW.

29A.56.490 Election of delegates—Ascertaining result. (*Effective July 1, 2004.*) The election officials shall count and determine the number of votes cast for each individual; and shall also count and determine the aggregate number of votes cast for all candidates whose names appear under each of the respective headings. Where more than the required number have been voted for, the ballot must be rejected. The figures determined by the various counts must be entered in the poll books of the respective precincts. The vote must be canvassed in each county by the county canvassing board, and certificate of results must within fifteen days after the election be transmitted to the secretary of state. Upon receiving the certificate, the secretary of state may require returns or poll books from any county precinct to be forwarded for the secretary's examination.

Where a district embraces precincts of more than one county, the secretary of state shall combine the votes from all the precincts included in each district. The delegates elected in each district will be the number of candidates corresponding to the number of state representatives from the district, who receive the highest number of votes in the group (either "for" or "against") that received an aggregate number of votes for all candidates in the group greater than the aggregate number of votes for all the candidates in the other group. The secretary of state shall issue certificates of election to the delegates so elected. [2003 c 111 § 1438; 1965 c 9 § 29.74.100. Prior: 1933 c 181 § 6; RRS § 5249-6. Formerly RCW 29.74.100.]

29A.56.500 Meeting—Organization. (*Effective July 1, 2004.*) The convention shall meet at the time and place

fixed in the governor's proclamation. The secretary of state shall call it to order, who shall then call the roll of the delegates and preside over the convention until its president is elected. The chief justice of the supreme court shall administer the oath of office to the delegates. As far as practicable, the convention shall proceed under the rules adopted by the last preceding session of the state senate. The convention shall elect a president and a secretary and shall thereafter and thereupon proceed with a publicly recorded voice vote upon the proposition submitted by the Congress of the United States. [2003 c 111 § 1439; 1965 c 9 § 29.74.110. Prior: 1933 c 181 § 7, part; RRS § 5249-7, part. Formerly RCW 29.74.110.]

29A.56.510 Quorum—Proceedings—Record. (*Effective July 1, 2004.*) Two-thirds of the elected members of said convention shall constitute a quorum to do business, and a majority of those elected shall be sufficient to adopt or reject any proposition coming before the convention. If such majority votes in favor of the ratification of the amendment submitted to the convention, the said amendment shall be deemed ratified by the state of Washington; and if a majority votes in favor of rejecting or not ratifying the amendment, the same shall be deemed rejected by the state of Washington. [2003 c 111 § 1440. Prior: 1965 c 9 § 29.74.120; prior: 1933 c 181 § 8, part; RRS § 5249-8, part. Formerly RCW 29.74.120.]

29A.56.520 Certification and transmittal of result. (*Effective July 1, 2004.*) The vote of each member shall be recorded in the journal of the convention, which shall be preserved by the secretary of state as a public document. The action of the convention shall be enrolled, signed by its president and secretary and filed with the secretary of state and it shall be the duty of the secretary of state to properly certify the action of the convention to the Congress of the United States as provided by general law. [2003 c 111 § 1441; 1965 c 9 § 29.74.130. Prior: (i) 1933 c 181 § 7, part; RRS § 5249-7, part. (ii) 1933 c 181 § 8, part; RRS § 5249-8, part. Formerly RCW 29.74.130.]

29A.56.530 Expenses—How paid—Delegates receive filing fee. (*Effective July 1, 2004.*) The delegates attending the convention shall be paid the amount of their filing fee, upon vouchers approved by the president and secretary of the convention and state warrants issued thereon and payable from the general fund of the state treasury. The delegates shall receive no other compensation or mileage. All other necessary expenses of the convention shall be payable from the general fund of the state upon vouchers approved by the president and secretary of the convention. [2003 c 111 § 1442. Prior: 1965 c 9 § 29.74.140; prior: 1933 c 181 § 10; RRS § 5249-10. Formerly RCW 29.74.140.]

29A.56.540 Federal statutes controlling. (*Effective July 1, 2004.*) If a congressional measure, which submits to the several states an amendment to the Constitution of the United States for ratification or rejection, provides for or requires a different method of calling and holding conventions to ratify or reject said amendment, the requirements of

said congressional measure shall be followed so far as they conflict with the provisions of this chapter. [2003 c 111 § 1443. Prior: 1965 c 9 § 29.74.150; prior: 1933 c 181 § 11; RRS § 5249-11. Formerly RCW 29.74.150.]

Chapter 29A.60 RCW CANVASSING

Sections

- 29A.60.010 Conduct of elections—Canvass. (*Effective July 1, 2004.*)
- 29A.60.020 Write-in voting—Declaration of candidacy—Counting of vote. (*Effective July 1, 2004.*)
- 29A.60.030 Tabulation continuous. (*Effective July 1, 2004.*)
- 29A.60.040 Rejection of ballots or parts—Write-in votes. (*Effective July 1, 2004.*)
- 29A.60.050 Questions on legality of ballot—Preservation and return. (*Effective July 1, 2004.*)
- 29A.60.060 Poll-site ballot counting devices—Results. (*Effective July 1, 2004.*)
- 29A.60.070 Returns, precinct and cumulative—Delivery to canvassing board. (*Effective July 1, 2004.*)
- 29A.60.080 Sealing of voting devices—Exceptions. (*Effective July 1, 2004.*)
- 29A.60.090 Voting systems—Maintenance of documents. (*Effective July 1, 2004.*)
- 29A.60.100 Votes by stickers, printed labels, rejected. (*Effective July 1, 2004.*)
- 29A.60.110 Ballot containers, sealing, opening. (*Effective July 1, 2004.*)
- 29A.60.120 Counting ballots—Official returns. (*Effective July 1, 2004.*)
- 29A.60.130 Certificate not withheld for informality in returns. (*Effective July 1, 2004.*)
- 29A.60.140 Canvassing board—Membership—Authority—Delegation of authority—Rule making. (*Effective July 1, 2004.*)
- 29A.60.150 Procedure when member a candidate. (*Effective July 1, 2004.*)
- 29A.60.160 Absentee ballots. (*Effective July 1, 2004.*)
- 29A.60.170 Counting center, direction and observation of proceedings—Manual count of certain precincts. (*Effective July 1, 2004.*)
- 29A.60.180 Credit for voting—Retention of ballots. (*Effective July 1, 2004.*)
- 29A.60.190 Certification of election results—Unofficial returns. (*Effective July 1, 2004.*)
- 29A.60.200 Canvassing board—Canvassing procedure—Penalty. (*Effective July 1, 2004.*)
- 29A.60.210 Recanvass—Generally. (*Effective July 1, 2004.*)
- 29A.60.220 Tie in primary or final election. (*Effective July 1, 2004.*)
- 29A.60.230 Abstract by election officer—Transmittal to secretary of state. (*Effective July 1, 2004.*)
- 29A.60.240 Secretary of state—Primary returns—State offices, etc. (*Effective July 1, 2004.*)
- 29A.60.250 Secretary of state—Final returns—Scope. (*Effective July 1, 2004.*)
- 29A.60.260 Canvass on statewide measures. (*Effective July 1, 2004.*)

29A.60.010 Conduct of elections—Canvass. (*Effective July 1, 2004.*) All elections, whether special or general, held under RCW 29A.04.320 and 29A.04.330 must be conducted by the county auditor as ex officio county supervisor of elections and, except as provided in RCW 29A.60.240, the returns canvassed by the county canvassing board. [2003 c 111 § 1501; 1965 c 123 § 4; 1965 c 9 § 29.13.040. Prior: 1963 c 200 § 6; 1955 c 55 § 3; 1951 c 257 § 4; 1951 c 101 § 4; 1949 c 161 § 5; Rem. Supp. 1949 § 5153-1. Formerly RCW 29.13.040.]

County auditor designated as supervisor of certain elections: RCW 29A.04.215.

29A.60.020 Write-in voting—Declaration of candidacy—Counting of vote. (*Effective July 1, 2004.*) (1) For any office at any election or primary, any voter may write in on the ballot the name of any person for an office who has filed as a write-in candidate for the office in the manner provided by RCW 29A.24.310 and such vote shall be counted

the same as if the name had been printed on the ballot and marked by the voter. No write-in vote made for any person who has not filed a declaration of candidacy pursuant to RCW 29A.24.310 is valid if that person filed for the same office, either as a regular candidate or a write-in candidate, at the preceding primary. Any abbreviation used to designate office, position, or political party shall be accepted if the canvassing board can determine, to their satisfaction, the voter's intent.

(2) The number of write-in votes cast for each office must be recorded and reported with the canvass for the election.

(3) Write-in votes cast for an individual candidate for an office need not be tallied if the total number of write-in votes cast for the office is not greater than the number of votes cast for the candidate apparently nominated or elected, and the write-in votes could not have altered the outcome of the primary or election. In the case of write-in votes for statewide office or for any office whose jurisdiction encompasses more than one county, write-in votes for an individual candidate must be tallied whenever the county auditor is notified by either the office of the secretary of state or another auditor in a multicounty jurisdiction that it appears that the write-in votes could alter the outcome of the primary or election.

(4) In the case of statewide offices or jurisdictions that encompass more than one county, if the total number of write-in votes cast for an office within a county is greater than the number of votes cast for a candidate apparently nominated or elected in a primary or election, the auditor shall tally all write-in votes for individual candidates for that office and notify the office of the secretary of state and the auditors of the other counties within the jurisdiction, that the write-in votes for individual candidates should be tallied. [2003 c 111 § 1502. Prior: 1999 c 157 § 3; 1995 c 158 § 2; 1988 c 181 § 5; 1973 1st ex.s. c 121 § 1; 1967 ex.s. c 109 § 28; 1965 ex.s. c 101 § 14; 1965 c 9 § 29.51.170; prior: (i) 1931 c 14 § 1; 1909 c 82 § 12; RRS § 5213. (ii) 1933 c 85 § 2; RRS § 5213-2. (iii) 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part. Formerly RCW 29.62.180, 29.51.170.]

29A.60.030 Tabulation continuous. (*Effective July 1, 2004.*) Except as provided by rule under *RCW 29.04.210, on the day of the primary or election, the tabulation of ballots at the polling place or at the counting center shall proceed without interruption or adjournment until all of the ballots cast at the polls at that primary or election have been tabulated. [2003 c 111 § 1503. Prior: 1990 c 59 § 58. Formerly RCW 29.54.042.]

***Reviser's note:** RCW 29.04.210 was repealed by 2003 c 111 § 2404, effective July 1, 2004. Rule making regarding elections is now done under RCW 29A.04.610.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.60.040 Rejection of ballots or parts—Write-in votes. (*Effective July 1, 2004.*) A ballot is invalid and no votes on that ballot may be counted if it is found folded together with another ballot or it is marked so as to identify the voter.

Those parts of a ballot are invalid and no votes may be counted for those issues or offices where more votes are cast

for the office or issue than are permitted by law; write-in votes do not contain all of the information required under RCW 29A.60.020; or that issue or office is not marked with sufficient definiteness to determine the voter's choice or intention. No write-in vote may be rejected due to a variation in the form of the name if the election board or the canvassing board can determine the issue for or against which or the person and the office for which the voter intended to vote. [2003 c 111 § 1504. Prior: 1999 c 158 § 13; 1999 c 157 § 4; 1990 c 59 § 56; 1977 ex.s. c 361 § 88; 1973 1st ex.s. c 121 § 2; 1965 ex.s. c 101 § 11; 1965 c 9 § 29.54.050; prior: (i) Code 1881 § 3091; 1865 p 38 § 2; RRS § 5336. (ii) 1895 c 156 § 10; 1889 p 411 § 29; RRS § 5294. (iii) 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part. (iv) 1895 c 156 § 11, part; 1886 p 128 § 1, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5323, part. Formerly RCW 29.54.050.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.60.050 Questions on legality of ballot—Preservation and return. (*Effective July 1, 2004.*) Whenever the precinct election officers or the counting center personnel have a question about the validity of a ballot or the votes for an office or issue that they are unable to resolve, they shall prepare and sign a concise record of the facts in question or dispute. These ballots shall be delivered to the canvassing board for processing. All ballots shall be preserved in the same manner as valid ballots for that primary or election. [2003 c 111 § 1505. Prior: 1990 c 59 § 57; 1977 ex.s. c 361 § 89; 1965 c 9 § 29.54.060; prior: Code 1881 § 3080, part; 1865 p 34 § 5, part; RRS § 5324, part. Formerly RCW 29.54.060.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.60.060 Poll-site ballot counting devices—Results. (*Effective July 1, 2004.*) After the close of the polls, counties employing poll-site ballot counting devices may telephonically or electronically transmit the accumulated tally for each device to a central reporting location. Before making a telephonic or electronic transmission the precinct election officer must create a printed record of the results of the election for that poll site. During the canvassing period the results transmitted telephonically or electronically must be considered unofficial until a complete reconciliation of the results has been performed. This reconciliation may be accomplished by a direct loading of the results from the memory pack into the central accumulator, or a comparison of the report produced at the poll site on election night with the results received by the central accumulating device. [2003 c 111 § 1506. Prior: 1999 c 158 § 12. Formerly RCW 29.54.097.]

Memory pack from poll-site counting device: RCW 29A.44.330.

29A.60.070 Returns, precinct and cumulative—Delivery to canvassing board. (*Effective July 1, 2004.*) The county auditor shall produce cumulative and precinct

returns for each primary and election and deliver them to the canvassing board for verification and certification. The precinct and cumulative returns of any primary or election are public records under chapter 42.17 RCW. [2003 c 111 § 1507. Prior: 1990 c 59 § 60. Formerly RCW 29.54.105.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.60.080 Sealing of voting devices—Exceptions. (*Effective July 1, 2004.*) Except for reopening to make a recanvass, the registering mechanism of each mechanical voting device used in any primary or election shall remain sealed until ten days after the completion of the canvass of that primary or election in that county. Except where provided by a rule adopted under *RCW 29.04.210, voting devices used in a primary or election shall remain sealed until ten days after the completion of the canvass of that primary or election in that county. [2003 c 111 § 1508. Prior: 1990 c 59 § 24; 1965 c 9 § 29.33.230; prior: 1917 c 7 § 1, part; 1913 c 58 § 15, part; RRS § 5315, part. Formerly RCW 29.54.121, 29.33.230.]

***Reviser's note:** RCW 29.04.210 was repealed by 2003 c 111 § 2404, effective July 1, 2004. Rule making regarding elections is now done under RCW 29A.04.710.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.60.090 Voting systems—Maintenance of documents. (*Effective July 1, 2004.*) In counties using voting systems, the county auditor shall maintain the following documents for at least sixty days after the primary or election:

- (1) Sample ballot formats together with a record of the format or formats assigned to each precinct;
- (2) All programming material related to the control of the vote tallying system for that primary or election; and
- (3) All test materials used to verify the accuracy of the tabulating equipment as required by RCW 29A.12.130. [2003 c 111 § 1509. Prior: 1990 c 59 § 61; 1977 ex.s. c 361 § 94. Formerly RCW 29.54.170.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.60.100 Votes by stickers, printed labels, rejected. (*Effective July 1, 2004.*) Votes cast by stickers or printed labels are not valid for any purpose and shall be rejected. Votes cast by sticker or label shall not affect the validity of other offices or issues on the voter's ballot. [2003 c 111 § 1510. Prior: 1990 c 59 § 46; 1965 ex.s. c 101 § 16. Formerly RCW 29.51.175.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.60.110 Ballot containers, sealing, opening. (*Effective July 1, 2004.*) Immediately after their tabulation, all ballots counted at a ballot counting center must be sealed in containers that identify the primary or election and be retained for at least sixty days or according to federal law, whichever is longer. All ballots tallied by poll-site ballot counting devices must be returned to the elections depart-

ment in sealed ballot containers on election day. Counties composed entirely of islands or portions of counties composed of islands shall collect the ballots within twenty-four hours of the close of the polls.

Ballots tabulated in poll-site ballot counting devices must be sealed by two of the election precinct officers at the polling place, and a log of the seal and the names of the people sealing the container must be completed. One copy of this log must be retained by the inspector, one copy must be placed in the ballot transfer case, and one copy must be transported with the ballots to the elections department, where the seal number must be verified by the county auditor or a designated representative. Ballots may be transported by one election employee if the container is sealed at the poll and then verified when returned to the elections department. Auditors using poll-site ballot counting devices may conduct early pickup of counted ballots on election day.

In the presence of major party observers who are available, ballots may be removed from the sealed containers at the elections department and consolidated into one sealed container for storage purposes. The containers may only be opened by the canvassing board as part of the canvass, or to conduct recounts, or under RCW 29.60.170(3), or by order of the superior court in a contest or election dispute. If the canvassing board opens a ballot container, it shall make a full record of the additional tabulation or examination made of the ballots. This record must be added to any other record of the canvassing process in that county. [2003 c 111 § 1511; 1999 c 158 § 14; 1990 c 59 § 59. Formerly RCW 29.54.075.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.60.120 Counting ballots—Official returns. (*Effective July 1, 2004.*) (1) The ballots picked up from the precincts during the polling hours may be counted only at the counting center before the polls have closed. Election returns from the count of these ballots must be held in secrecy until the polls have been closed.

(2) Upon breaking the seals and opening the ballot containers from the precincts, all voted ballots must be manually inspected for damage, write-in votes, and incorrect or incomplete marks. If it is found that any ballot is damaged so that it cannot properly be counted by the vote tallying system, a true duplicate copy must be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. All damaged ballots must be kept by the county auditor until sixty days after the primary or election or according to federal law, whichever is longer.

(3) The returns produced by the vote tallying system, to which have been added the counts of questioned ballots, write-in votes, and absentee votes, constitute the official returns of the primary or election in that county. [2003 c 111 § 1512; 1999 c 158 § 15; 1990 c 59 § 33; 1977 ex.s. c 361 § 74. Formerly RCW 29.54.085, 29.34.167.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.60.130 Certificate not withheld for informality in returns. (*Effective July 1, 2004.*) No certificate shall be

withheld on account of any defect or informality in the returns of any election, if it can with reasonable certainty be ascertained from such return what office is intended, and who is entitled to such certificate, nor shall any commission be withheld by the governor on account of any defect or informality of any return made to the office of the secretary of state. [2003 c 111 § 1513. Prior: 1965 c 9 § 29.27.120; prior: Code 1881 § 3102; 1865 p 41 § 13; RRS § 5347. Formerly RCW 29.27.120.]

29A.60.140 Canvassing board—Membership—Authority—Delegation of authority—Rule making. (Effective July 1, 2004.) (1) Members of the county canvassing board are the county auditor, who is the chair, the county prosecuting attorney, and the chair of the county legislative body. If a member of the board is not available to carry out the duties of the board, then the auditor may designate a deputy auditor, the prosecutor may designate a deputy prosecuting attorney, and the chair of the county legislative body may designate another member of the county legislative body. Any such designation may be made on an election-by-election basis or may be on a permanent basis until revoked by the designating authority. Any such designation must be in writing, and if for a specific election, must be filed with the county auditor not later than the day before the first day duties are to be undertaken by the canvassing board. If the designation is permanent until revoked by the designating authority, then the designation must be on file in the county auditor's office no later than the day before the first day the designee is to undertake the duties of the canvassing board.

(2) The county canvassing board may adopt rules that delegate in writing to the county auditor or the county auditor's staff the performance of any task assigned by law to the canvassing board.

(3) The county canvassing board may not delegate the responsibility of certifying the returns of a primary or election, of determining the validity of challenged ballots, or of determining the validity of provisional ballots referred to the board by the county auditor.

(4) The county canvassing board shall adopt administrative rules to facilitate and govern the canvassing process in that jurisdiction.

(5) Meetings of the county canvassing board are public meetings under chapter 42.30 RCW. All rules adopted by the county canvassing board must be adopted in a public meeting under chapter 42.30 RCW, and once adopted must be available to the public to review and copy under chapter 42.17 RCW. [2003 c 111 § 1514.]

29A.60.150 Procedure when member a candidate. (Effective July 1, 2004.) The members of the county canvassing board may not include individuals who are candidates for an office to be voted upon at the primary or election. If no individual is available to serve on the canvassing board who is not a candidate at the primary or election the individual who is a candidate must not make decisions regarding the determination of a voter's intent with respect to a vote cast for that specific office; the decision must be made by the other two members of the board. If the two disagree, the vote must not be counted unless the number of those votes could affect the result of the primary or election, in which case the secre-

tary of state or a designee shall make the decision on those votes. This section does not restrict participation in decisions as to the acceptance or rejection of entire ballots, unless the office in question is the only one for which the voter cast a vote. [2003 c 111 § 1515; 1995 c 139 § 3; 1965 c 9 § 29.62.030. Prior: 1957 c 195 § 16; prior: (i) Code 1881 § 3098; 1865 p 39 § 8; RRS § 5345. (ii) 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part. Formerly RCW 29.62.030.]

29A.60.160 Absentee ballots. (Effective July 1, 2004.) At least every third day after a primary or election and before certification of the election results, except Sundays and legal holidays, the county auditor, as delegated by the county canvassing board, shall process absentee ballots and canvass the votes cast at that primary or election, if the county auditor is in possession of more than twenty-five ballots that have yet to be canvassed. The county auditor, as delegated by the county canvassing board, may use his or her discretion in determining when to process the remaining absentee ballots and canvass the votes during the final four days before the certification of election results in order to protect the secrecy of any ballot. In counties where this process has not been delegated to the county auditor, the county auditor shall convene the county canvassing board to process absentee ballots and canvass the votes cast at the primary or election as set forth in this section.

Each absentee ballot previously not canvassed that was received by the county auditor two days or more before processing absentee ballots and canvassing the votes as delegated by or processed by the county canvassing board, that either was received by the county auditor before the closing of the polls on the day of the primary or election for which it was issued, or that bears a postmark on or before the primary or election for which it was issued, must be processed at that time. The tabulation of votes that results from that day's canvass must be made available to the general public immediately upon completion of the canvass. [2003 c 111 § 1516; 1999 c 259 § 4; 1995 c 139 § 2; 1987 c 54 § 2; 1965 c 9 § 29.62.020. Prior: 1957 c 195 § 15; prior: 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part. Formerly RCW 29.62.020.]

Absentee ballots, canvassing: RCW 29A.40.110.

29A.60.170 Counting center, direction and observation of proceedings—Manual count of certain precincts. (Effective July 1, 2004.) (1) The counting center in a county using voting systems is under the direction of the county auditor and must be observed by one representative from each major political party, if representatives have been appointed by the respective major political parties and these representatives are present while the counting center is operating. The proceedings must be open to the public, but no persons except those employed and authorized by the county auditor may touch any ballot or ballot container or operate a vote tallying system.

(2) In counties in which ballots are not counted at the polling place, the official political party observers, upon mutual agreement, may request that a precinct be selected at random on receipt of the ballots from the polling place and

that a manual count be made of the number of ballots and of the votes cast on any office or issue. The ballots for that precinct must then be counted by the vote tallying system, and this result will be compared to the results of the manual count. This may be done as many as three times during the tabulation of ballots on the day of the primary or election.

(3) In counties using poll-site ballot counting devices, the political party observers, upon mutual agreement, may choose as many as three precincts and request that a manual count be made of the number of ballots and the votes cast on any office or issue. The results of this count will be compared to the count of the precinct made by the poll-site ballot counting device. These selections must be made no later than thirty minutes after the close of the polls. The manual count must be completed within forty-eight hours after the close of the polls. The process must take place at a location designated by the county auditor for that purpose. The political party observers must receive timely notice of the time and location, and have the right to be present. However, the process must proceed as scheduled if the observers are unable to attend. [2003 c 111 § 1517; 1999 c 158 § 9; 1990 c 59 § 30; 1977 ex.s. c 361 § 71. Formerly RCW 29.54.025, 29.34.153.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.60.180 Credit for voting—Retention of ballots. (*Effective July 1, 2004.*) Each registered voter casting an absentee ballot will be credited with voting on his or her voter registration record. Absentee ballots must be retained for the same length of time and in the same manner as ballots cast at the precinct polling places. [2003 c 111 § 1518. Prior: 2001 c 241 § 12; 1988 c 181 § 3; 1987 c 346 § 16; 1983 c 136 § 1; 1965 c 9 § 29.36.075; prior: 1961 c 78 § 1. Formerly RCW 29.36.330, 29.36.075.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.60.190 Certification of election results—Unofficial returns. (*Effective July 1, 2004.*) (1) On the tenth day after a special election or primary and on the fifteenth day after a general election, the county canvassing board shall complete the canvass and certify the results. Each absentee ballot that was returned before the closing of the polls on the date of the primary or election for which it was issued, and each absentee ballot with a postmark on or before the date of the primary or election for which it was issued and received on or before the date on which the primary or election is certified, must be included in the canvass report.

(2) At the request of a caucus of the state legislature, the county auditor shall transmit copies of all unofficial returns of state and legislative primaries or elections prepared by or for the county canvassing board to either the secretary of the senate or the chief clerk of the house or [of] representatives. [2003 c 111 § 1519.]

29A.60.200 Canvassing board—Canvassing procedure—Penalty. (*Effective July 1, 2004.*) Before canvassing the returns of a primary or election, the chair of the county

legislative authority or the chair's designee shall administer an oath to the county auditor or the auditor's designee attesting to the authenticity of the information presented to the canvassing board. This oath must be signed by the county auditor or designee and filed with the returns of the primary or election.

The county canvassing board shall proceed to verify the results from the precincts and the absentee ballots. The board shall execute a certificate of the results of the primary or election signed by all members of the board or their designees. Failure to certify the returns, if they can be ascertained with reasonable certainty, is a crime under RCW 29A.84.720. [2003 c 111 § 1520; 1990 c 59 § 63; 1965 c 9 § 29.62.040. Prior: 1957 c 195 § 17; prior: (i) 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part. (ii) 1893 c 112 § 2; RRS § 5342. (iii) 1903 c 85 § 1, part; Code 1881 § 3094, part; 1865 p 38 § 4, part; RRS § 5339, part. Formerly RCW 29.62.040.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.60.210 Recanvass—Generally. (*Effective July 1, 2004.*) Whenever the canvassing board finds that there is an apparent discrepancy or an inconsistency in the returns of a primary or election, the board may recanvass the ballots or voting devices in any precincts of the county. The canvassing board shall conduct any necessary recanvass activity on or before the last day to certify the primary or election and correct any error and document the correction of any error that it finds. [2003 c 111 § 1521; 1990 c 59 § 64; 1965 c 9 § 29.62.050. Prior: 1951 c 193 § 1; 1917 c 7 § 1, part; 1913 c 58 § 15, part; RRS § 5315, part. Formerly RCW 29.62.050.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Voting systems: Chapter 29A.12 RCW.

29A.60.220 Tie in primary or final election. (*Effective July 1, 2004.*) (1) If the requisite number of any federal, state, county, city, or district offices have not been nominated in a primary by reason of two or more persons having an equal and requisite number of votes for being placed on the general election ballot, the official empowered by state law to certify candidates for the general election ballot shall give notice to the several persons so having the equal and requisite number of votes to attend at the appropriate office at the time designated by that official, who shall then and there proceed publicly to decide by lot which of those persons will be declared nominated and placed on the general election ballot.

(2) If the requisite number of any federal, state, county, city, district, or precinct officers have not been elected by reason of two or more persons having an equal and highest number of votes for one and the same office, the official empowered by state law to issue the original certificate of election shall give notice to the several persons so having the highest and equal number of votes to attend at the appropriate office at the time to be appointed by that official, who shall then and there proceed publicly to decide by lot which of those persons will be declared duly elected, and the official shall make out and deliver to the person thus duly declared elected a certificate of election. [2003 c 111 § 1522; 1965 c 9 § 29.62.080. Prior: 1961 c 130 § 13; prior: (i) Code 1881 § 3097; 1866 p

7 § 3; RRS § 5344. (ii) Code 1881 § 3104; 1865 p 41 § 15; RRS § 5349. Formerly RCW 29.62.080.]

29A.60.230 Abstract by election officer—Transmittal to secretary of state. (*Effective July 1, 2004.*) (1) Immediately after the official results of a state primary or general election in a county are ascertained, the county auditor or other election officer shall make an abstract of the number of registered voters in each precinct and of all the votes cast in the county at such state primary or general election for and against state measures and for each candidate for federal, state, and legislative office or for any other office which the secretary of state is required by law to canvass. The cumulative report of the election and a copy of the certificate of the election must be transmitted to the secretary of state immediately, through electronic means and mailed with the abstract of votes no later than the next business day following the certification by the county canvassing board.

(2) After each general election, the county auditor or other election officer shall provide to the secretary of state a report of the number of absentee ballots cast in each precinct for and against state measures and for each candidate for federal, state, and legislative office or for any other office which the secretary of state is required by law to canvass. The report may be included in the abstract required by this section or may be transmitted to the secretary of state separately, but in no event later than March 31st of the year following the election. Absentee ballot results may be incorporated into votes cast at the polls for each precinct or may be reported separately on a precinct-by-precinct basis.

(3) If absentee ballot results are not incorporated into votes cast at the polls, the county auditor or other election official may aggregate results from more than one precinct if the auditor, pursuant to rules adopted by the secretary of state, finds that reporting a single precinct's absentee ballot results would jeopardize the secrecy of a person's ballot. To the extent practicable, precincts for which absentee results are aggregated must be contiguous. [2003 c 111 § 1523; 2001 c 225 § 2; 1999 c 298 § 21; 1990 c 262 § 1; 1977 ex.s. c 361 § 96; 1965 c 9 § 29.62.090. Prior: (i) 1895 c 156 § 12; Code 1881 § 3101; 1865 p 40 § 12; RRS § 5346. (ii) Code 1881 § 3103; 1865 p 41 § 14; RRS § 5348. Formerly RCW 29.62.090.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.60.240 Secretary of state—Primary returns—State offices, etc. (*Effective July 1, 2004.*) The secretary of state shall, as soon as possible but in any event not later than the third Tuesday following the primary, canvass and certify the returns of all primary elections as to candidates for state offices, United States senators and representatives in Congress, and all other candidates whose district extends beyond the limits of a single county. [2003 c 111 § 1524; 1977 ex.s. c 361 § 97; 1965 c 9 § 29.62.100. Prior: 1961 c 130 § 11; prior: 1907 c 209 § 24, part; RRS § 5201, part. Formerly RCW 29.62.100.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

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29A.60.250 Secretary of state—Final returns—Scope. (*Effective July 1, 2004.*) As soon as the returns have been received from all the counties of the state, but not later than the thirtieth day after the election, the secretary of state shall make a canvass of such of the returns as are not required to be canvassed by the legislature and make out a statement thereof, file it in his or her office, and transmit a certified copy to the governor. [2003 c 111 § 1525; 1965 c 9 § 29.62.120. Prior: Code 1881 § 3100, part; No RRS. Formerly RCW 29.62.120.]

29A.60.260 Canvass on statewide measures. (*Effective July 1, 2004.*) The votes on proposed amendments to the state Constitution, recommendations for the calling of constitutional conventions and other questions submitted to the people must be counted, canvassed, and returned by each county canvassing board in the manner provided by law for counting, canvassing, and returning votes for candidates for state offices. The secretary of state shall, in the presence of the governor, within thirty days after the election, canvass the votes upon each question and certify to the governor the result. The governor shall forthwith issue a proclamation giving the whole number of votes cast in the state for and against such measure and declaring the result. If the vote cast upon an initiative or referendum measure is equal to less than one-third of the total vote cast at the election, the governor shall proclaim the measure to have failed. [2003 c 111 § 1526; 1965 c 9 § 29.62.130. Prior: (i) 1913 c 138 § 30; RRS § 5426. (ii) 1917 c 23 § 1; RRS § 5341. Formerly RCW 29.62.130.]

Chapter 29A.64 RCW RECOUNTS

Sections

- 29A.64.010 Application—Requirements—Application of chapter. (*Effective July 1, 2004.*)
- 29A.64.020 Mandatory. (*Effective July 1, 2004.*)
- 29A.64.030 Deposit of fees—Notice—Public proceeding. (*Effective July 1, 2004.*)
- 29A.64.040 Procedure—Observers—Request to stop. (*Effective July 1, 2004.*)
- 29A.64.050 Partial recount requiring complete recount. (*Effective July 1, 2004.*)
- 29A.64.060 Amended abstracts. (*Effective July 1, 2004.*)
- 29A.64.070 Limitation. (*Effective July 1, 2004.*)
- 29A.64.080 Expenses—Charges. (*Effective July 1, 2004.*)
- 29A.64.090 Statewide measures—When mandatory—Cost at state expense. (*Effective July 1, 2004.*)
- 29A.64.100 Statewide measures—Funds for additional expenses. (*Effective July 1, 2004.*)

29A.64.010 Application—Requirements—Application of chapter. (*Effective July 1, 2004.*) An officer of a political party or any person for whom votes were cast in a primary who was not declared nominated may file a written application for a recount of the votes or a portion of the votes cast at that primary for all persons for whom votes were cast for nomination to that office.

An officer of a political party or any person for whom votes were cast at any election may file a written application for a recount of the votes or a portion of the votes cast at that election for all candidates for election to that office.

Any group of five or more registered voters may file a written application for a recount of the votes or a portion of

the votes cast upon any question or issue. They shall designate one of the members of the group as chair and shall indicate the voting residence of each member of the group.

An application for a recount of the votes cast for an office or on a ballot measure must be filed with the officer with whom filings are made for the jurisdiction.

An application for a recount must specify whether the recount will be done manually or by the vote tally system. A recount done by the vote tally system must use programming that recounts and reports only the office or ballot measure in question. The county shall also provide for a test of the logic and accuracy of that program.

An application for a recount must be filed within three business days after the county canvassing board or secretary of state has declared the official results of the primary or election for the office or issue for which the recount is requested.

This chapter applies to the recounting of votes cast by paper ballots and to the recounting of votes recorded on ballots counted by a vote tally system. [2003 c 111 § 1601; 2001 c 225 § 3; 1987 c 54 § 3; 1977 ex.s. c 361 § 98; 1965 c 9 § 29.64.010. Prior: 1963 ex.s. c 25 § 1; 1961 c 50 § 1; 1955 c 215 § 1. Formerly RCW 29.64.010.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.64.020 Mandatory. (Effective July 1, 2004.) (1)

If the official canvass of all of the returns for any office at any primary or election reveals that the difference in the number of votes cast for a candidate apparently nominated or elected to any office and the number of votes cast for the closest apparently defeated opponent is less than two thousand votes and also less than one-half of one percent of the total number of votes cast for both candidates, the county canvassing board shall conduct a recount of all votes cast on that position.

(a) Whenever such a difference occurs in the number of votes cast for candidates for a position the declaration of candidacy for which was filed with the secretary of state, the secretary of state shall, within three business days of the day that the returns of the primary or election are first certified by the canvassing boards of those counties, direct those boards to recount all votes cast on the position.

(b) If the difference in the number of votes cast for the apparent winner and the closest apparently defeated opponent is less than one hundred fifty votes and also less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually or as provided in subsection (3) of this section.

(2) A mandatory recount shall be conducted in the manner provided by RCW 29A.64.030, 29A.64.040, and 29A.64.060. No cost of a mandatory recount may be charged to any candidate.

(3) The apparent winner and closest apparently defeated opponent for an office for which a manual recount is required under subsection (1)(b) of this section may select an alternative method of conducting the recount. To select such an alternative, the two candidates shall agree to the alternative in a signed, written statement filed with the election official for the office. The recount shall be conducted using the alternative method if: It is suited to the balloting system that was used for casting the votes for the office; it involves the use of a vote tallying system that is approved for use in this state by

the secretary of state; and the vote tallying system is readily available in each county required to conduct the recount. If more than one balloting system was used in casting votes for the office, an alternative to a manual recount may be selected for each system. [2003 c 111 § 1602. Prior: 2001 c 225 § 4; 1993 c 377 § 1; 1991 c 90 § 2; 1987 c 54 § 4; 1965 c 9 § 29.64.015; prior: 1963 ex.s. c 25 § 2. Formerly RCW 29.64.015.]

Finding, purpose—1991 c 90: "The legislature finds that it is in the public interest to determine the winner of close contests for elective offices as expeditiously and as accurately as possible. It is the purpose of this act to provide procedures which promote the prompt and accurate recounting of votes for elective offices and which provide closure to the recount process." [1991 c 90 § 1.]

29A.64.030 Deposit of fees—Notice—Public proceeding. (Effective July 1, 2004.)

An application for a recount shall state the office for which a recount is requested and whether the request is for all or only a portion of the votes cast in that jurisdiction of that office. The person filing an application for a manual recount shall, at the same time, deposit with the county canvassing board or secretary of state, in cash or by certified check, a sum equal to twenty-five cents for each ballot cast in the jurisdiction or portion of the jurisdiction for which the recount is requested as security for the payment of any costs of conducting the recount. If the application is for a machine recount, the deposit must be equal to fifteen cents for each ballot. These charges shall be determined by the county canvassing board or boards under RCW 29A.64.080.

The county canvassing board shall determine a time and a place or places at which the recount will be conducted. This time shall be less than three business days after the day upon which: The application was filed with the board; the request for a recount or directive ordering a recount was received by the board from the secretary of state; or the returns are certified which indicate that a recount is required under RCW 29A.64.020 for an issue or office voted upon only within the county. Not less than two days before the date of the recount, the county auditor shall mail a notice of the time and place of the recount to the applicant or affected parties and, if the recount involves an office, to any person for whom votes were cast for that office. The county auditor shall also notify the affected parties by either telephone, fax, e-mail, or other electronic means at the time of mailing. At least three attempts must be made over a two-day period to notify the affected parties or until the affected parties have received the notification. Each attempt to notify affected parties must request a return response indicating that the notice has been received. Each person entitled to receive notice of the recount may attend, witness the recount, and be accompanied by counsel.

Proceedings of the canvassing board are public under chapter 42.30 RCW. Subject to reasonable and equitable guidelines adopted by the canvassing board, all interested persons may attend and witness a recount. [2003 c 111 § 1603. Prior: 2001 c 225 § 5; 1991 c 81 § 36; 1987 c 54 § 5; 1977 ex.s. c 361 § 99; 1965 c 9 § 29.64.020; prior: 1961 c 50 § 2; 1955 c 215 § 2. Formerly RCW 29.64.020.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.64.040 Procedure—Observers—Request to stop. (*Effective July 1, 2004.*) (1) At the time and place established for a recount, the canvassing board or its duly authorized representatives, in the presence of all witnesses who may be in attendance, shall open the sealed containers containing the ballots to be recounted, and shall recount the votes for the offices or issues for which the recount has been ordered. Ballots shall be handled only by the members of the canvassing board or their duly authorized representatives.

Witnesses shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots. The canvassing board shall not permit the tabulation of votes for any nomination, election, or issue other than the ones for which a recount was applied for or required.

(2) At any time before the ballots from all of the precincts listed in the application for the recount have been recounted, the applicant may file with the board a written request to stop the recount.

(3) The recount may be observed by persons representing the candidates affected by the recount or the persons representing both sides of an issue that is being recounted. The observers may not make a record of the names, addresses, or other information on the ballots, poll books, or applications for absentee ballots unless authorized by the superior court. The secretary of state or county auditor may limit the number of observers to not less than two on each side if, in his or her opinion, a greater number would cause undue delay or disruption of the recount process. [2003 c 111 § 1604. Prior: 2001 c 225 § 6; 1991 c 81 § 37; 1990 c 59 § 65; 1965 c 9 § 29.64.030; prior: 1961 c 50 § 3; 1955 c 215 § 3. Formerly RCW 29.64.030.]

Effective date—1991 c 81: See note following RCW 29A.84.540

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.64.050 Partial recount requiring complete recount. (*Effective July 1, 2004.*) When a partial recount of votes cast for an office or issue changes the result of the election, the canvassing board or the secretary of state, if the office or issue is being recounted at his or her direction, shall order a complete recount of all ballots cast for the office or issue for the jurisdiction in question.

This recount will be conducted in a manner consistent with RCW 29A.64.020. [2003 c 111 § 1605. Prior: 2001 c 225 § 7. Formerly RCW 29.64.035.]

29A.64.060 Amended abstracts. (*Effective July 1, 2004.*) Upon completion of the canvass of a recount, the canvassing board shall prepare and certify an amended abstract showing the votes cast in each precinct for which the recount was conducted. Copies of the amended abstracts must be transmitted to the same officers who received the abstract on which the recount was based.

If the nomination, election, or issue for which the recount was conducted was submitted only to the voters of a county, the canvassing board shall file the amended abstract with the original results of that election or primary.

If the nomination, election, or issue for which a recount was conducted was submitted to the voters of more than one county, the secretary of state shall canvass the amended

abstracts and shall file an amended abstract with the original results of that election. An amended abstract certified under this section supersedes any prior abstract of the results for the same offices or issues at the same primary or election. [2003 c 111 § 1606. Prior: 2001 c 225 § 8; 1990 c 59 § 66; 1965 c 9 § 29.64.040; prior: 1955 c 215 § 4. Formerly RCW 29.64.040.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.64.070 Limitation. (*Effective July 1, 2004.*) After the original count, canvass, and certification of results, the votes cast in any single precinct may not be recounted and the results recertified more than twice. [2003 c 111 § 1607. Prior: 2001 c 225 § 9; 1991 c 90 § 3. Formerly RCW 29.64.051.]

Finding, purpose—1991 c 90: See note following RCW 29A.64.020.

29A.64.080 Expenses—Charges. (*Effective July 1, 2004.*) The canvassing board shall determine the expenses for conducting a recount of votes.

The cost of the recount shall be deducted from the amount deposited by the applicant for the recount at the time of filing the request for the recount, and the balance shall be returned to the applicant. If the costs of the recount exceed the deposit, the applicant shall pay the difference. No charges may be deducted by the canvassing board from the deposit for a recount if the recount changes the result of the nomination or election for which the recount was ordered. [2003 c 111 § 1608. Prior: 2001 c 225 § 10; 1990 c 59 § 68; 1977 ex.s. c 361 § 100; 1965 c 9 § 29.64.060; prior: 1955 c 215 § 6. Formerly RCW 29.64.060.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.64.090 Statewide measures—When mandatory—Cost at state expense. (*Effective July 1, 2004.*) When the official canvass of returns of any election reveals that the difference in the number of votes cast for the approval of a statewide measure and the number of votes cast for the rejection of such measure is less than two thousand votes and also less than one-half of one percent of the total number of votes cast on such measure, the secretary of state shall direct that a recount of all votes cast on such measure be made on such measure, in the manner provided by RCW 29A.64.040 and 29A.64.060, and the cost of such recount will be at state expense. [2003 c 111 § 1609. Prior: 2001 c 225 § 11; 1973 c 82 § 1. Formerly RCW 29.64.080.]

29A.64.100 Statewide measures—Funds for additional expenses. (*Effective July 1, 2004.*) Each county auditor shall file with the secretary of state a statement listing only the additional expenses incurred whenever a mandatory recount of the votes cast on a state measure is made as provided in RCW 29A.64.090. The secretary of state shall include in his or her biennial budget request a provision for sufficient funds to carry out the provisions of this section. Payments hereunder shall be from appropriations specifically

provided for such purpose by law. [2003 c 111 § 1610; 1977 ex.s. c 144 § 5; 1973 c 82 § 2. Formerly RCW 29.64.090.]

Chapter 29A.68 RCW CONTESTING AN ELECTION

Sections

- 29A.68.010 Prevention and correction of election frauds and errors. (*Effective July 1, 2004.*)
- 29A.68.020 Commencement by registered voter—Causes for. (*Effective July 1, 2004.*)
- 29A.68.030 Affidavit of error or omission—Time for filing—Contents—Witnesses. (*Effective July 1, 2004.*)
- 29A.68.040 Hearing date—Issuance of citation—Service. (*Effective July 1, 2004.*)
- 29A.68.050 Witnesses to attend—Hearing of contest—Judgment. (*Effective July 1, 2004.*)
- 29A.68.060 Costs, how awarded. (*Effective July 1, 2004.*)
- 29A.68.070 Misconduct of board—Irregularity material to result. (*Effective July 1, 2004.*)
- 29A.68.080 Misconduct of board—Number of votes affected—Enough to change result. (*Effective July 1, 2004.*)
- 29A.68.090 Illegal votes—Allegation of. (*Effective July 1, 2004.*)
- 29A.68.100 Illegal votes—List required for testimony. (*Effective July 1, 2004.*)
- 29A.68.110 Illegal votes—Number of votes affected—Enough to change result. (*Effective July 1, 2004.*)
- 29A.68.120 Election set aside—Appeal period. (*Effective July 1, 2004.*)

29A.68.010 Prevention and correction of election frauds and errors. (*Effective July 1, 2004.*) Any justice of the supreme court, judge of the court of appeals, or judge of the superior court in the proper county shall, by order, require any person charged with error, wrongful act, or neglect to forthwith correct the error, desist from the wrongful act, or perform the duty and to do as the court orders or to show cause forthwith why the error should not be corrected, the wrongful act desisted from, or the duty or order not performed, whenever it is made to appear to such justice or judge by affidavit of an elector that:

- (1) An error or omission has occurred or is about to occur in printing the name of any candidate on official ballots; or
- (2) An error other than as provided in subsections (1) and (3) of this section has been committed or is about to be committed in printing the ballots; or
- (3) The name of any person has been or is about to be wrongfully placed upon the ballots; or
- (4) A wrongful act other than as provided for in subsections (1) and (3) of this section has been performed or is about to be performed by any election officer; or
- (5) Any neglect of duty on the part of an election officer other than as provided for in subsections (1) and (3) of this section has occurred or is about to occur; or
- (6) An error or omission has occurred or is about to occur in the issuance of a certificate of election.

An affidavit of an elector under subsections (1) and (3) above when relating to a primary election must be filed with the appropriate court no later than the second Friday following the closing of the filing period for nominations for such office and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsections (1) and (3) of this section when relating to a general election must be filed with the appropriate court no later than three days following the official certification of the primary election returns and shall be heard and finally disposed of by the court not later than five

days after the filing thereof. An affidavit of an elector under subsection (6) of this section shall be filed with the appropriate court no later than ten days following the issuance of a certificate of election. [2003 c 111 § 1701. Prior: 1977 ex.s. c 361 § 3; 1973 1st ex.s. c 165 § 1; 1971 c 81 § 74; 1965 c 9 § 29.04.030; prior: (i) 1907 c 209 § 25, part; RRS § 5202, part. (ii) 1889 p 407 § 19; RRS § 5276. Formerly RCW 29.04.030.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

Certiorari, mandamus, and prohibition: Chapter 7.16 RCW.

Crimes and penalties: Chapter 29A.84 RCW.

29A.68.020 Commencement by registered voter—Causes for. (*Effective July 1, 2004.*) Any registered voter may contest the right of any person declared elected to an office to be issued a certificate of election for any of the following causes:

- (1) For misconduct on the part of any member of any precinct election board involved therein;
- (2) Because the person whose right is being contested was not at the time the person was declared elected eligible to that office;
- (3) Because the person whose right is being contested was previous to the election convicted of a felony by a court of competent jurisdiction, the conviction not having been reversed nor the person's civil rights restored after the conviction;
- (4) Because the person whose right is being contested gave a bribe or reward to a voter or to an inspector or judge of election for the purpose of procuring the election, or offered to do so;
- (5) On account of illegal votes.
 - (a) Illegal votes include but are not limited to the following:
 - (i) More than one vote cast by a single voter;
 - (ii) A vote cast by a person disqualified under Article VI, section 3 of the state Constitution.
 - (b) Illegal votes do not include votes cast by improperly registered voters who were not properly challenged under RCW 29A.08.810 and 29A.08.820.

All election contests must proceed under RCW 29A.68.010. [2003 c 111 § 1702; 1983 1st ex.s. c 30 § 6; 1977 ex.s. c 361 § 101; 1965 c 9 § 29.65.010. Prior: 1959 c 329 § 26; prior: (i) Code 1881 § 3105; 1865 p 42 § 1; RRS § 5366. (ii) Code 1881 § 3109; 1865 p 43 § 5; RRS § 5370. Formerly RCW 29.65.010.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

Civil rights

loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.

restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

29A.68.030 Affidavit of error or omission—Time for filing—Contents—Witnesses. (*Effective July 1, 2004.*) An affidavit of an elector with respect to RCW 29A.68.010(6) must be filed with the appropriate court no later than ten days following the issuance of a certificate of election and must set forth specifically:

(1) The name of the contestant and that he or she is a registered voter in the county, district or precinct, as the case may be, in which the office is to be exercised;

(2) The name of the person whose right is being contested;

(3) The office;

(4) The particular causes of the contest.

No statement of contest may be dismissed for want of form if the particular causes of contest are alleged with sufficient certainty. The person charged with the error or omission must be given the opportunity to call any witness, including the candidate to whom he or she has issued or intends to issue the certificate of election. [2003 c 111 § 1703; 1977 ex.s. c 361 § 102; 1965 c 9 § 29.65.020. Prior: (i) Code 1881 § 3110; 1865 p 43 § 6; RRS § 5371. (ii) Code 1881 § 3112; 1865 p 44 § 8; RRS § 5373. Formerly RCW 29.65.020.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.68.040 Hearing date—Issuance of citation—Service. (Effective July 1, 2004.) Upon such affidavit being filed, the clerk shall inform the judge of the appropriate court, who may give notice, and order a session of the court to be held at the usual place of holding the court, on some day to be named by the judge, not less than ten nor more than twenty days from the date of the notice, to hear and determine such contested election. If no session is called for the purpose, the contest must be determined at the first regular session of court after the statement is filed.

The clerk of the court shall also at the time issue a citation for the person charged with the error or omission, to appear at the time and place specified in the notice. The citation must be delivered to the sheriff and be served upon the party in person; or if the person cannot be found, by leaving a copy thereof at the house where the person last resided. [2003 c 111 § 1704; 1977 ex.s. c 361 § 103; 1965 c 9 § 29.65.040. Prior: (i) Code 1881 § 3113; 1865 p 44 § 9; RRS § 5374. (ii) Code 1881 § 3114; 1865 p 45 § 10; RRS § 5375. Formerly RCW 29.65.040.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.68.050 Witnesses to attend—Hearing of contest—Judgment. (Effective July 1, 2004.) The clerk shall issue subpoenas for witnesses in such contested election at the request of either party, which shall be served by the sheriff or constable, as other subpoenas, and the superior court shall have full power to issue attachments to compel the attendance of witnesses who shall have been duly subpoenaed to attend if they fail to do so.

The court shall meet at the time and place designated to determine such contested election by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable, and may dismiss the proceedings if the statement of the cause or causes of contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties, the court shall pronounce judgment in the premises, either confirming or annulling and setting aside such election, according to the law and right of the case.

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If in any such case it shall appear that another person than the one returned has the highest number of legal votes, said court shall declare such person duly elected. [2003 c 111 § 1705. Prior: 1965 c 9 § 29.65.050; prior: (i) Code 1881 § 3115; 1865 p 45 § 11; RRS § 5376. (ii) Code 1881 § 3116; 1865 p 45 § 12; RRS § 5377. (iii) Code 1881 § 3117; 1865 p 45 § 13; RRS § 5378. FORMER PARTS OF SECTION: (i) Code 1881 § 3119; 1865 p 45 § 15; RRS § 5379, now codified in RCW 29.65.055. (ii) Code 1881 § 3120; 1865 p 45 § 16; RRS § 5380, now codified in RCW 29.65.055. Formerly RCW 29.65.050.]

29A.68.060 Costs, how awarded. (Effective July 1, 2004.) If the proceedings are dismissed for insufficiency, want of prosecution, or the election is by the court confirmed, judgment shall be rendered against the party contesting such election for costs, in favor of the party charged with error or omission.

If such election is annulled and set aside, judgment for costs shall be rendered against the party charged with the error or omission and in favor of the party alleging the same. [2003 c 111 § 1706. Prior: 1977 ex.s. c 361 § 104; 1965 c 9 § 29.65.055; prior: (i) Code 1881 § 3119; 1865 p 45 § 15; RRS § 5379; formerly RCW 29.65.050, part. (ii) Code 1881 § 3120; 1865 p 45 § 16; RRS § 5380, formerly RCW 29.65.050, part. Formerly RCW 29.65.055.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.68.070 Misconduct of board—Irregularity material to result. (Effective July 1, 2004.) No irregularity or improper conduct in the proceedings of any election board or any member of the board amounts to such malconduct as to annul or set aside any election unless the irregularity or improper conduct was such as to procure the person whose right to the office may be contested, to be declared duly elected although the person did not receive the highest number of legal votes. [2003 c 111 § 1707; 1965 c 9 § 29.65.060. Prior: Code 1881 § 3106; 1865 p 43 § 2; RRS § 5367. Formerly RCW 29.65.060.]

29A.68.080 Misconduct of board—Number of votes affected—Enough to change result. (Effective July 1, 2004.) When any election for an office exercised in and for a county is contested on account of any malconduct on the part of any election board, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct or precincts will change the result as to such office in the remaining vote of the county. [2003 c 111 § 1708. Prior: 1965 c 9 § 29.65.070; prior: Code 1881 § 3107; 1865 p 43 § 3; RRS § 5368. Formerly RCW 29.65.070.]

29A.68.090 Illegal votes—Allegation of. (Effective July 1, 2004.) When the reception of illegal votes is alleged as a cause of contest, it is sufficient to state generally that illegal votes were cast, that, if given to the person whose election is contested in the specified precinct or precincts, will, if taken from that person, reduce the number of the person's legal votes below the number of legal votes given to some

other person for the same office. [2003 c 111 § 1709; 1965 c 9 § 29.65.080. Prior: Code 1881 § 3111, part; 1865 p 44 § 7, part; RRS § 5372, part. Formerly RCW 29.65.080.]

29A.68.100 Illegal votes—List required for testimony. (*Effective July 1, 2004.*) No testimony may be received as to any illegal votes unless the party contesting the election delivers to the opposite party, at least three days before trial, a written list of the number of illegal votes and by whom given, that the contesting party intends to prove at the trial. No testimony may be received as to any illegal votes, except as to such as are specified in the list. [2003 c 111 § 1710; 1965 c 9 § 29.65.090. Prior: Code 1881 § 3111, part; 1865 p 44 § 7, part; RRS § 5372, part. Formerly RCW 29.65.090.]

29A.68.110 Illegal votes—Number of votes affected—Enough to change result. (*Effective July 1, 2004.*) No election may be set aside on account of illegal votes, unless it appears that an amount of illegal votes has been given to the person whose right is being contested, that, if taken from that person, would reduce the number of the person's legal votes below the number of votes given to some other person for the same office, after deducting therefrom the illegal votes that may be shown to have been given to the other person. [2003 c 111 § 1711; 1965 c 9 § 29.65.100. Prior: Code 1881 § 3108; 1865 p 43 § 4; RRS § 5369. Formerly RCW 29.65.100.]

29A.68.120 Election set aside—Appeal period. (*Effective July 1, 2004.*) If an election is set aside by the judgment of the superior court and if no appeal is taken therefrom within ten days, the certificate issued shall be thereby rendered void. [2003 c 111 § 1712; 1965 c 9 § 29.65.120. Prior: Code 1881 § 3123, part; 1865 p 46 § 19, part; RRS § 5382, part. Formerly RCW 29.65.120.]

Chapter 29A.72 RCW

STATE INITIATIVE AND REFERENDUM

Sections

- 29A.72.010 Filing proposed measures with secretary of state. (*Effective July 1, 2004.*)
- 29A.72.020 Review of proposed initiatives—Certificate required. (*Effective July 1, 2004.*)
- 29A.72.030 Time for filing various types. (*Effective July 1, 2004.*)
- 29A.72.040 Numbering—Transmittal to attorney general. (*Effective July 1, 2004.*)
- 29A.72.050 Ballot title—Formulation, ballot display. (*Effective July 1, 2004.*)
- 29A.72.060 Ballot title and summary by attorney general. (*Effective July 1, 2004.*)
- 29A.72.070 Ballot title and summary—Notice. (*Effective July 1, 2004.*)
- 29A.72.080 Ballot title and summary—Appeal to superior court. (*Effective July 1, 2004.*)
- 29A.72.090 Ballot title and summary—Mailed to proponents and other persons—Appearance on petitions. (*Effective July 1, 2004.*)
- 29A.72.100 Petitions—Paper—Size—Contents. (*Effective July 1, 2004.*)
- 29A.72.110 Petitions to legislature—Form. (*Effective July 1, 2004.*)
- 29A.72.120 Petitions to people—Form. (*Effective July 1, 2004.*)
- 29A.72.130 Referendum petitions—Form. (*Effective July 1, 2004.*)
- 29A.72.140 Warning statement—Further requirements. (*Effective July 1, 2004.*)
- 29A.72.150 Petitions—Signatures—Number necessary. (*Effective July 1, 2004.*)
- 29A.72.160 Petitions—Time for filing. (*Effective July 1, 2004.*)
- 29A.72.170 Petitions—Acceptance or rejection by secretary of state. (*Effective July 1, 2004.*)

- 29A.72.180 Petitions—Review of refusal to file. (*Effective July 1, 2004.*)
- 29A.72.190 Petitions—Appellate review. (*Effective July 1, 2004.*)
- 29A.72.200 Petitions—Destruction on final refusal. (*Effective July 1, 2004.*)
- 29A.72.210 Petitions—Consolidation into volumes. (*Effective July 1, 2004.*)
- 29A.72.220 Petitions—Signature checking—Registration information file. (*Effective July 1, 2004.*)
- 29A.72.230 Petitions—Verification and canvass of signatures, observers—Statistical sampling—Initiatives to legislature, certification of. (*Effective July 1, 2004.*)
- 29A.72.240 Petitions to legislature—Count of signatures—Review. (*Effective July 1, 2004.*)
- 29A.72.250 Initiatives and referenda to voters—Certificates of sufficiency. (*Effective July 1, 2004.*)
- 29A.72.260 Rejected initiative to legislature treated as referendum bill. (*Effective July 1, 2004.*)
- 29A.72.270 Substitute for rejected initiative treated as referendum bill. (*Effective July 1, 2004.*)
- 29A.72.280 Substitute for rejected initiative—Concise description. (*Effective July 1, 2004.*)
- 29A.72.290 Printing ballot titles on ballots—Order and form. (*Effective July 1, 2004.*)

29A.72.010 Filing proposed measures with secretary of state. (*Effective July 1, 2004.*) If any legal voter of the state, either individually or on behalf of an organization, desires to petition the legislature to enact a proposed measure, or submit a proposed initiative measure to the people, or order that a referendum of all or part of any act, bill, or law, passed by the legislature be submitted to the people, he or she shall file with the secretary of state a legible copy of the measure proposed, or the act or part of such act on which a referendum is desired, accompanied by an affidavit that the sponsor is a legal voter and a filing fee prescribed under RCW 43.07.120. [2003 c 111 § 1802; 1982 c 116 § 1; 1965 c 9 § 29.79.010. Prior: 1913 c 138 § 1, part; RRS § 5397, part. Formerly RCW 29.79.010.]

29A.72.020 Review of proposed initiatives—Certificate required. (*Effective July 1, 2004.*) Upon receipt of a proposed initiative measure, and before giving it a serial number, the secretary of state shall submit a copy thereof to the office of the code reviser and give notice to the sponsor of such transmittal. Upon receipt of the measure, the assistant code reviser to whom it has been assigned may confer with the sponsor and shall within seven working days from its receipt, review the proposal and recommend to the sponsor such revision or alteration of the measure as may be deemed necessary and appropriate. The recommendations of the code reviser's office are advisory only, and the sponsor may accept or reject them in whole or in part. The code reviser shall issue a certificate of review certifying that he or she has reviewed the measure and that any recommendations have been communicated to the sponsor. The certificate must be issued whether or not the sponsor accepts such recommendations. Within fifteen working days after notification of submittal of the proposed measure to the code reviser's office, the sponsor, if he or she desires to proceed with sponsorship, shall file the measure together with the certificate of review with the secretary of state for assignment of a serial number, and the secretary of state shall then submit to the code reviser's office a certified copy of the measure filed. Upon submission of the proposal to the secretary of state for assignment of a serial number, the secretary of state shall refuse to make such assignment unless the proposal is accompanied by a certifi-

cate of review. [2003 c 111 § 1803; 1982 c 116 § 2; 1973 c 122 § 2. Formerly RCW 29.79.015.]

Legislative finding—1973 c 122: "The legislature finds that the initiative process reserving to the people the power to propose bills, laws and to enact or reject the same at the polls, independent of the legislature, is finding increased popularity with citizens of our state. The exercise of this power concomitant with the power of the legislature requires coordination to avoid the duplication and confusion of laws. This legislation is enacted especially to facilitate the operation of the initiative process." [1973 c 122 § 1.]

29A.72.030 Time for filing various types. (Effective July 1, 2004.) Initiative measures proposed to be submitted to the people must be filed with the secretary of state within ten months prior to the election at which they are to be submitted, and the signature petitions must be filed with the secretary of state not less than four months before the next general statewide election.

Initiative measures proposed to be submitted to the legislature must be filed with the secretary of state within ten months prior to the next regular session of the legislature at which they are to be submitted, and the signature petitions must be filed with the secretary of state not less than ten days before such regular session of the legislature.

A referendum measure petition ordering that any act or part of an act passed by the legislature be referred to the people must be filed with the secretary of state within ninety days after the final adjournment of the legislative session at which the act was passed. It may be submitted at the next general statewide election or at a special election ordered by the legislature.

A proposed initiative or referendum measure may be filed no earlier than the opening of the secretary of state's office for business pursuant to RCW 42.04.060 on the first day filings are permitted, and any initiative or referendum petition must be filed not later than the close of business on the last business day in the specified period for submission of signatures. If a filing deadline falls on a Saturday, the office of the secretary of state must be open for the transaction of business under this section from 8:00 a.m. to 5:00 p.m. on that Saturday. [2003 c 111 § 1804; 1987 c 161 § 1; 1965 c 9 § 29.79.020. Prior: (i) 1913 c 138 § 1, part; RRS § 5397, part. (ii) 1913 c 138 § 6, part; RRS § 5402, part. (iii) 1913 c 138 § 5, part; RRS § 5401, part. (iv) 1913 c 138 § 7, part; RRS § 5403, part. Formerly RCW 29.79.020.]

Initiative, referendum, time for filing: State Constitution Art. 2 § 1 (a) and (d) (Amendment 7).

Petitions—Time for filing: RCW 29A.72.160.

29A.72.040 Numbering—Transmittal to attorney general. (Effective July 1, 2004.) The secretary of state shall give a serial number to each initiative, referendum bill, or referendum measure, using a separate series for initiatives to the legislature, initiatives to the people, referendum bills, and referendum measures, and forthwith transmit one copy of the measure proposed bearing its serial number to the attorney general. Thereafter a measure shall be known and designated on all petitions, ballots, and proceedings as "Initiative Measure No. . . .," "Referendum Bill No. . . .," or "Referendum Measure No. . . ." [2003 c 111 § 1805; 1982 c 116 § 3; 1965 c 9 § 29.79.030. Prior: 1913 c 138 § 1, part; RRS § 5397, part. Formerly RCW 29.79.030.]

29A.72.050 Ballot title—Formulation, ballot display. (Effective July 1, 2004.) (1) The ballot title for an initiative to the people, an initiative to the legislature, a referendum bill, or a referendum measure consists of: (a) A statement of the subject of the measure; (b) a concise description of the measure; and (c) a question in the form prescribed in this section for the ballot measure in question. The statement of the subject of a measure must be sufficiently broad to reflect the subject of the measure, sufficiently precise to give notice of the measure's subject matter, and not exceed ten words. The concise description must contain no more than thirty words, be a true and impartial description of the measure's essential contents, clearly identify the proposition to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the measure.

(2) For an initiative to the people, or for an initiative to the legislature for which the legislature has not proposed an alternative, the ballot title must be displayed on the ballot substantially as follows:

"Initiative Measure No. . . . concerns (statement of subject). This measure would (concise description). Should this measure be enacted into law?"

Yes
No

(3) For an initiative to the legislature for which the legislature has proposed an alternative, the ballot title must be displayed on the ballot substantially as follows:

"Initiative Measure Nos. . . . and . . . B concern (statement of subject).

Initiative Measure No. . . . would (concise description).

As an alternative, the legislature has proposed Initiative Measure No. . . . B, which would (concise description).

1. Should either of these measures be enacted into law?

Yes
No

2. Regardless of whether you voted yes or no above, if one of these measures is enacted, which one should it be?

Measure No.
or
Measure No.

(4) For a referendum bill submitted to the people by the legislature, the ballot issue must be displayed on the ballot substantially as follows:

"The legislature has passed Bill No. . . . concerning (statement of subject). This bill would (concise description). Should this bill be:

Approved
Rejected

(5) For a referendum measure by state voters on a bill the legislature has passed, the ballot issue must be displayed on the ballot substantially as follows:

"The legislature passed . . . Bill No. . . . concerning (statement of subject) and voters have filed a sufficient referendum petition on this bill. This bill would (concise description). Should this bill be:

- Approved
Rejected

(6) The legislature may specify the statement of subject or concise description, or both, in a referendum bill that it refers to the people. The legislature may specify the concise description for an alternative it submits for an initiative to the legislature. If the legislature fails to specify these matters, the attorney general shall prepare the material that was not specified. The statement of subject and concise description as so provided must be included as part of the ballot title unless changed on appeal.

The attorney general shall specify the statement of subject and concise description for an initiative to the people, an initiative to the legislature, and a referendum measure. The statement of subject and concise description as so provided must be included as part of the ballot title unless changed on appeal. [2003 c 111 § 1806. Prior: 2000 c 197 § 1. Formerly RCW 29.79.035.]

Part headings not law—2000 c 197: "Part headings used in this act are not part of the law." [2000 c 197 § 17.]

29A.72.060 Ballot title and summary by attorney general. (Effective July 1, 2004.) Within five days after the receipt of an initiative or referendum the attorney general shall formulate the ballot title, or portion of the ballot title that the legislature has not provided, required by RCW 29A.72.050 and a summary of the measure, not to exceed seventy-five words, and transmit the serial number for the measure, complete ballot title, and summary to the secretary of state. Saturdays, Sundays, and legal holidays are not counted in calculating the time limits in this section. [2003 c 111 § 1807. Prior: 2000 c 197 § 2; 1993 c 256 § 9; 1982 c 116 § 4; 1973 1st ex.s. c 118 § 2; 1965 c 9 § 29.79.040; prior: 1953 c 242 § 2; 1913 c 138 § 2; RRS § 5398. Formerly RCW 29.79.040.]

Part headings not law—2000 c 197: See note following RCW 29A.72.050.

Severability—Effective date—1993 c 256: See notes following RCW 29A.84.280.

Ballot titles to other state and local measures: RCW 29A.36.020 through 29A.36.090.

29A.72.070 Ballot title and summary—Notice. (Effective July 1, 2004.) Upon the filing of the ballot title and summary for a state initiative or referendum measure in the office of secretary of state, the secretary of state shall notify by telephone and by mail, and, if requested, by other electronic means, the person proposing the measure, the prime sponsor of a referendum bill or alternative to an initiative to the legislature, the chief clerk of the house of representatives, the secretary of the senate, and any other individuals who have made written request for such notification of the exact language of the ballot title and summary. [2003 c 111

§ 1808. Prior: 2000 c 197 § 3; 1982 c 116 § 5; 1973 1st ex.s. c 118 § 3; 1965 c 9 § 29.79.050; prior: 1913 c 138 § 3, part; RRS § 5399, part. Formerly RCW 29.79.050.]

Part headings not law—2000 c 197: See note following RCW 29A.72.050.

29A.72.080 Ballot title and summary—Appeal to superior court. (Effective July 1, 2004.) Any persons, including the attorney general or either or both houses of the legislature, dissatisfied with the ballot title or summary for a state initiative or referendum may, within five days from the filing of the ballot title in the office of the secretary of state appeal to the superior court of Thurston county by petition setting forth the measure, the ballot title or summary, and their objections to the ballot title or summary and requesting amendment of the ballot title or summary by the court. Saturdays, Sundays, and legal holidays are not counted in calculating the time limits contained in this section.

A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the secretary of state, upon the attorney general, and upon the person proposing the measure if the appeal is initiated by someone other than that person. Upon the filing of the petition on appeal or at the time to which the hearing may be adjourned by consent of the appellant, the court shall accord first priority to examining the proposed measure, the ballot title or summary, and the objections to that ballot title or summary, may hear arguments, and shall, within five days, render its decision and file with the secretary of state a certified copy of such ballot title or summary as it determines will meet the requirements of RCW 29A.72.060. The decision of the superior court shall be final. Such appeal shall be heard without costs to either party. [2003 c 111 § 1809. Prior: 2000 c 197 § 4; 1982 c 116 § 6; 1965 c 9 § 29.79.060; prior: 1913 c 138 § 3, part; RRS § 5399, part. Formerly RCW 29.79.060.]

Part headings not law—2000 c 197: See note following RCW 29A.72.050.

29A.72.090 Ballot title and summary—Mailed to proponents and other persons—Appearance on petitions. (Effective July 1, 2004.) When the ballot title and summary are finally established, the secretary of state shall file the instrument establishing it with the proposed measure and transmit a copy thereof by mail to the person proposing the measure, the chief clerk of the house of representatives, the secretary of the senate, and to any other individuals who have made written request for such notification. Thereafter such ballot title shall be the title of the measure in all petitions, ballots, and other proceedings in relation thereto. The summary shall appear on all petitions directly following the ballot title. [2003 c 111 § 1810. Prior: 2000 c 197 § 5; 1982 c 116 § 7; 1965 c 9 § 29.79.070; prior: 1913 c 138 § 4, part; RRS § 5400, part. Formerly RCW 29.79.070.]

Part headings not law—2000 c 197: See note following RCW 29A.72.050.

29A.72.100 Petitions—Paper—Size—Contents. (Effective July 1, 2004.) The person proposing the measure shall print blank petitions upon single sheets of paper of good writing quality (including but not limited to newsprint) not less than eleven inches in width and not less than fourteen

inches in length. Each petition at the time of circulating, signing, and filing with the secretary of state must consist of not more than one sheet with numbered lines for not more than twenty signatures, with the prescribed warning and title, be in the form required by RCW 29A.72.110, 29A.72.120, or 29A.72.130, and have a readable, full, true, and correct copy of the proposed measure printed on the reverse side of the petition. [2003 c 111 § 1811; 1982 c 116 § 8; 1973 1st ex.s. c 118 § 4; 1965 c 9 § 29.79.080. Prior: (i) 1913 c 138 § 4, part; RRS § 5400, part. (ii) 1913 c 138 § 9; RRS § 5405. Formerly RCW 29.79.080.]

29A.72.110 Petitions to legislature—Form. (*Effective July 1, 2004.*) Petitions for proposing measures for submission to the legislature at its next regular session must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

INITIATIVE PETITION FOR SUBMISSION TO
THE LEGISLATURE

To the Honorable, Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that this petition and the proposed measure known as Initiative Measure No. . . . and entitled (here set forth the established ballot title of the measure), a full, true, and correct copy of which is printed on the reverse side of this petition, be transmitted to the legislature of the State of Washington at its next ensuing regular session, and we respectfully petition the legislature to enact said proposed measure into law; and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote. [2003 c 111 § 1812; 1982 c 116 § 9; 1965 c 9 § 29.79.090. Prior: 1913 c 138 § 5, part; RRS § 5401, part. Formerly RCW 29.79.090]

29A.72.120 Petitions to people—Form. (*Effective July 1, 2004.*) Petitions for proposing measures for submission to the people for their approval or rejection at the next ensuing general election must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

INITIATIVE PETITION FOR SUBMISSION TO
THE PEOPLE

To the Honorable, Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that the proposed measure known as Initiative Measure No. . . . , entitled (here insert the established ballot title of the measure), a full, true and correct copy of which is printed on the reverse side of this

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petition, be submitted to the legal voters of the State of Washington for their approval or rejection at the general election to be held on the day of November, (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote. [2003 c 111 § 1813; 1982 c 116 § 10; 1965 c 9 § 29.79.100. Prior: 1913 c 138 § 6, part; RRS § 5402, part. Formerly RCW 29.79.100.]

29A.72.130 Referendum petitions—Form. (*Effective July 1, 2004.*) Petitions ordering that acts or parts of acts passed by the legislature be referred to the people at the next ensuing general election, or special election ordered by the legislature, must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

PETITION FOR REFERENDUM

To the Honorable, Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully order and direct that Referendum Measure No., filed to revoke a (or part or parts of a) bill that (concise statement required by RCW 29A.36.070) and that was passed by the legislature of the State of Washington at the last regular (special) session of said legislature, shall be referred to the people of the state for their approval or rejection at the regular (special) election to be held on the . . . day of November, (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote. [2003 c 111 § 1814; 1993 c 256 § 10; 1982 c 116 § 11; 1965 c 9 § 29.79.110. Prior: 1913 c 138 § 7, part; RRS § 5403, part. Formerly RCW 29.79.110.]

Severability—Effective date—1993 c 256: See notes following RCW 29A.84.280.

29A.72.140 Warning statement—Further requirements. (*Effective July 1, 2004.*) The word "warning" and the following warning statement regarding signing petitions must appear on petitions as prescribed by this title and must be printed on each petition sheet such that they occupy not less than four square inches of the front of the petition sheet.

WARNING

Every person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter, or makes any false statement on this petition may be punished by fine or imprisonment or both. [2003 c 111 § 1815; 1993 c 256 § 5. Formerly RCW 29.79.115.]

Severability—Effective date—1993 c 256: See notes following RCW 29A.84.280.

29A.72.150 Petitions—Signatures—Number necessary. (*Effective July 1, 2004.*) When the person proposing any initiative measure has obtained signatures of legal voters equal to or exceeding eight percent of the votes cast for the office of governor at the last regular gubernatorial election prior to the submission of the signatures for verification, or when the person or organization demanding any referendum of an act or part of an act of the legislature has obtained a number of signatures of legal voters equal to or exceeding four percent of the votes cast for the office of governor at the last regular gubernatorial election prior to the submission of the signatures for verification, the petition containing the signatures may be submitted to the secretary of state for filing. [2003 c 111 § 1816; 1982 c 116 § 12; 1965 c 9 § 29.79.120. Prior: 1913 c 138 § 11, part; RRS § 5407, part. See also State Constitution Art. 2 § 1A (Amendment 30), (L. 1955, p. 1860, S.J.R. No. 4). Formerly RCW 29.79.120.]

29A.72.160 Petitions—Time for filing. (*Effective July 1, 2004.*) The time for submitting initiative or referendum petitions to the secretary of state for filing is as follows:

(1) A referendum petition ordering and directing that the whole or some part or parts of an act passed by the legislature be referred to the people for their approval or rejection at the next ensuing general election or a special election ordered by the legislature, must be submitted not more than ninety days after the final adjournment of the session of the legislature which passed the act;

(2) An initiative petition proposing a measure to be submitted to the people for their approval or rejection at the next ensuing general election, must be submitted not less than four months before the date of such election;

(3) An initiative petition proposing a measure to be submitted to the legislature at its next ensuing regular session must be submitted not less than ten days before the commencement of the session. [2003 c 111 § 1817. Prior: 1965 c 9 § 29.79.140; prior: 1913 c 138 § 12, part; RRS § 5408, part. Formerly RCW 29.79.140.]

Initiative, referendum, time for filing: State Constitution Art. 2 § 1 (a) and (d) (Amendment 7).

Measures, petitions, time for filing various types: RCW 29A.72.030.

29A.72.170 Petitions—Acceptance or rejection by secretary of state. (*Effective July 1, 2004.*) The secretary of state may refuse to file any initiative or referendum petition being submitted upon any of the following grounds:

(1) That the petition does not contain the information required by RCW 29A.72.110, 29A.72.120, or 29A.72.130.

(2) That the petition clearly bears insufficient signatures.

(3) That the time within which the petition may be filed has expired.

In case of such refusal, the secretary of state shall endorse on the petition the word "submitted" and the date, and retain the petition pending appeal.

If none of the grounds for refusal exists, the secretary of state must accept and file the petition. [2003 c 111 § 1818; 1982 c 116 § 13; 1965 c 9 § 29.79.150. Prior: (i) 1913 c 138 § 11, part; RRS § 5407, part. (ii) 1913 c 138 § 12, part; RRS § 5408, part. Formerly RCW 29.79.150.]

29A.72.180 Petitions—Review of refusal to file. (*Effective July 1, 2004.*) If the secretary of state refuses to file an initiative or referendum petition when submitted for filing, the persons submitting it for filing may, within ten days after the refusal, apply to the superior court of Thurston county for an order requiring the secretary of state to bring the petitions before the court, and for a writ of mandate to compel the secretary of state to file it. The application takes precedence over other cases and matters and must be speedily heard and determined.

If the court issues the citation, and determines that the petition is legal in form and apparently contains the requisite number of signatures and was submitted for filing within the time prescribed in the Constitution, it shall issue its mandate requiring the secretary of state to file it as of the date of submission for filing.

The decision of the superior court granting a writ of mandate is final. [2003 c 111 § 1819; 1965 c 9 § 29.79.160. Prior: 1913 c 138 § 13, part; RRS § 5409, part. Formerly RCW 29.79.160.]

Initiative, referendum, time for filing: State Constitution Art. 2 § 1 (a) and (d) (Amendment 7).

29A.72.190 Petitions—Appellate review. (*Effective July 1, 2004.*) The decision of the superior court refusing to grant a writ of mandate may be reviewed by the supreme court within five days after the decision of the superior court. The review must be considered an emergency matter of public concern, and be heard and determined with all convenient speed. If the supreme court decides that the petitions are legal in form and apparently contain the requisite number of signatures of legal voters, and were filed within the time prescribed in the Constitution, it shall issue its mandate directing the secretary of state to file the petition as of the date of submission. [2003 c 111 § 1820; 1988 c 202 § 28; 1965 c 9 § 29.79.170. Prior: 1913 c 138 § 13, part; RRS § 5409, part. Formerly RCW 29.79.170.]

Rules of court: *Writ procedure superseded by RAP 2.1(b), 2.2, 18.22.*

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

29A.72.200 Petitions—Destruction on final refusal. (*Effective July 1, 2004.*) If no appeal is taken from the refusal of the secretary of state to file a petition within the time prescribed, or if an appeal is taken and the secretary of state is not required to file the petition by the mandate of either the superior or the supreme court, the secretary of state shall destroy it. [2003 c 111 § 1821. Prior: 1965 c 9 § 29.79.180; prior: 1913 c 138 § 13, part; RRS § 5409, part. Formerly RCW 29.79.180.]

29A.72.210 Petitions—Consolidation into volumes. (*Effective July 1, 2004.*) If the secretary of state accepts and files an initiative or referendum petition upon its being submitted for filing or if he or she is required to file it by the court, he or she shall, in the presence of the person submitting such petition for filing if he or she desires to be present, arrange and assemble the sheets containing the signatures into such volumes as will be most convenient for verification and canvassing and shall consecutively number the volumes and stamp the date of filing on each volume. [2003 c 111 § 1822. Prior: 1982 c 116 § 14; 1965 c 9 § 29.79.190; prior: 1913 c 138 § 14; RRS § 5410. Formerly RCW 29.79.190.]

29A.72.220 Petitions—Signature checking—Registration information file. (*Effective July 1, 2004.*) The cards required by RCW 29A.08.240 must be kept on file in the office of the secretary of state in the manner that will be most convenient for, and for the sole purpose of, checking initiative and referendum petitions. The secretary may maintain an automated file of voter registration information for any county or counties in lieu of filing or maintaining these voter registration cards if the automated file includes all of the information from the cards including, but not limited to, a retrievable facsimile of the signature of each voter of that county or counties. The automated file may be used only for the purpose authorized for the use of the cards. [2003 c 111 § 1801.]

29A.72.230 Petitions—Verification and canvass of signatures, observers—Statistical sampling—Initiatives to legislature, certification of. (*Effective July 1, 2004.*) Upon the filing of an initiative or referendum petition, the secretary of state shall proceed to verify and canvass the names of the legal voters on the petition. The verification and canvass of signatures on the petition may be observed by persons representing the advocates and opponents of the proposed measure so long as they make no record of the names, addresses, or other information on the petitions or related records during the verification process except upon the order of the superior court of Thurston county. The secretary of state may limit the number of observers to not less than two on each side, if in his or her opinion, a greater number would cause undue delay or disruption of the verification process. Any such limitation shall apply equally to both sides. The secretary of state may use any statistical sampling techniques for this verification and canvass which have been adopted by rule as provided by chapter 34.05 RCW. No petition will be rejected on the basis of any statistical method employed, and no petition will be accepted on the basis of any statistical method employed if such method indicates that the petition contains fewer than the requisite number of signatures of legal voters. If the secretary of state finds the same name signed to more than one petition, he or she shall reject all but the first such valid signature. For an initiative to the legislature, the secretary of state shall transmit a certified copy of the proposed measure to the legislature at the opening of its session and, as soon as the signatures on the petition have been verified and canvassed, the secretary of state shall send to the legislature a certificate of the facts relating to the filing, verification, and canvass of the petition. [2003 c 111 § 1823. Prior: 1993 c 368 § 1; 1982 c 116 § 15; 1977 ex.s. c 361 §

105; 1969 ex.s. c 107 § 1; 1965 c 9 § 29.79.200; prior: 1933 c 144 § 1; 1913 c 138 § 15; RRS § 5411. Formerly RCW 29.79.200.]

Effective date—1993 c 368: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 368 § 2.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.72.240 Petitions to legislature—Count of signatures—Review. (*Effective July 1, 2004.*) Any citizen dissatisfied with the determination of the secretary of state that an initiative or referendum petition contains or does not contain the requisite number of signatures of legal voters may, within five days after such determination, apply to the superior court of Thurston county for a citation requiring the secretary of state to submit the petition to said court for examination, and for a writ of mandate compelling the certification of the measure and petition, or for an injunction to prevent the certification thereof to the legislature, as the case may be. Such application and all proceedings had thereunder shall take precedence over other cases and shall be speedily heard and determined.

The decision of the superior court granting or refusing to grant the writ of mandate or injunction may be reviewed by the supreme court within five days after the decision of the superior court, and if the supreme court decides that a writ of mandate or injunction, as the case may be, should issue, it shall issue the writ directed to the secretary of state; otherwise, it shall dismiss the proceedings. The clerk of the supreme court shall forthwith notify the secretary of state of the decision of the supreme court. [2003 c 111 § 1824. Prior: 1988 c 202 § 29; 1965 c 9 § 29.79.210; prior: 1913 c 138 § 17; RRS § 5413. Formerly RCW 29.79.210.]

Rules of court: *Writ procedure superseded by RAP 2.1(b), 2.2, 18.22.*

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

29A.72.250 Initiatives and referenda to voters—Certificates of sufficiency. (*Effective July 1, 2004.*) If a referendum or initiative petition for submission of a measure to the people is found sufficient, the secretary of state shall at the time and in the manner that he or she certifies to the county auditors of the various counties the names of candidates for state and district officers certify to each county auditor the serial numbers and ballot titles of the several initiative and referendum measures to be voted upon at the next ensuing general election or special election ordered by the legislature. [2003 c 111 § 1825; 1965 c 9 § 29.79.230. Prior: 1913 c 138 § 19; RRS § 5415. Formerly RCW 29.79.230.]

29A.72.260 Rejected initiative to legislature treated as referendum bill. (*Effective July 1, 2004.*) Whenever any measure proposed by initiative petition for submission to the legislature is rejected by the legislature or the legislature takes no action thereon before the end of the regular session at which it is submitted, the secretary of state shall certify the serial number and ballot title thereof to the county auditors for printing on the ballots at the next ensuing general election in like manner as initiative measures for submission to the people are certified. [2003 c 111 § 1826. Prior: 1965 c 9 §

29.79.270; prior: 1913 c 138 § 21; RRS § 5417. Formerly RCW 29.79.270.]

29A.72.270 Substitute for rejected initiative treated as referendum bill. (*Effective July 1, 2004.*) If the legislature, having rejected a measure submitted to it by initiative petition, proposes a different measure dealing with the same subject, the secretary of state shall give that measure the same number as that borne by the initiative measure followed by the letter "B." Such measure so designated as "Alternative Measure No. . . . B," together with the ballot title thereof, when ascertained, shall be certified by the secretary of state to the county auditors for printing on the ballots for submission to the voters for their approval or rejection in like manner as initiative measures for submission to the people are certified. [2003 c 111 § 1827. Prior: 1965 c 9 § 29.79.280; prior: 1913 c 138 § 22, part; RRS § 5418, part. Formerly RCW 29.79.280.]

29A.72.280 Substitute for rejected initiative—Concise description. (*Effective July 1, 2004.*) For a measure designated as "Alternative Measure No. . . . B," the secretary of state shall obtain from the measure adopting the alternative, or otherwise the attorney general, a concise description of the alternative measure that differs from the concise description of the original initiative and indicates as clearly as possible the essential differences between the two measures. [2003 c 111 § 1828. Prior: 2000 c 197 § 6; 1965 c 9 § 29.79.290; prior: 1913 c 138 § 22, part; RRS § 5418, part. Formerly RCW 29.79.290.]

Part headings not law—2000 c 197: See note following RCW 29A.72.050.

29A.72.290 Printing ballot titles on ballots—Order and form. (*Effective July 1, 2004.*) The county auditor of each county shall print on the official ballots for the election at which initiative and referendum measures are to be submitted to the people for their approval or rejection, the serial numbers and ballot titles certified by the secretary of state. They must appear under separate headings in the order of the serial numbers as follows:

(1) Measures proposed for submission to the people by initiative petition will be under the heading, "Proposed by Initiative Petition";

(2) Bills passed by the legislature and ordered referred to the people by referendum petition will be under the heading, "Passed by the Legislature and Ordered Referred by Petition";

(3) Bills passed and referred to the people by the legislature will be under the heading, "Proposed to the People by the Legislature";

(4) Measures proposed to the legislature and rejected or not acted upon will be under the heading, "Proposed to the Legislature and Referred to the People";

(5) Measures proposed to the legislature and alternative measures passed by the legislature in lieu thereof will be under the heading, "Initiated by Petition and Alternative by Legislature." [2003 c 111 § 1829; 1965 c 9 § 29.79.300. Prior: 1913 c 138 § 23; RRS § 5419. Formerly RCW 29.79.300.]

Chapter 29A.76 RCW REDISTRICTING

Sections

- 29A.76.010 Counties, municipal corporations, and special purpose districts. (*Effective July 1, 2004.*)
 29A.76.020 Boundary information. (*Effective July 1, 2004.*)
 29A.76.030 Precinct boundary change—Registration transfer. (*Effective July 1, 2004.*)
 29A.76.040 Maps and census correspondence lists—Apportionment—Duties of secretary of state. (*Effective July 1, 2004.*)

29A.76.010 Counties, municipal corporations, and special purpose districts. (*Effective July 1, 2004.*) (1) It is the responsibility of each county, municipal corporation, and special purpose district with a governing body comprised of internal director, council, or commissioner districts not based on statutorily required land ownership criteria to periodically redistrict its governmental unit, based on population information from the most recent federal decennial census.

(2) Within forty-five days after receipt of federal decennial census information applicable to a specific local area, the commission established in RCW 44.05.030 shall forward the census information to each municipal corporation, county, and district charged with redistricting under this section.

(3) No later than eight months after its receipt of federal decennial census data, the governing body of the municipal corporation, county, or district shall prepare a plan for redistricting its internal or director districts.

(4) The plan shall be consistent with the following criteria:

(a) Each internal director, council, or commissioner district shall be as nearly equal in population as possible to each and every other such district comprising the municipal corporation, county, or special purpose district.

(b) Each district shall be as compact as possible.

(c) Each district shall consist of geographically contiguous area.

(d) Population data may not be used for purposes of favoring or disfavoring any racial group or political party.

(e) To the extent feasible and if not inconsistent with the basic enabling legislation for the municipal corporation, county, or district, the district boundaries shall coincide with existing recognized natural boundaries and shall, to the extent possible, preserve existing communities of related and mutual interest.

(5) During the adoption of its plan, the municipal corporation, county, or district shall ensure that full and reasonable public notice of its actions is provided. The municipal corporation, county, or district shall hold at least one public hearing on the redistricting plan at least one week before adoption of the plan.

(6)(a) Any registered voter residing in an area affected by the redistricting plan may request review of the adopted local plan by the superior court of the county in which he or she resides, within forty-five days of the plan's adoption. Any request for review must specify the reason or reasons alleged why the local plan is not consistent with the applicable redistricting criteria. The municipal corporation, county, or district may be joined as respondent. The superior court shall thereupon review the challenged plan for compliance with the applicable redistricting criteria set out in subsection (4) of this section.

(b) If the superior court finds the plan to be consistent with the requirements of this section, the plan shall take effect immediately.

(c) If the superior court determines the plan does not meet the requirements of this section, in whole or in part, it shall remand the plan for further or corrective action within a specified and reasonable time period.

(d) If the superior court finds that any request for review is frivolous or has been filed solely for purposes of harassment or delay, it may impose appropriate sanctions on the party requesting review, including payment of attorneys' fees and costs to the respondent municipal corporation, county, or district. [2003 c 111 § 1901. Prior: 1984 c 13 § 4; 1983 c 16 § 15; 1982 c 2 § 27. Formerly RCW 29.70.100.]

Severability—1984 c 13: See RCW 44.05.902.

Contingent effective date—Severability—1983 c 16: See RCW 44.05.900 and 44.05.901.

29A.76.020 Boundary information. (Effective July 1, 2004.) (1) The legislative authority of each county and each city, town, and special purpose district which lies entirely within the county shall provide the county auditor accurate information describing its geographical boundaries and the boundaries of its director, council, or commissioner districts and shall ensure that the information provided to the auditor is kept current.

(2) A city, town, or special purpose district that lies in more than one county shall provide the secretary of state accurate information describing its geographical boundaries and the boundaries of its director, council, or commissioner districts and shall ensure that the information provided to the secretary is kept current. The secretary of state shall promptly transmit to each county in which a city, town, or special purpose district is located information regarding the boundaries of that jurisdiction which is provided to the secretary. [2003 c 111 § 1902. Prior: 1991 c 178 § 2. Formerly RCW 29.15.026, 29.04.220.]

29A.76.030 Precinct boundary change—Registration transfer. (Effective July 1, 2004.) If the boundaries of any city, township, or rural precinct are changed in the manner provided by law, the county auditor shall transfer the registration cards of every registered voter whose place of residence is affected thereby to the files of the proper precinct, noting thereon the name or number of the new precinct, or change the addresses, the precinct names or numbers, and the special district designations for those registered voters on the voter registration lists of the county. It shall not be necessary for any registered voter whose residence has been changed from one precinct to another, by a change of boundary, to apply to the registration officer for a transfer of registration. The county auditor shall mail to each registrant in the new precinct a notice that his or her precinct has been changed from to, and that thereafter the registrant will be entitled to vote in the new precinct, giving the name or number. [2003 c 111 § 1903; 1971 ex.s. c 202 § 27; 1965 c 9 § 29.10.060. Prior: 1933 c 1 § 17; RRS § 5114-17. Formerly RCW 29.10.060.]

[2003 RCW Supp—page 384]

29A.76.040 Maps and census correspondence lists—Apportionment—Duties of secretary of state. (Effective July 1, 2004.) (1) With regard to functions relating to census, apportionment, and the establishment of legislative and congressional districts, the secretary of state shall:

(a) Coordinate and monitor precinct mapping functions of the county auditors and county engineers;

(b) Maintain official state base maps and correspondence lists and maintain an index of all such maps and lists;

(c) Furnish to the United States bureau of the census as needed for the decennial census of population, current, accurate, and easily readable versions of maps of all counties, cities, towns, and other areas of this state, which indicate current precinct boundaries together with copies of the census correspondence lists.

(2) The secretary of state shall serve as the state liaison with the United States bureau of census on matters relating to the preparation of maps and the tabulation of population for apportionment purposes. [2003 c 111 § 1904; 1989 c 278 § 2; 1977 ex.s. c 128 § 4; 1975-'76 2nd ex.s. c 129 § 2. Formerly RCW 29.04.140.]

Severability—1977 ex.s. c 128: See note following RCW 29A.16.040.

Effective date—1975-'76 2nd ex.s. c 129: "This 1976 amendatory act shall take effect on February 1, 1977." [1975-'76 2nd ex.s. c 129 § 5.]

Severability—1975-'76 2nd ex.s. c 129: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 129 § 6.]

Chapter 29A.80 RCW POLITICAL PARTIES

Sections

- 29A.80.010 Authority—Generally. (*Effective July 1, 2004.*)
- 29A.80.020 State committee. (*Effective July 1, 2004.*)
- 29A.80.030 County central committee—Organization meetings. (*Effective July 1, 2004.*)
- 29A.80.040 Precinct committee officer, eligibility. (*Effective July 1, 2004.*)
- 29A.80.050 Precinct committee officer—Election—Declaration of candidacy, fee—Term. (*Effective July 1, 2004.*)
- 29A.80.060 Legislative district chair—Election—Term—Removal. (*Effective July 1, 2004.*)

29A.80.010 Authority—Generally. (Effective July 1, 2004.) (1) Each political party organization may:

- (a) Make its own rules and regulations; and
- (b) Perform all functions inherent in such an organization.

(2) Only major political parties may designate candidates to appear on the state primary ballot as provided in RCW 29A.28.010. [2003 c 111 § 2001; 1977 ex.s. c 329 § 16; 1965 c 9 § 29.42.010. Prior: 1961 c 130 § 2; prior: 1943 c 178 § 1, part; 1939 c 48 § 1, part; 1927 c 200 § 1, part; 1925 ex.s. c 158 § 1, part; 1909 c 82 § 6, part; 1907 c 209 § 22, part; Rem. Supp. 1943 § 5198, part. Formerly RCW 29.42.010.]

Vacancies on ticket—How filled: RCW 29A.28.010, 29A.28.020.

29A.80.020 State committee. (Effective July 1, 2004.) The state committee of each major political party consists of one committeeman and one committeewoman from each county elected by the county central committee at its organization meeting. It must have a chair and vice-chair of opposite sexes. This committee shall meet during January of each

odd-numbered year for the purpose of organization at a time and place designated by a notice mailed at least one week before the date of the meeting to all the newly elected state committeemen and committeewomen by the authorized officers of the retiring committee. At its organizational meeting it shall elect its chair and vice-chair, and such officers as its bylaws may provide, and adopt bylaws, rules, and regulations. It may:

(1) Call conventions at such time and place and under such circumstances and for such purposes as the call to convention designates. The manner, number, and procedure for selection of state convention delegates is subject to the committee's rules and regulations duly adopted;

(2) Provide for the election of delegates to national conventions;

(3) Fill vacancies on the ticket for any federal or state office to be voted on by the electors of more than one county;

(4) Provide for the nomination of presidential electors; and

(5) Perform all functions inherent in such an organization.

Notwithstanding any provision of this chapter, the committee may not adopt rules governing the conduct of the actual proceedings at a party state convention. [2003 c 111 § 2002; 1987 c 295 § 11; 1972 ex.s. c 45 § 1; 1965 c 9 § 29.42.020. Prior: 1961 c 130 § 3; prior: 1943 c 178 § 1, part; 1939 c 48 § 1, part; 1927 c 200 § 1, part; 1925 ex.s. c 158 § 1, part; 1909 c 82 § 6, part; 1907 c 209 § 22, part; Rem. Supp. 1943 § 5198, part. Formerly RCW 29.42.020.]

29A.80.030 County central committee—Organization meetings. (*Effective July 1, 2004.*) The county central committee of each major political party consists of the precinct committee officers of the party from the several voting precincts of the county. Following each state general election held in even-numbered years, this committee shall meet for the purpose of organization at an easily accessible location within the county, subsequent to the certification of precinct committee officers by the county auditor and no later than the second Saturday of the following January. The authorized officers of the retiring committee shall cause notice of the time and place of the meeting to be mailed to each precinct committee officer at least seventy-two hours before the date of the meeting.

At its organization meeting, the county central committee shall elect a chair and vice-chair of opposite sexes. [2003 c 111 § 2003; 1987 c 295 § 12; 1973 c 85 § 1; 1973 c 4 § 5; 1965 c 9 § 29.42.030. Prior: 1961 c 130 § 4; prior: 1943 c 178 § 1, part; 1939 c 48 § 1, part; 1927 c 200 § 1, part; 1925 ex.s. c 158 § 1, part; 1909 c 82 § 6, part; 1907 c 209 § 22, part; Rem. Supp. 1943 § 5198, part. Formerly RCW 29.42.030.]

Precinct election officers, appointment: RCW 29A.44.410 and 29A.44.430.

29A.80.040 Precinct committee officer, eligibility. (*Effective July 1, 2004.*) Any member of a major political party who is a registered voter in the precinct may upon payment of a fee of one dollar file his or her declaration of candidacy as prescribed under RCW 29A.24.030 with the county auditor for the office of precinct committee officer of his or her party in that precinct. When elected the precinct commit-

tee officer shall serve so long as the committee officer remains an eligible voter in that precinct and until a successor has been elected at the next ensuing state general election in the even-numbered year. [2003 c 111 § 2004. Prior: 1990 c 59 § 104; prior: 1987 c 295 § 13; 1987 c 133 § 3; 1973 c 4 § 6; 1965 c 9 § 29.42.040; prior: 1961 c 130 § 5; prior: 1943 c 178 § 1, part; 1939 c 48 § 1, part; 1927 c 200 § 1, part; 1925 ex.s. c 158 § 1, part; 1909 c 82 § 6, part; 1907 c 209 § 22, part; Rem. Supp. 1943 § 5198, part. Formerly RCW 29.42.040.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Precinct election officers, list of qualified persons: RCW 29A.44.430.

29A.80.050 Precinct committee officer—Election—Declaration of candidacy, fee—Term. (*Effective July 1, 2004.*) The statutory requirements for filing as a candidate at the primaries apply to candidates for precinct committee officer, except that the filing period for this office alone is extended to and includes the Friday immediately following the last day for political parties to fill vacancies in the ticket as provided by RCW 29A.28.010. The office shall not be voted upon at the primaries, but the names of all candidates must appear under the proper party and office designations on the ballot for the general election for each even-numbered year, and the one receiving the highest number of votes will be declared elected. However, to be declared elected, a candidate must receive at least ten percent of the number of votes cast for the candidate of the candidate's party receiving the greatest number of votes in the precinct. The term of office of precinct committee officer is two years, commencing upon completion of the official canvass of votes by the county canvassing board of election returns. [2003 c 111 § 2005; 1991 c 363 § 34; 1987 c 295 § 14; 1973 c 4 § 7; 1967 ex.s. c 32 § 2; 1965 ex.s. c 103 § 3; 1965 c 9 § 29.42.050. Prior: 1961 c 130 § 6; prior: 1953 c 196 § 1; 1943 c 178 § 1, part; 1939 c 48 § 1, part; 1927 c 200 § 1, part; 1925 ex.s. c 158 § 1, part; 1909 c 82 § 6, part; 1907 c 209 § 22, part; Rem. Supp. 1943 § 5198, part. Formerly RCW 29.42.050.]

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

Severability—1967 ex.s. c 32: See note following RCW 29A.80.060.

Notice of general election, office to be indicated: RCW 29A.04.215.

29A.80.060 Legislative district chair—Election—Term—Removal. (*Effective July 1, 2004.*) Within forty-five days after the statewide general election in even-numbered years, the county chair of each major political party shall call separate meetings of all elected precinct committee officers in each legislative district, a majority of the precincts of which are within a county with a population of one million or more for the purpose of electing a legislative district chair in such district. The district chair shall hold office until the next legislative district reorganizational meeting two years later, or until a successor is elected.

The legislative district chair may be removed only by the majority vote of the elected precinct committee officers in the chair's district. [2003 c 111 § 2006; 1991 c 363 § 35; 1987 c 295 § 15; 1967 ex.s. c 32 § 1. Formerly RCW 29.42.070.]

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

Severability—1967 ex.s. c 32: "If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the 1967 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1967 ex.s. c 32 § 3.]

Precinct committee officer, filling vacancy: RCW 29A.80.050.

Chapter 29A.84 RCW

CRIMES AND PENALTIES

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- 29A.84.010 Voting, registration irregularities. (*Effective July 1, 2004.*)
- 29A.84.020 Violations by officers. (*Effective July 1, 2004.*)
- 29A.84.030 Penalty. (*Effective July 1, 2004.*)
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- 29A.84.210 Violations by officers. (*Effective July 1, 2004.*)
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- 29A.84.240 Violations by signers, officers—Penalty (*as amended by 2003 c 53*). (*Effective July 1, 2004.*)
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- 29A.84.710 Documents regarding nomination, election, candidacy—Frauds and falsehoods. (*Effective July 1, 2004.*)
- 29A.84.720 Officers—Violations generally. (*Effective July 1, 2004.*)
- 29A.84.730 Divulging ballot count. (*Effective July 1, 2004.*)
- 29A.84.740 Returns and posted copy of results—Tampering with. (*Effective July 1, 2004.*)

GENERAL PROVISIONS

29A.84.010 Voting, registration irregularities. (*Effective July 1, 2004.*) (1) A county auditor who suspects a person of fraudulent voter registration, vote tampering, or irregularities in voting shall transmit his or her suspicions and observations without delay to the canvassing board.

(2) The county auditor shall make a good faith effort to contact the person in question without delay. If the county auditor is unable to contact the person, or if, after contacting the person, the auditor still suspects fraudulent voter registration, vote tampering, or irregularities in voting, the auditor shall refer the issue to the county prosecuting attorney to determine if further action is warranted.

(3) When a complaint providing information concerning fraudulent voter registration, vote tampering, or irregularities in voting is presented to the office of the prosecuting attorney, that office shall file charges in all cases where warranted. [2003 c 111 § 2101; 2001 c 41 § 12. Formerly RCW 29.85.245.]

29A.84.020 Violations by officers. (*Effective July 1, 2004.*) Every officer who willfully violates RCW 29A.56.110 through 29A.56.270, for the violation of which no penalty is prescribed in this title or who willfully fails to comply with the provisions of this chapter is guilty of a gross misdemeanor. [2003 c 111 § 2102; 1965 c 9 § 29.82.210. Prior: 1953 c 113 § 1; prior: 1913 c 146 § 16, part; RRS § 5365, part. Formerly RCW 29.82.210.]

29A.84.030 Penalty. (*Effective July 1, 2004.*) A person who willfully violates any provision of this title regarding the conduct of mail ballot primaries or elections is guilty of a class C felony punishable under RCW 9A.20.021. [2003 c 111 § 2103; 2001 c 241 § 21. Formerly RCW 29.38.070.]

29A.84.040 Political advertising, removing or defacing. (*Effective July 1, 2004.*) A person who removes or defaces lawfully placed political advertising including yard signs or billboards without authorization is guilty of a misdemeanor punishable to the same extent as a misdemeanor that is punishable under RCW 9A.20.021. The defacement or removal of each item constitutes a separate violation. [2003 c 111 § 2104. Prior: 1991 c 81 § 19; 1984 c 216 § 5. Formerly RCW 29.85.275.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

Political advertising generally: RCW 42.17.510 through 42.17.540.
rates for candidates: RCW 65.16.095.

REGISTRATION

29A.84.110 Officials' violations. (*Effective July 1, 2004.*) If any county auditor or registration assistant:

(1) Willfully neglects or refuses to perform any duty required by law in connection with the registration of voters; or

(2) Willfully neglects or refuses to perform such duty in the manner required by voter registration law; or

(3) Enters or causes or permits to be entered on the voter registration records the name of any person in any other manner or at any other time than as prescribed by voter registration law or enters or causes or permits to be entered on such records the name of any person not entitled to be thereon; or

(4) Destroys, mutilates, conceals, changes, or alters any registration record in connection therewith except as authorized by voter registration law,

he or she is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2105. Prior: 1994 c 57 § 24; 1991 c 81 § 11; 1965 c 9 § 29.85.190; prior: 1933 c 1 § 26; RRS § 5114-26; prior: 1889 p 418 § 15; RRS § 5133. Formerly RCW 29.07.400, 29.85.190.]

Severability—1994 c 57: See note following RCW 10.64.021.

Effective date—1991 c 81: See note following RCW 29A.84.540.

29A.84.120 Disenfranchisement or discrimination. (*Effective July 1, 2004.*) An election officer or a person who intentionally disenfranchises an eligible citizen or discriminates against a person eligible to vote by denying voter registration is guilty of a misdemeanor punishable under RCW 9A.20.021. [2003 c 111 § 2106. Prior: 2001 c 41 § 2. Formerly RCW 29.07.405.]

29A.84.130 Voter violations. (*Effective July 1, 2004.*) Any person who:

(1) Knowingly provides false information on an application for voter registration under any provision of this title;

(2) Knowingly makes or attests to a false declaration as to his or her qualifications as a voter;

(3) Knowingly causes or permits himself or herself to be registered using the name of another person;

(4) Knowingly causes himself or herself to be registered under two or more different names;

(5) Knowingly causes himself or herself to be registered in two or more counties;

(6) Offers to pay another person to assist in registering voters, where payment is based on a fixed amount of money per voter registration;

(7) Accepts payment for assisting in registering voters, where payment is based on a fixed amount of money per voter registration; or

(8) Knowingly causes any person to be registered or causes any registration to be transferred or canceled except as authorized under this title,

is guilty of a class C felony punishable under RCW 9A.20.021. [2003 c 111 § 2107. Prior: 1994 c 57 § 25; 1991 c 81 § 12; 1990 c 143 § 12; 1977 ex.s. c 361 § 110; 1965 c 9 § 29.85.200; prior: 1933 c 1 § 27; RRS § 5114-27; prior: 1893 c 45 § 5; 1889 p 418 § 16; RRS § 5136. Formerly RCW 29.07.410, 29.85.200.]

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

Effective date—1991 c 81: See note following RCW 29A.84.540.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

29A.84.140 Unqualified registration. (*Effective July 1, 2004.*) A person who knows that he or she does not possess the legal qualifications of a voter and who registers to vote is guilty of a misdemeanor punishable under RCW 9A.20.021. [2003 c 111 § 2108. Prior: 2001 c 41 § 13. Formerly RCW 29.85.249.]

PETITIONS AND SIGNATURES

29A.84.210 Violations by officers. (*Effective July 1, 2004.*) Every officer who willfully violates any of the provisions of chapter 29A.72 RCW or RCW 29A.32.010 through 29A.32.120, for the violation of which no penalty is herein prescribed, or who willfully fails to comply with the provisions of chapter 29A.72 RCW or RCW 29A.32.010 through 29A.32.120, is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2109; 1993 c 256 § 3; 1965 c 9 § 29.79.480. Prior: 1913 c 138 § 32, part; RRS § 5428, part. Formerly RCW 29.79.480.]

Severability—Effective date—1993 c 256: See notes following RCW 29A.84.280.

29A.84.220 Violations—Corrupt practices. (*Effective July 1, 2004.*) Every person is guilty of a gross misdemeanor, who:

(1) For any consideration, compensation, gratuity, reward, or thing of value or promise thereof, signs or declines to sign any recall petition; or

(2) Advertises in any newspaper, magazine or other periodical publication, or in any book, pamphlet, circular, or letter, or by means of any sign, signboard, bill, poster, handbill, or card, or in any manner whatsoever, that he or she will either for or without compensation or consideration circulate, solicit, procure, or obtain signatures upon, or influence or induce or attempt to influence or induce persons to sign or not to sign any recall petition or vote for or against any recall; or

(3) For pay or any consideration, compensation, gratuity, reward, or thing of value or promise thereof, circulates, or solicits, procures, or obtains or attempts to procure or obtain signatures upon any recall petition; or

(4) Pays or offers or promises to pay, or gives or offers or promises to give any consideration, compensation, gratuity, reward, or thing of value to any person to induce him or her to sign or not to sign, or to circulate or solicit, procure, or attempt to procure or obtain signatures upon any recall petition, or to vote for or against any recall; or

(5) By any other corrupt means or practice or by threats or intimidation interferes with or attempts to interfere with the right of any legal voter to sign or not to sign any recall petition or to vote for or against any recall; or

(6) Receives, accepts, handles, distributes, pays out, or gives away, directly or indirectly, any money, consideration, compensation, gratuity, reward, or thing of value contributed by or received from any person, firm, association, or corporation whose residence or principal office is, or the majority of whose stockholders are nonresidents of the state of Washington, for any service, work, or assistance of any kind done or

rendered for the purpose of aiding in procuring signatures upon any recall petition or the adoption or rejection of any recall. [2003 c 111 § 2110; 1984 c 170 § 12; 1965 c 9 § 29.82.220. Prior: 1953 c 113 § 2; prior: 1913 c 146 § 16, part; RRS § 5365, part. Formerly RCW 29.82.220.]

Misconduct in signing a petition: RCW 9.44.080.

29A.84.230 Violations by signers. (Effective July 1, 2004.) (1) Every person who signs an initiative or referendum petition with any other than his or her true name is guilty of a class C felony punishable under RCW 9A.20.021.

(2) Every person who knowingly signs more than one petition for the same initiative or referendum measure or who signs an initiative or referendum petition knowing that he or she is not a legal voter or who makes a false statement as to his or her residence on any initiative or referendum petition, is guilty of a gross misdemeanor. [2003 c 111 § 2111; 2003 c 53 § 182; 1993 c 256 § 2; 1965 c 9 § 29.79.440. Prior: 1913 c 138 § 31; RRS § 5427. Formerly RCW 29.79.440, 29.79.450, 29.79.460, 29.79.470.]

Reviser's note: This section was amended by 2003 c 53 § 182 and by 2003 c 111 § 2111, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—Effective date—1993 c 256: See notes following RCW 29A.84.280.

Misconduct in signing a petition: RCW 9.44.080.

Only registered voters may vote—Exception: RCW 29A.04.210.

Registration, information from voter as to qualifications: RCW 29A.08.210.

Residence

*contingencies affecting: State Constitution Art. 6 § 4.
defined: RCW 29A.04.151.*

29A.84.240 Violations by signers, officers—Penalty (as amended by 2003 c 53). (Effective July 1, 2004.) (1) Every person who signs a recall petition with any other than his or her true name is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Every person who knowingly ((+)) (a) signs more than one petition for the same recall, ((+)) (b) signs a recall petition when he or she is not a legal voter, or ((+)) (c) makes a false statement as to his or her residence on any recall petition is guilty of a gross misdemeanor.

(3) Every registration officer who makes any false report or certificate on any recall petition is guilty of a gross misdemeanor. [2003 c 53 § 183; 1984 c 170 § 11; 1965 c 9 § 29.82.170. Prior: 1913 c 146 § 15; RRS § 5364. Formerly RCW 29.82.170, 29.82.180, 29.82.190, 29.82.200.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

29A.84.240 Violations by signers—Officers (as amended by 2003 c 111). (Effective July 1, 2004.) Every person who signs a recall petition with any other than his or her true name is guilty of a felony. Every person who knowingly (1) signs more than one petition for the same recall, (2) signs a recall petition when he or she is not a legal voter, or (3) makes a false statement as to (his) residence on any recall petition is guilty of a gross misdemeanor. Every registration officer who makes any false report or certificate on any recall petition is guilty of a gross misdemeanor. [2003 c 111 § 2112; 1984 c 170 § 11; 1965 c 9 § 29.82.170. Prior: 1913 c 146 § 15; RRS § 5364. Formerly RCW 29.82.170, 29.82.180, 29.82.190, 29.82.200.]

Reviser's note: RCW 29.82.170 (recodified as RCW 29A.84.240) was amended twice during the 2003 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Misconduct in signing a petition: RCW 9.44.080.

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29A.84.250 Violations—Corrupt practices. (Effective July 1, 2004.) Every person is guilty of a gross misdemeanor who:

(1) For any consideration or gratuity or promise thereof, signs or declines to sign any initiative or referendum petition; or

(2) Provides or receives consideration for soliciting or procuring signatures on an initiative or referendum petition if any part of the consideration is based upon the number of signatures solicited or procured, or offers to provide or agrees to receive such consideration any of which is based on the number of signatures solicited or procured; or

(3) Gives or offers any consideration or gratuity to any person to induce him or her to sign or not to sign or to vote for or against any initiative or referendum measure; or

(4) Interferes with or attempts to interfere with the right of any voter to sign or not to sign an initiative or referendum petition or with the right to vote for or against an initiative or referendum measure by threats, intimidation, or any other corrupt means or practice; or

(5) Receives, handles, distributes, pays out, or gives away, directly or indirectly, money or any other thing of value contributed by or received from any person, firm, association, or corporation whose residence or principal office is, or the majority of whose members or stockholders have their residence outside, the state of Washington, for any service rendered for the purpose of aiding in procuring signatures upon any initiative or referendum petition or for the purpose of aiding in the adoption or rejection of any initiative or referendum measure. This subsection does not apply to or prohibit any activity that is properly reported in accordance with the applicable provisions of chapter 42.17 RCW.

A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2113; 1993 c 256 § 4; 1975-'76 2nd ex.s. c 112 § 2; 1965 c 9 § 29.79.490. Prior: 1913 c 138 § 32, part; RRS § 5428, part. Formerly RCW 29.79.490]

Severability—Effective date—1993 c 256: See notes following RCW 29A.84.280.

Construction—Severability—1975-'76 2nd ex.s. c 112: See RCW 42.17.945 and 42.17.912.

Misconduct in signing a petition: RCW 9.44.080.

29A.84.260 Petitions—Improperly signing. (Effective July 1, 2004.) The following apply to persons signing nominating petitions prescribed by RCW 29A.24.100:

(1) A person who signs a petition with any other than his or her name shall be guilty of a misdemeanor.

(2) A person shall be guilty of a misdemeanor if the person knowingly: Signs more than one petition for any single candidacy of any single candidate; signs the petition when he or she is not a legal voter; or makes a false statement as to his or her residence. [2003 c 111 § 2114. Prior: 1984 c 142 § 8. Formerly RCW 29.15.080, 29.18.057.]

Intent—1984 c 142: See note following RCW 29A.24.050.

29A.84.270 Duplication of names—Conspiracy—Criminal and civil liability. (Effective July 1, 2004.) Any person who with intent to mislead or confuse the electors conspires with another person who has a surname similar to

an incumbent seeking reelection to the same office, or to an opponent for the same office whose political reputation has been well established, by persuading such other person to file for such office with no intention of being elected, but to defeat the incumbent or the well known opponent, is guilty of a class B felony punishable according to chapter 9A.20 RCW. In addition, all conspirators are subject to a suit for civil damages, the amount of which may not exceed the salary that the injured person would have received had he or she been elected or reelected. [2003 c 111 § 2115; 2003 c 53 § 178; 1965 c 9 § 29.18.080. Prior: 1943 c 198 § 6; Rem. Supp. 1943 § 5213-15. Formerly RCW 29.15.110, 29.18.080.]

Reviser's note: This section was amended by 2003 c 53 § 178 and by 2003 c 111 § 2115, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

29A.84.280 Paid petition solicitors—Finding. (Effective July 1, 2004.) The legislature finds that paying a worker, whose task it is to secure the signatures of voters on initiative or referendum petitions, on the basis of the number of signatures the worker secures on the petitions encourages the introduction of fraud in the signature gathering process. Such a form of payment may act as an incentive for the worker to encourage a person to sign a petition which the person is not qualified to sign or to sign a petition for a ballot measure even if the person has already signed a petition for the measure. Such payments also threaten the integrity of the initiative and referendum process by providing an incentive for misrepresenting the nature or effect of a ballot measure in securing petition signatures for the measure. [2003 c 111 § 2116. Prior: 1993 c 256 § 1. Formerly RCW 29.79.500.]

Severability—1993 c 256: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 256 § 15.]

Effective date—1993 c 256: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 256 § 16.]

FILING FOR OFFICE, DECLARATIONS, AND NOMINATIONS

29A.84.310 Candidacy declarations, nominating petitions. (Effective July 1, 2004.) Every person who:

(1) Knowingly provides false information on his or her declaration of candidacy or petition of nomination; or

(2) Conceals or fraudulently defaces or destroys a certificate that has been filed with an elections officer under RCW 29A.20.110 through 29A.20.200 or a declaration of candidacy or petition of nomination that has been filed with an elections officer, or any part of such a certificate, declaration, or petition, is guilty of a class C felony punishable under RCW 9A.20.021. [2003 c 111 § 2117.]

29A.84.320 Duplicate, nonexistent, untrue names—Penalty. (Effective July 1, 2004.) A person is guilty of a

class B felony punishable according to chapter 9A.20 RCW who files a declaration of candidacy for any public office of:

(1) A nonexistent or fictitious person; or

(2) The name of any person not his or her true name; or

(3) A name similar to that of an incumbent seeking reelection to the same office with intent to confuse and mislead the electors by taking advantage of the public reputation of the incumbent; or

(4) A surname similar to one who has already filed for the same office, and whose political reputation is widely known, with intent to confuse and mislead the electors by capitalizing on the public reputation of the candidate who had previously filed. [2003 c 111 § 2118; 2003 c 53 § 177; 1965 c 9 § 29.18.070. Prior: (i) 1943 c 198 § 2; Rem. Supp. 1943 § 5213-11. (ii) 1943 c 198 § 3; Rem. Supp. 1943 § 5213-12. Formerly RCW 29.15.100, 29.18.070.]

Reviser's note: This section was amended by 2003 c 53 § 177 and by 2003 c 111 § 2118, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

BALLOTS

29A.84.410 Unlawful appropriation, printing, or distribution. (Effective July 1, 2004.) Any person who is retained or employed by any officer authorized by the laws of this state to procure the printing of any official ballot or who is engaged in printing official ballots is guilty of a gross misdemeanor if the person knowingly:

(1) Appropriates any official ballot to himself or herself;

or

(2) Gives or delivers any official ballot to or permits any official ballot to be taken by any person other than the officer authorized by law to receive it; or

(3) Prints or causes to be printed any official ballot: (a) In any other form than that prescribed by law or as directed by the officer authorized to procure the printing thereof; or (b) with any other names thereon or with the names spelled otherwise than as directed by such officer, or the names or printing thereon arranged in any other way than that authorized and directed by law.

A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2119. Prior: 1991 c 81 § 3; 1965 c 9 § 29.85.040; prior: 1893 c 115 § 1; RRS § 5395. Formerly RCW 29.85.040.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

29A.84.420 Unauthorized examination of ballots, election materials—Revealing information. (Effective July 1, 2004.) (1) It is a gross misdemeanor for a person to examine, or assist another to examine, any voter record, ballot, or any other state or local government official election material if the person, without lawful authority, conducts the examination:

(a) For the purpose of identifying the name of a voter and how the voter voted; or

(b) For the purpose of determining how a voter, whose name is known to the person, voted; or

(c) For the purpose of identifying the name of the voter who voted in a manner known to the person.

(2) Any person who reveals to another information which the person ascertained in violation of subsection (1) of this section is guilty of a gross misdemeanor.

(3) A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2120. Prior: 1991 c 81 § 2; 1965 c 9 § 29.85.020; prior: 1911 c 89 § 1, part; Code 1881 § 906; 1873 p 205 § 105; 1854 p 93 § 96; RRS § 5387. Formerly RCW 29.85.020.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

POLLING PLACE

29A.84.510 Acts prohibited in vicinity of polling place—Prohibited practices as to ballots. (*Effective July 1, 2004.*) (1) On the day of any primary or general or special election, no person may, within a polling place, or in any public area within three hundred feet of any entrance to such polling place:

(a) Suggest or persuade or attempt to suggest or persuade any voter to vote for or against any candidate or ballot measure;

(b) Circulate cards or handbills of any kind;

(c) Solicit signatures to any kind of petition; or

(d) Engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the polling place.

(2) No person may obstruct the doors or entries to a building in which a polling place is located or prevent free access to and from any polling place. Any sheriff, deputy sheriff, or municipal law enforcement officer shall prevent such obstruction, and may arrest any person creating such obstruction.

(3) No person may:

(a) Except as provided in RCW 29A.44.050, remove any ballot from the polling place before the closing of the polls; or

(b) Solicit any voter to show his or her ballot.

(4) No person other than an inspector or judge of election may receive from any voter a voted ballot or deliver a blank ballot to such elector.

(5) Any violation of this section is a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021, and the person convicted may be ordered to pay the costs of prosecution. [2003 c 111 § 2121. Prior: 1991 c 81 § 20; 1990 c 59 § 75; 1984 c 35 § 1; 1983 1st ex.s. c 33 § 1; 1965 c 9 § 29.51.020; prior: (i) 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. (ii) 1895 c 156 § 7, part; 1889 p 409 § 22, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5279, part. Formerly RCW 29.51.020]

Effective date—1991 c 81: See note following RCW 29A.84.540.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.84.520 Electioneering by election officers forbidden. (*Effective July 1, 2004.*) Any election officer who does any electioneering on primary or election day, is guilty of a misdemeanor, and upon conviction must be fined in any

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sum not exceeding one hundred dollars and pay the costs of prosecution. [2003 c 111 § 2122; 1965 c 9 § 29.51.030. Prior: 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. Formerly RCW 29.51.030.]

29A.84.530 Refusing to leave voting booth. (*Effective July 1, 2004.*) Deliberately impeding other voters from casting their votes by refusing to leave a voting booth or voting device is a misdemeanor and is subject to the penalties provided in chapter 9A.20 RCW. The precinct election officers may provide assistance in the manner provided by RCW 29A.44.240 to any voter who requests it. [2003 c 111 § 2123. Prior: 1990 c 59 § 49. Formerly RCW 29.51.221.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

29A.84.540 Ballots—Removing from polling place. (*Effective July 1, 2004.*) Any person who, without lawful authority, removes a ballot from a polling place is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2124. Prior: 1991 c 81 § 1; 1965 c 9 § 29.85.010; prior: 1893 c 115 § 2; RRS § 5396. Formerly RCW 29.85.010.]

Effective date—1991 c 81: "This act shall take effect July 1, 1992." [1991 c 81 § 42.]

29A.84.550 Tampering with materials. (*Effective July 1, 2004.*) Any person who willfully defaces, removes, or destroys any of the supplies or materials that the person knows are intended both for use in a polling place and for enabling a voter to prepare his or her ballot is guilty of a class C felony punishable under RCW 9A.20.021. [2003 c 111 § 2125; 1991 c 81 § 9; 1965 c 9 § 29.85.110. Prior: 1889 p 412 § 31; RRS § 5296. FORMER PART OF SECTION: 1935 c 108 § 3, part; RRS § 5339-3, part, now codified, as reenacted, in RCW 29.85.230. Formerly RCW 29.85.110.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

29A.84.560 Voting machines, devices—Tampering with—Extra keys. (*Effective July 1, 2004.*) Any person who tampers with or damages or attempts to damage any voting machine or device to be used or being used in a primary or special or general election, or who prevents or attempts to prevent the correct operation of such machine or device, or any unauthorized person who makes or has in his or her possession a key to a voting machine or device to be used or being used in a primary or special or general election, is guilty of a class C felony punishable under RCW 9A.20.021. [2003 c 111 § 2126; 1991 c 81 § 18; 1965 c 9 § 29.85.260. Prior: 1913 c 58 § 16; RRS § 5316. Formerly RCW 29.85.260.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

VOTING

29A.84.610 Deceptive, incorrect vote recording. (*Effective July 1, 2004.*) A person is guilty of a gross misdemeanor who knowingly:

(1) Deceives any voter in recording his or her vote by providing incorrect or misleading recording information or by providing faulty election equipment or records; or

(2) Records the vote of any voter in a manner other than as designated by the voter.

Such a gross misdemeanor is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2127. Prior: 1991 c 81 § 4. Formerly RCW 29.85.051.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

29A.84.620 Hindering or bribing voter. (*Effective July 1, 2004.*) Any person who uses menace, force, threat, or any unlawful means towards any voter to hinder or deter such a voter from voting, or directly or indirectly offers any bribe, reward, or any thing of value to a voter in exchange for the voter's vote for or against any person or ballot measure, or authorizes any person to do so, is guilty of a class C felony punishable under RCW 9A.20.021. [2003 c 111 § 2128. Prior: 1991 c 81 § 5; 1965 c 9 § 29.85.060; prior: (i) 1911 c 89 § 1, part; Code 1881 § 904; 1873 p 204 § 103; 1854 p 93 § 94; RRS § 5386. (ii) 1911 c 89 § 1, part; 1901 c 142 § 1; Code 1881 § 909; 1873 p 205 § 106; 1865 p 50 § 1; 1854 p 93 § 97; RRS § 5388. Formerly RCW 29.85.060.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

Employer's duty to provide time to vote: RCW 49.28.120.

29A.84.630 Influencing voter to withhold vote. (*Effective July 1, 2004.*) Any person who in any way, directly or indirectly, by menace or unlawful means, attempts to influence any person in refusing to give his or her vote in any primary or special or general election is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2129. Prior: 1991 c 81 § 6; 1965 c 9 § 29.85.070; prior: Code 1881 § 3140; RRS § 5389. Formerly RCW 29.85.070.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

Employer's duty to provide time to vote: RCW 49.28.120.

29A.84.640 Solicitation of bribe by voter. (*Effective July 1, 2004.*) Any person who solicits, requests, or demands, directly or indirectly, any reward or thing of value or the promise thereof in exchange for his or her vote or in exchange for the vote of any other person for or against any candidate or for or against any ballot measure to be voted upon at a primary or special or general election is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2130. Prior: 1991 c 81 § 7; 1965 c 9 § 29.85.090; prior: 1907 c 209 § 32; RRS § 5207. Formerly RCW 29.85.090.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

29A.84.650 Repeaters. (*Effective July 1, 2004.*) Any person who votes or attempts to vote more than once at any primary or general or special election is guilty of a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2131. Prior: 1991 c 81 § 13; 1965 c 9 § 29.85.210;

prior: 1911 c 89 § 1, part; Code 1881 § 903; 1873 p 204 § 102; 1865 p 51 § 5; 1854 p 93 § 93; RRS § 5383. Formerly RCW 29.85.210.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

29A.84.655 Repeaters—Unqualified persons—Officers conniving with. (*Effective July 1, 2004.*) Any precinct election officer who knowingly permits any voter to cast a second vote at any primary or general or special election, or knowingly permits any person not a qualified voter to vote at any primary or general or special election, is guilty of a class C felony punishable under RCW 9A.20.021. [2003 c 111 § 2132. Prior: 1991 c 81 § 14; 1965 c 9 § 29.85.220; prior: 1911 c 89 § 1, part; Code 1881 § 911; 1873 p 205 § 108; RRS § 5385. Formerly RCW 29.85.220.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

29A.84.660 Unqualified persons voting. (*Effective July 1, 2004.*) Any person who knows that he or she does not possess the legal qualifications of a voter and who votes at any primary or special or general election authorized by law to be held in this state for any office whatever is guilty of a class C felony punishable under RCW 9A.20.021. [2003 c 111 § 2133; 1991 c 81 § 17; 1965 c 9 § 29.85.240. Prior: 1911 c 89 § 1, part; Code 1881 § 905; 1873 p 204 § 104; 1865 p 51 § 4; 1854 p 93 § 95; RRS § 5384. Formerly RCW 29.85.240.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

29A.84.670 Unlawful acts by voters—Penalty (as amended by 2003 c 53). (*Effective July 1, 2004.*) (1) It ((shall be)) is unlawful for a voter to:

((1)) (a) Show his or her ballot after it is marked to any person in such a way as to reveal the contents thereof or the name of any candidate for whom he or she has marked his or her vote;

((2)) (b) Receive a ballot from any person other than the election officer having charge of the ballots;

((3)) (c) Vote or offer to vote any ballot except one that he or she has received from the election officer having charge of the ballots;

((4)) (d) Place any mark upon his or her ballot by which it may afterward be identified as the one voted by him or her;

((5)) (e) Fail to return to the election officers any ballot he or she received from an election officer.

(2) A violation of ((any provision of)) this section ((shall be)) is a misdemeanor, punishable by a fine not exceeding one hundred dollars, plus costs of prosecution. [2003 c 53 § 181; 1965 c 9 § 29.51.230. Prior: 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. Formerly RCW 29.51.230.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

29A.84.670 Unlawful acts by voters (as amended by 2003 c 111). (*Effective July 1, 2004.*) It ((shall be)) is unlawful for a voter to:

(1) ((Show his ballot after it is marked to any person in such a way as to reveal the contents thereof or the name of any candidate for whom he has marked his vote;

(2)) Receive a ballot from any person other than the election officer having charge of the ballots;

((3)) (2) Vote or offer to vote any ballot except one ((that he has)) received from the election officer having charge of the ballots;

((4)) Place any mark upon his ballot by which it may afterward be identified as the one voted by him;

(5)) (3) Fail to return to the election officers any ballot ((he)) received from an election officer.

A violation of any provision of this section ((shall be)) is a misdemeanor, punishable by a fine not exceeding one hundred dollars, plus costs of prosecution. [2003 c 111 § 2134; 1965 c 9 § 29.51.230. Prior: 1947 c 35

§ 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. Formerly RCW 29.51.230.]

Reviser's note: RCW 29.51.230 (recodified as RCW 29A.84.670) was amended twice during the 2003 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

29A.84.680 Absentee ballots. (Effective July 1, 2004.)

(1) A person who willfully violates any provision of chapter 29A.40 RCW regarding the assertion or declaration of qualifications to receive or cast an absentee ballot or unlawfully casts a vote by absentee ballot is guilty of a class C felony punishable under RCW 9A.20.021.

(2) Except as provided in this chapter, a person who willfully violates any other provision of chapter 29A.40 RCW is guilty of a misdemeanor. [2003 c 111 § 2136; 2003 c 53 § 179; 2001 c 241 § 14; 1994 c 269 § 2; 1991 c 81 § 34; 1987 c 346 § 20; 1983 1st ex.s. c 71 § 9. Formerly RCW 29.36.370, 29.36.160.]

Reviser's note: This section was amended by 2003 c 53 § 179 and by 2003 c 111 § 2136, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—1991 c 81: See note following RCW 29A.84.540.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

CANVASSING AND CERTIFYING

29A.84.710 Documents regarding nomination, election, candidacy—Frauds and falsehoods. (Effective July 1, 2004.) Every person who:

(1) Knowingly and falsely issues a certificate of nomination or election; or

(2) Knowingly provides false information on a certificate which must be filed with an elections officer under RCW 29A.20.110 through 29A.20.200, is guilty of a class C felony punishable under RCW 9A.20.021. [2003 c 111 § 2137; 1991 c 81 § 8; 1965 c 9 § 29.85.100. Prior: 1889 p 411 § 30; RRS § 5295. Formerly RCW 29.85.100.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

29A.84.720 Officers—Violations generally. (Effective July 1, 2004.) Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, including primaries, or the provisions of any charter or ordinance of any city or town of this state relating to elections who willfully neglects or refuses to perform such duty, or who, in the performance of such duty, or in his or her official capacity, knowingly or fraudulently violates any of the provisions of law relating to such duty, is guilty of a class C felony punishable under RCW 9A.20.021 and shall forfeit his or her office. [2003 c 111 § 2138. Prior: 1991 c 81 § 10; 1965 c 9 § 29.85.170; prior: (i) 1889 p 412 § 32; RRS § 5297. (ii) 1911 c 89 § 1, part; Code 1881 § 912; 1877 p 205 § 2; RRS § 5392. Formerly RCW 29.85.170.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

29A.84.730 Divulging ballot count. (Effective July 1, 2004.) (1) In any location in which ballots are counted, no

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person authorized by law to be present while votes are being counted may divulge any results of the count of the ballots at any time prior to the closing of the polls for that primary or special or general election.

(2) A violation of this section is a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2003 c 111 § 2139. Prior: 1991 c 81 § 15; 1990 c 59 § 55; 1977 ex.s. c 361 § 85; 1965 c 9 § 29.54.035; prior: 1955 c 148 § 6. Formerly RCW 29.85.225, 29.54.035.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.04.007.

Divulging returns in voting device precincts: RCW 29A.60.120.

29A.84.740 Returns and posted copy of results—Tampering with. (Effective July 1, 2004.) It shall be a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021, for any person to remove or deface the posted copy of the result of votes cast at their precinct or to delay delivery of or change the copy of primary or special or general election returns to be delivered to the proper election officer. [2003 c 111 § 2140. Prior: 1991 c 81 § 16; 1965 c 9 § 29.85.230; prior: 1935 c 108 § 3; RRS § 5339-3. Formerly RCW 29.85.230, 29.85.110, part.]

Effective date—1991 c 81: See note following RCW 29A.84.540.

Chapter 29A.88 RCW

NUCLEAR WASTE SITE—ELECTION FOR DISAPPROVAL

Sections

29A.88.010 Findings. *(Effective July 1, 2004.)*

29A.88.020 High-level repository—Selection of site in state—Special election for disapproval. *(Effective July 1, 2004.)*

29A.88.030 Costs of election. *(Effective July 1, 2004.)*

29A.88.040 Special election—Notification of auditors—Application of election laws. *(Effective July 1, 2004.)*

29A.88.050 Ballot title. *(Effective July 1, 2004.)*

29A.88.060 Effect of vote. *(Effective July 1, 2004.)*

29A.88.010 Findings. (Effective July 1, 2004.) (1) The legislature and the people find that the federal Nuclear Waste Policy Act provides that within sixty days of the president's recommendation of a site for a high-level nuclear waste repository, a state may disapprove the selection of such site in that state.

(2) The legislature and the people desire, if the governor and legislature do not issue a notice of disapproval within twenty-one days of the president's recommendation, that the people of this state have the opportunity to vote upon disapproval. [2003 c 111 § 2201. Prior: 1986 ex.s. c 1 § 3. Formerly RCW 29.91.010.]

29A.88.020 High-level repository—Selection of site in state—Special election for disapproval. (Effective July 1, 2004.) (1) Within seven days after any recommendation by the president of the United States of a site in the state of Washington to be a high-level nuclear waste repository under 42 U.S.C. Sec. 10136, the governor shall set the date for a

special statewide election to vote on disapproval of the selection of such site. The special election shall be no more than fifty days after the date of the recommendation of the president of the United States.

(2) If either the governor or the legislature submits a notice of disapproval to the United States Congress within twenty-one days of the date of the recommendation by the president of the United States, then the governor is authorized to cancel the special election pursuant to subsection (1) of this section. [2003 c 111 § 2202; 1986 ex.s. c 1 § 4. Formerly RCW 29.91.020.]

29A.88.030 Costs of election. (Effective July 1, 2004.)

The state of Washington shall assume the costs of any special election called under RCW 29A.88.020 in the same manner as provided in RCW 29A.04.420 and 29A.04.430. [2003 c 111 § 2203. Prior: 1986 ex.s. c 1 § 5. Formerly RCW 29.91.030.]

29A.88.040 Special election—Notification of auditors—Application of election laws. (Effective July 1, 2004.) The secretary of state shall promptly notify the county auditors of the date of the special election and certify to them the text of the ballot title for this special election. The general election laws shall apply to the election required by RCW 29A.88.020 to the extent that they are not inconsistent with this chapter. Statutory deadlines relating to certification, canvassing, and the voters' pamphlet may be modified for the election held pursuant to RCW 29A.88.020 by the secretary of state through emergency rules adopted under RCW 29A.04.610. [2003 c 111 § 2204. Prior: 1986 ex.s. c 1 § 6. Formerly RCW 29.91.040.]

29A.88.050 Ballot title. (Effective July 1, 2004.) The ballot title for the special election called under RCW 29A.88.020 shall be "Shall the Governor be required to notify Congress of Washington's disapproval of the President's recommendation of [name of site] as a national high-level nuclear waste repository?" [2003 c 111 § 2205. Prior: 1986 ex.s. c 1 § 7. Formerly RCW 29.91.050.]

29A.88.060 Effect of vote. (Effective July 1, 2004.) If the governor or the legislature fails to prepare and submit a notice of disapproval to the United States Congress within fifty-five days of the president's recommendation and a majority of the voters in the special election held pursuant to RCW 29A.88.020 favored such notice of disapproval, then the vote of the people shall be binding on the governor. The governor shall prepare and submit the notice of disapproval to the United States Congress pursuant to 42 U.S.C. Sec. 10136. [2003 c 111 § 2206; 1986 ex.s. c 1 § 8. Formerly RCW 29.91.060.]

Title 30

BANKS AND TRUST COMPANIES

Chapters

30.04 General provisions.

30.12 Officers, employees, and stockholders.

30.42 Alien banks.

30.44 Insolvency and liquidation.

Chapter 30.04 RCW

GENERAL PROVISIONS

Sections

30.04.025	Financial institutions—Loan charges—Out-of-state national banks.
30.04.215	Engaging in other business activities.
30.04.217	Additional powers—Powers and authorities of mutual savings bank—Restrictions.
30.04.240	Trust business to be kept separate—Authorized deposit of securities. (Effective July 1, 2004.)
30.04.260	Legal services, advertising of—Penalty. (Effective July 1, 2004.)
30.04.901	Severability—2003 c 24.

30.04.025 Financial institutions—Loan charges—Out-of-state national banks. Notwithstanding any restrictions, limitations, requirements, or other provisions of law, a financial institution, as defined in RCW 30.22.040(12), may charge, take, receive, or reserve interest, discount or other points, finance charges, or other similar charges on any loan or other extension of credit, at a rate or amount that is equal to, or less than, the maximum rate or amount of interest, discount or other points, finance charges, or other similar charges that national banks located in any other state or states may charge, take, receive, or reserve, under 12 U.S.C. Sec. 85, on loans or other extensions of credit to residents of this state. However, this section does not authorize any subsidiary of a bank, of a trust company, of a mutual savings bank, of a savings and loan association, or of a credit union to charge, take, receive, or reserve interest, discount or other points, finance charges, or other similar charges on any loan or other extension of credit, unless the subsidiary is itself a bank, trust company, mutual savings bank, savings and loan association, or credit union. [2003 c 24 § 3.]

30.04.215 Engaging in other business activities. (1) Notwithstanding any other provisions of law, in addition to all powers enumerated by this title, and those necessarily implied therefrom, a bank or trust company may engage in other business activities that have been determined by the board of governors of the federal reserve system or by the United States Congress to be closely related to the business of banking, as of July 27, 2003.

(2) A bank or trust company that desires to perform an activity that is not expressly authorized by subsection (1) of this section shall first apply to the director for authorization to conduct such activity. Within thirty days of the receipt of this application, the director shall determine whether the activity is closely related to the business of banking, whether the public convenience and advantage will be promoted, whether the activity is apt to create an unsafe or unsound practice by the bank or trust company and whether the applicant is capable of performing such an activity. If the director finds the activity to be closely related to the business of banking and the bank or trust company is otherwise qualified, he or she shall immediately inform the applicant that the activity is authorized. If the director determines that such activity is not closely related to the business of banking or that the bank or trust company is not otherwise qualified, he or she shall promptly

inform the applicant in writing. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the Administrative Procedure Act, chapter 34.05 RCW. In determining whether a particular activity is closely related to the business of banking, the director shall be guided by the rulings of the board of governors of the federal reserve system and the comptroller of the currency in making determinations in connection with the powers exercisable by bank holding companies, and the activities performed by other commercial banks or their holding companies.

(3) Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a bank or trust company has under the laws of this state, a bank or trust company shall have the powers and authorities conferred as of August 31, 1994, or a subsequent date not later than July 27, 2003, upon a federally chartered bank doing business in this state. A bank or trust company may exercise the powers and authorities conferred on a federally chartered bank after July 27, 2003, only if the director finds that the exercise of such powers and authorities:

- (a) Serves the convenience and advantage of depositors, borrowers, or the general public; and
- (b) Maintains the fairness of competition and parity between state-chartered banks or trust companies and federally chartered banks.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of federally chartered banks shall apply to banks or trust companies exercising those powers or authorities permitted under this subsection but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted banks or trust companies solely under this subsection.

(4) Any activity which may be performed by a bank or trust company, except the taking of deposits, may be performed by (a) a corporation or (b) another entity approved by the director, which in either case is owned in whole or in part by the bank or trust company. [2003 c 24 § 2. Prior: 1995 c 344 § 2; 1995 c 134 § 2; prior: 1994 c 256 § 37; 1994 c 92 § 20; 1986 c 279 § 10; 1983 c 157 § 8; 1969 c 136 § 7.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Severability—1983 c 157: See note following RCW 30.04.060.

30.04.217 Additional powers—Powers and authorities of mutual savings bank—Restrictions. Notwithstanding any other provisions of law, in addition to all powers, express or implied, that a bank or trust company has under the laws of this state, a bank or trust company shall have the powers and authorities conferred upon a mutual savings bank under Title 32 RCW, only if:

(1) The bank or trust company notifies the director at least thirty days prior to the exercise of such power or authority by the bank or trust company, unless the director waives or modifies this requirement for notice as to the exercise of a power, authority, or category of powers or authorities by the bank or trust company;

(2) The director finds that the exercise of such powers and authorities by the bank or by the trust company serves the convenience and advantage of depositors, borrowers, or the general public; and

(3) The director finds that the exercise of such powers and authorities by the bank or by the trust company maintains the fairness of competition and parity between banks or trust companies and mutual savings banks.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of mutual savings banks shall apply to banks or trust companies exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted banks or trust companies solely under this section. [2003 c 24 § 1.]

30.04.240 Trust business to be kept separate—Authorized deposit of securities. (Effective July 1, 2004.)

(1) Every corporation doing a trust business shall maintain in its office a trust department in which it shall keep books and accounts of its trust business, separate and apart from its other business. Such books and accounts shall specify the cash, securities and other properties, real and personal, held in each trust, and such securities and properties shall be at all times segregated from all other securities and properties except as otherwise provided in this section.

(2) Any person connected with a bank or trust company who shall, contrary to this section or any other provision of law, commingle any funds or securities of any kind held by such corporation in trust, for safekeeping or as agent for another, with the funds or assets of the corporation is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding any other provisions of law, any fiduciary holding securities in its fiduciary capacity or any state bank, national bank, or trust company holding securities as fiduciary or as custodian for a fiduciary is authorized to deposit or arrange for the deposit of such securities: (a) In a clearing corporation (as defined in Article 8 of the Uniform Commercial Code, chapter 62A.8 RCW); (b) within another state bank, national bank, or trust company having trust power whether located inside or outside of this state; or (c) within itself. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation or state bank, national bank, or trust company holding the securities as the depository, with any other such securities deposited in such clearing corporation or depository by any person, regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such state bank, national bank, or trust company as a fiduciary or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Ownership of, and other interests in, such securities may be transferred by bookkeeping entries on the books of such clearing corporation, state bank, national bank, or

trust company without physical delivery or alteration of certificates representing such securities. A state bank, national bank, or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of state chartered banks and trust companies, the director and, in the case of national banking associations, the comptroller of the currency may from time to time issue. A state bank, national bank, or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such state bank, national bank, or trust company in such clearing corporation or state bank, national bank, or trust company acting as such depository for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation or state bank, national bank, or trust company acting as such depository for its account as such fiduciary.

This subsection shall apply to any fiduciary holding securities in its fiduciary capacity, and to any state bank, national bank, or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary, acting on March 14, 1973 or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation. [2003 c 53 § 184; 1994 c 92 § 25; 1979 c 45 § 1; 1973 c 99 § 1; 1955 c 33 § 30.04.240. Prior: 1919 c 209 § 16; 1917 c 80 § 49; RRS § 3256.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

30.04.260 Legal services, advertising of—Penalty. (Effective July 1, 2004.) (1) No trust company or other corporation which advertises that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers, shall be permitted to act as executor, administrator, or guardian; and any trust company or other corporation whose officers or agents shall solicit legal business shall be ineligible for a period of one year thereafter to be appointed executor, administrator or guardian in any of the courts of this state.

(2) Any trust company or other corporation which advertises that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers, and any officer, agent, or employee of any trust company or corporation who shall solicit legal business is guilty of a gross misdemeanor. [2003 c 53 § 185; 1974 ex.s. c 117 § 43; 1955 c 33 § 30.04.260. Prior: 1929 c 72 § 4, part; 1923 c 115 § 6, part; 1921 c 94 § 1, part; 1917 c 80 § 24, part; RRS § 3231, part.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

30.04.901 Severability—2003 c 24. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [2003 c 24 § 10.]

Chapter 30.12 RCW

OFFICERS, EMPLOYEES, AND STOCKHOLDERS

Sections

- 30.12.090 False entries, statements, etc.—Penalty. (*Effective July 1, 2004.*)
- 30.12.100 Destroying or secreting records—Penalty. (*Effective July 1, 2004.*)
- 30.12.120 Loans to officers or employees from trust funds—Penalty. (*Effective July 1, 2004.*)

30.12.090 False entries, statements, etc.—Penalty. (Effective July 1, 2004.) Every person who shall knowingly subscribe to or make or cause to be made any false statement or false entry in the books of any bank or trust company or shall knowingly subscribe to or exhibit any false or fictitious paper or security, instrument or paper, with the intent to deceive any person authorized to examine into the affairs of any bank or trust company or shall make, state or publish any false statement of the amount of the assets or liabilities of any bank or trust company is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 186; 1955 c 33 § 30.12.090. Prior: 1917 c 80 § 56; RRS § 3263.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

30.12.100 Destroying or secreting records—Penalty. (Effective July 1, 2004.) Every officer, director or employee or agent of any bank or trust company who, for the purpose of concealing any fact or suppressing any evidence against himself or herself, or against any other person, abstracts, removes, mutilates, destroys or secretes any paper, book or record of any bank or trust company, or of the director, or of anyone connected with his or her office, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 187; 1994 c 92 § 71; 1955 c 33 § 30.12.100. Prior: 1917 c 80 § 56; RRS § 3264.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

30.12.120 Loans to officers or employees from trust funds—Penalty. (Effective July 1, 2004.) No corporation doing a trust business shall make any loan to any officer, or employee from its trust funds, nor shall it permit any officer, or employee to become indebted to it in any way out of its trust funds. Every officer, director, or employee of any such corporation, who knowingly violates this section, or who aids or abets any other person in any such violation, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 188; 1955 c 33 § 30.12.120. Prior: 1917 c 80 § 53; RRS § 3260.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 30.42 RCW

ALIEN BANKS

Sections

- 30.42.290 Compliance—Violations—Penalties. (*Effective July 1, 2004.*)

30.42.290 Compliance—Violations—Penalties. (*Effective July 1, 2004.*) (1) The director shall have the responsibility for assuring compliance with the provisions of this chapter. An alien bank that conducts business in this state in violation of any provisions of this chapter is guilty of a misdemeanor and in addition thereto shall be liable in the sum of one hundred dollars per day that each such offense continues, such sum to be recovered by the attorney general in a civil action in the name of the state.

(2) Every person who shall knowingly subscribe to or make or cause to be made any false entry in the books of any alien bank office or bureau doing business in this state pursuant to this chapter or shall knowingly subscribe to or exhibit any false or fictitious paper or security, instrument or paper, with the intent to deceive any person authorized to examine into the affairs of any such office or bureau or shall make, state or publish any false statement of the amount of the assets or liabilities of any such office or bureau is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) Every director or member of the governing body, officer, employee or agent of such alien bank operating an office or bureau in this state who conceals or destroys any fact or otherwise suppresses any evidence relating to a violation of this chapter is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(4) Any person who transacts business in this state on behalf of an alien bank which is subject to the provisions of this chapter, but which is not authorized to transact such business pursuant to this chapter is guilty of a misdemeanor and in addition thereto shall be liable in the sum of one hundred dollars per day for each day that such offense continues, such sum to be recovered by the attorney general in a civil action in the name of the state. [2003 c 53 § 189; 1994 c 92 § 99; 1973 1st ex.s. c 53 § 29.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 30.44 RCW

INSOLVENCY AND LIQUIDATION

Sections

- 30.44.110 Preferences prohibited—Penalty. (*Effective July 1, 2004.*)
 30.44.120 Receiving deposits when insolvent—Penalty. (*Effective July 1, 2004.*)

30.44.110 Preferences prohibited—Penalty. (*Effective July 1, 2004.*) Every transfer of its property or assets by any bank or trust company in this state, made in contemplation of insolvency, or after it shall have become insolvent, with a view to the preference of one creditor over another, or to prevent the equal distribution of its property and assets among its creditors, shall be void. Every director, officer, or employee making any such transfer is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 190; 1955 c 33 § 30.44.110. Prior: 1917 c 80 § 55; RRS § 3262.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

30.44.120 Receiving deposits when insolvent—Penalty. (*Effective July 1, 2004.*) An officer, director or employee of any bank or trust company who shall fraudu-

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lently receive for it any deposit, knowing that such bank or trust company is insolvent, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 191; 1955 c 33 § 30.44.120. Prior: 1933 c 42 § 26; 1917 c 80 § 81; RRS § 3288.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Receiving deposits after insolvency prohibited: State Constitution Art. 12 § 12.

Title 31

MISCELLANEOUS LOAN AGENCIES

Chapters

- 31.12 Washington state credit union act.**
31.45 Check cashers and sellers.

Chapter 31.12 RCW

WASHINGTON STATE CREDIT UNION ACT

Sections

- 31.12.724 Actions that are void—Felonious conduct—Penalties. (*Effective July 1, 2004.*)
 31.12.850 Prohibited acts—Penalty. (*Effective July 1, 2004.*)

31.12.724 Actions that are void—Felonious conduct—Penalties. (*Effective July 1, 2004.*) (1) Every transfer of a credit union's property or assets, and every assignment by a credit union for the benefit of creditors, made in contemplation of insolvency, or after it has become insolvent, to intentionally prefer one creditor over another, or to intentionally prevent the equal distribution of its property and assets among its creditors, is void.

(2) Every credit union director, officer, or employee making any transfer described in subsection (1) of this section is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) An officer, director, or employee of a credit union who fraudulently receives any share or deposit on behalf of the credit union, knowing that the credit union is insolvent, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 192; 1997 c 397 § 86.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

31.12.850 Prohibited acts—Penalty. (*Effective July 1, 2004.*) (1)(a) It is unlawful for a director, supervisory committee member, officer, employee, or agent of a credit union to knowingly violate or consent to a violation of this chapter.

(b) Unless otherwise provided by law, a violation of this subsection is a misdemeanor under chapter 9A.20 RCW.

(2)(a) It is unlawful for a person to perform any of the following acts:

(i) To knowingly subscribe to, make, or cause to be made a false statement or entry in the books of a credit union;

(ii) To knowingly make a false statement or entry in a report required to be made to the director; or

(iii) To knowingly exhibit a false or fictitious paper, instrument, or security to a person authorized to examine a credit union.

(b) A violation of this subsection is a class C felony under chapter 9A.20 RCW. [2003 c 53 § 193; 1997 c 397 § 87; 1994 c 92 § 215; 1984 c 31 § 65. Formerly RCW 31.12.635.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 31.45 RCW

CHECK CASHERS AND SELLERS

Sections

31.45.010	Definitions.
31.45.020	Application of chapter.
31.45.030	License required—Small loan endorsement—Application—Fee—Bond—Deposit in lieu of bond—Director's duties.
31.45.040	Application for license or small loan endorsement—Financial responsibility—Director's investigation.
31.45.050	Investigation or examination fee and annual assessment fee required—Amounts determined by rule—Failure to pay—Notice requirements of licensee.
31.45.060	Licensee—Schedule of fee and charges—Recordkeeping.
31.45.070	Licensee—Permissible transactions—Restrictions.
31.45.073	Making small loans—Endorsement required—Termination date—Maximum amount—Interest—Fees—Postdated check or draft as security.
31.45.077	Small loan endorsement—Application—Form—Information—Exemption from disclosure—Fees.
31.45.079	Making small loans—Agent for a licensee or exempt entity—Federal preemption.
31.45.082	Delinquent small loan—Collection by licensee or third party.
31.45.084	Small loan payment plan—Terms—Restrictions.
31.45.086	Small loans—Right of rescission.
31.45.088	Small loans—Disclosure requirements—Advertising—Making loan.
31.45.090	Report requirements—Disclosure of information—Rules.
31.45.100	Examination or investigation—Director's authority—Costs.
31.45.110	Violations or unsound financial practices—Statement of charges—Hearing—Sanctions—Director's authority.
31.45.120	Violations or unsound practices—Temporary cease and desist order—Director's authority.
31.45.170	Repealed.

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

(1) "Applicant" means a person that files an application for a license under this chapter, including the applicant's sole proprietor, owners, directors, officers, partners, members, and controlling persons.

(2) "Borrower" means a natural person who receives a small loan.

(3) "Business day" means any day that the licensee is open for business in at least one physical location.

(4) "Check" means the same as defined in RCW 62A.3-104(f) and, for purposes of conducting the business of making small loans, includes other electronic forms of payment, including stored value cards, internet transfers, and automated clearing house transactions.

(5) "Check casher" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of cashing checks, drafts, money orders, or other commercial paper serving the same purpose.

(6) "Check seller" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of or selling checks, drafts, money orders, or other commercial paper serving the same purpose.

(7) "Collateral" means the same as defined in chapter 62A.9A RCW.

(8) "Controlling person" means a person owning or controlling ten percent or more of the total outstanding shares of the applicant or licensee, if the applicant or licensee is a corporation, and a member who owns ten percent or more of a limited liability company or limited liability partnership.

(9) "Default" means the borrower's failure to repay the small loan in compliance with the terms contained in the small loan agreement or note or failure to make payments in compliance with a loan payment plan.

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

(11) "Financial institution" means a commercial bank, savings bank, savings and loan association, or credit union.

(12) "Licensee" means a check casher or seller licensed by the director to engage in business in accordance with this chapter. For purposes of the enforcement powers of this chapter, including the power to issue cease and desist orders under RCW 31.45.110, "licensee" also means a check casher or seller who fails to obtain the license required by this chapter.

(13) "Origination date" means the date upon which the borrower and the licensee initiate a small loan transaction.

(14) "Outstanding principal balance" of a small loan means any of the principal amount that has not been paid by the borrower.

(15) "Paid" means that moment in time when the licensee deposits the borrower's check or accepts cash for the full amount owing on a valid small loan.

(16) "Person" means an individual, partnership, association, limited liability company, limited liability partnership, trust, corporation, and any other legal entity.

(17) "Principal" means the loan proceeds advanced for the benefit of the borrower in a small loan, excluding any fee or interest charge.

(18) "Rescission" means annulling the loan contract and, with respect to the small loan contract, returning the borrower and the licensee to their financial condition prior to the origination date of the loan.

(19) "Small loan" means a loan of up to the maximum amount and for a period of time up to the maximum term specified in RCW 31.45.073.

(20) "Successive loans" means a series of loans made by the same licensee to the same borrower in such a manner that no more than three business days separate the termination date of any one loan and the origination date of any other loan in the series.

(21) "Termination date" means the date upon which payment for the small loan transaction is due or paid to the licensee, whichever occurs first.

(22) "Total of payments" means the principal amount of the small loan plus all fees or interest charged on the loan.

(23) "Trade secret" means the same as defined in RCW 19.108.010. [2003 c 86 § 1; 1995 c 18 § 1; 1994 c 92 § 274; 1993 c 143 § 1; 1991 c 355 § 1.]

31.45.020 Application of chapter. (1) This chapter does not apply to:

(a) Any financial institution or trust company authorized to do business in Washington;

(b) The cashing of checks, drafts, or money orders by any person who cashes checks, drafts, or money orders as a convenience, as a minor part of its customary business, and not for profit;

(c) The issuance or sale of checks, drafts, or money orders by any corporation, partnership, or association that has a net worth of not less than three million dollars as shown by audited financial statements; and

(d) The issuance or sale of checks, drafts, money orders, or other commercial paper serving the same purpose by any agent of a corporation, partnership, or association described in (c) of this subsection.

(2) Upon application to the director, the director may exempt a person from any or all provisions of this chapter upon a finding by the director that although not otherwise exempt under this section, the applicant is not primarily engaged in the business of cashing or selling checks and a total or partial exemption would not be detrimental to the public. [2003 c 86 § 2; 1994 c 92 § 275; 1991 c 355 § 2.]

31.45.030 License required—Small loan endorsement—Application—Fee—Bond—Deposit in lieu of bond—Director's duties. (1) Except as provided in RCW 31.45.020, no check casher or seller may engage in business without first obtaining a license from the director in accordance with this chapter. A license is required for each location where a licensee engages in the business of cashing or selling checks or drafts.

(2) Each application for a license shall be in writing in a form prescribed by the director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;

(b) The location where the initial registered office of the applicant will be located in this state;

(c) The complete address of any other locations at which the applicant proposes to engage in business as a check casher or seller; and

(d) Such other data, financial statements, and pertinent information as the director may require with respect to the applicant, its directors, trustees, officers, members, or agents.

(3) Any information in the application regarding the personal residential address or telephone number of the applicant, and any trade secret as defined in RCW 19.108.010 including any financial statement that is a trade secret, is exempt from the public records disclosure requirements of chapter 42.17 RCW.

(4) The application shall be filed together with an investigation and supervision fee established by rule by the director. Such fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110.

(5)(a) Before granting a license to sell checks, drafts, or money orders under this chapter, the director shall require that the licensee file with the director a surety bond running to the state of Washington, which bond shall be issued by a surety insurer which meets the requirements of chapter 48.28 RCW, and be in a format acceptable to the director. The director shall adopt rules to determine the penal sum of the

bond that shall be filed by each licensee. The bond shall be conditioned upon the licensee paying all persons who purchase checks, drafts, or money orders from the licensee the face value of any check, draft, or money order which is dishonored by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed. The bond shall only be liable for the face value of the dishonored check, draft, or money order, and shall not be liable for any interest or consequential damages.

(b) Before granting a small loan endorsement under this chapter, the director shall require that the licensee file with the director a surety bond, in a format acceptable to the director, issued by a surety insurer that meets the requirements of chapter 48.28 RCW. The director shall adopt rules to determine the penal sum of the bond that shall be filed by each licensee. A licensee who wishes to engage in both check selling and making small loans may combine the penal sums of the bonding requirements and file one bond in a form acceptable to the director. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the licensee's violation of this chapter or any rules adopted under this chapter. The bond shall only be liable for damages suffered by borrowers as a result of the licensee's violation of this chapter or rules adopted under this chapter, and shall not be liable for any interest or consequential damages.

(c) The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director and licensee of its intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any liability of the licensee for tortious acts, whether or not such liability is imposed by statute or common law, or is imposed by contract. The bond shall not be a substitute or supplement to any liability or other insurance required by law or by the contract. If the surety desires to make payment without awaiting court action against it, the penal sum of the bond shall be reduced to the extent of any payment made by the surety in good faith under the bond.

(d) Any person who is a purchaser of a check, draft, or money order from the licensee having a claim against the licensee for the dishonor of any check, draft, or money order by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed, or who obtained a small loan from the licensee and was damaged by the licensee's violation of this chapter or rules adopted under this chapter, may bring suit upon such bond or deposit in the superior court of the county in which the check, draft, or money order was purchased, or in the superior court of a county in which the licensee maintains a place of business. Jurisdiction shall be exclusively in the superior court. Any such action must be brought not later

than one year after the dishonor of the check, draft, or money order on which the claim is based. In the event valid claims against a bond or deposit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond, or deposit, without regard to the date of filing of any claim or action.

(e) In lieu of the surety bond required by this section, the applicant for a check seller license may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond. In lieu of the surety bond required by this section, the applicant for a small loan endorsement may file with the director a deposit consisting of cash or other security acceptable to the director in an amount equal to the penal sum of the required bond, or may demonstrate to the director net worth in excess of three times the amount of the penal sum of the required bond.

The director may adopt rules necessary for the proper administration of the security or to establish reporting requirements to ensure that the net worth requirements continue to be met. A deposit given instead of the bond required by this section is not an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter. A deposit given instead of the bond required by this section is a fund held in trust for the benefit of eligible claimants under this section and is not an asset of the estate of any licensee that seeks protection voluntarily or involuntarily under the bankruptcy laws of the United States.

(f) Such security may be sold by the director at public auction if it becomes necessary to satisfy the requirements of this chapter. Notice of the sale shall be served upon the licensee who placed the security personally or by mail. If notice is served by mail, service shall be addressed to the licensee at its address as it appears in the records of the director. Bearer bonds of the United States or the state of Washington without a prevailing market price must be sold at public auction. Such bonds having a prevailing market price may be sold at private sale not lower than the prevailing market price. Upon any sale, any surplus above amounts due shall be returned to the licensee, and the licensee shall deposit with the director additional security sufficient to meet the amount required by the director. A deposit given instead of the bond required by this section shall not be deemed an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter. [2003 c 86 § 3; 2001 c 177 § 11; 1995 c 18 § 4; 1994 c 92 § 276; 1993 c 176 § 1; 1991 c 355 § 3.]

Effective date—2001 c 177: See note following RCW 43.320.080.

Effective date—1993 c 176: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]." [1993 c 176 § 2.]

Examination reports and information from financial institutions exempt: RCW 42.17.31911.

31.45.040 Application for license or small loan endorsement—Financial responsibility—Director's investigation. (1) The director shall conduct an investigation of every applicant to determine the financial responsibility, experience, character, and general fitness of the applicant. The director shall issue the applicant a license to engage in

the business of cashing or selling checks, or both, or a small loan endorsement, if the director determines to his or her satisfaction that:

(a) The applicant has satisfied the requirements of RCW 31.45.030;

(b) The applicant is financially responsible and appears to be able to conduct the business of cashing or selling checks or making small loans in an honest, fair, and efficient manner with the confidence and trust of the community; and

(c) The applicant has the required bonds, or has provided an acceptable alternative form of financial security.

(2) The director may refuse to issue a license or small loan endorsement if he or she finds that the applicant, or any person who is a director, officer, partner, agent, sole proprietor, owner, or controlling person of the applicant, has been convicted of a felony in any jurisdiction within seven years of filing the present application or is associating or consorting with any person who has been convicted of a felony in any jurisdiction within seven years of filing the present application. The term "substantial stockholder" as used in this subsection, means a person owning or controlling ten percent or more of the total outstanding shares of the applicant corporation.

(3) A license or small loan endorsement may not be issued to an applicant:

(a) Whose license to conduct business under this chapter, or any similar statute in any other jurisdiction, has been suspended or revoked within five years of the filing of the present application;

(b) Who has been banned from the industry by an administrative order issued by the director or the director's designee, for the period specified in the administrative order; or

(c) When any person who is a sole proprietor, owner, director, officer, partner, agent, or controlling person of the applicant has been banned from the industry in an administrative order issued by the director, for the period specified in the administrative order.

(4) A license or small loan endorsement issued under this chapter shall be conspicuously posted in the place of business of the licensee. The license is not transferable or assignable.

(5) A license or small loan endorsement issued in accordance with this chapter remains in force and effect until surrendered, suspended, or revoked, or until the license expires as a result of nonpayment of the annual assessment fee. [2003 c 86 § 4; 1996 c 13 § 1; 1995 c 18 § 5; 1994 c 92 § 277; 1991 c 355 § 4.]

31.45.050 Investigation or examination fee and annual assessment fee required—Amounts determined by rule—Failure to pay—Notice requirements of licensee.

(1) Each applicant and licensee shall pay to the director an investigation or examination fee as established in rule and an annual assessment fee for the coming year in an amount determined by rule as necessary to cover the operation of the program. The annual assessment fee is due upon the annual assessment fee due date as established in rule. Nonpayment of the annual assessment fee may result in expiration of the license as provided in subsection (2) of this section. In establishing the fees, the director shall differentiate between check cashing and check selling and making small loans, and consider at least the volume of business, level of risk, and poten-

tial harm to the public related to each activity. The fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110.

(2) If a licensee does not pay its annual assessment fee by the annual assessment fee due date as specified in rule, the director or the director's designee shall send the licensee a notice of suspension and assess the licensee a late fee not to exceed twenty-five percent of the annual assessment fee as established in rule by the director. The licensee's payment of both the annual assessment fee and the late fee must arrive in the department's offices by 5:00 p.m. on the tenth day after the annual assessment fee due date, unless the department is not open for business on that date, in which case the licensee's payment of both the annual assessment fee and the late fee must arrive in the department's offices by 5:00 p.m. on the next occurring day that the department is open for business. If the payment of both the annual assessment fee and the late fee does not arrive prior to such time and date, then the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after the assessment fee due date. The director or the director's designee may reinstate the license if, within twenty days after the effective date of expiration, the licensee:

(a) Pays both the annual assessment fee and the late fee; and

(b) Attests under penalty of perjury that it did not engage in conduct requiring a license under this chapter during the period its license was expired, as confirmed by an investigation by the director or the director's designee.

(3) If a licensee intends to do business at a new location, to close an existing place of business, or to relocate an existing place of business, the licensee shall provide written notification of that intention to the director no less than thirty days before the proposed establishing, closing, or moving of a place of business. [2003 c 86 § 5; 2001 c 177 § 12; 1996 c 13 § 2; 1995 c 18 § 6; 1994 c 92 § 278; 1991 c 355 § 5.]

Effective date—2001 c 177: See note following RCW 43.320.080.

31.45.060 Licensee—Schedule of fee and charges—Recordkeeping. (1) A schedule of the fees and the charges for the cashing and selling of checks, drafts, money orders, or other commercial paper serving the same purpose shall be conspicuously and continuously posted in every location licensed under this chapter. The licensee shall provide to its customer a receipt for each transaction. The receipt must include the name of the licensee, the type and amount of the transaction, and the fee or fees charged for the transaction.

(2) Each licensee shall keep and maintain such business books, accounts, and records as the director may require to fulfill the purposes of this chapter. Every licensee shall preserve such books, accounts, and records as required in rule by the director for at least two years from the completion of the transaction. Records may be maintained on an electronic, magnetic, optical, or other storage media. However, the licensee must maintain the necessary technology to permit access to the records by the department for the period required under this chapter.

(3) A check, draft, or money order sold by a licensee shall be drawn on an account of a licensee maintained in a federally insured financial institution authorized to do busi-

ness in the state of Washington. [2003 c 86 § 6; 1994 c 92 § 279; 1991 c 355 § 6.]

31.45.070 Licensee—Permissible transactions—Restrictions. (1) No licensee may engage in a loan business or the negotiation of loans or the discounting of notes, bills of exchange, checks, or other evidences of debt on the same premises where a check cashing or selling business is conducted, unless the licensee:

(a) Is conducting the activities of pawnbroker as defined in RCW 19.60.010;

(b) Is a properly licensed consumer loan company under chapter 31.04 RCW;

(c) Is conducting other lending activity permitted in the state of Washington; or

(d) Has a small loan endorsement.

(2) Except as otherwise permitted in this chapter, no licensee may at any time cash or advance any moneys on a postdated check or draft. However, a licensee may cash a check payable on the first banking day following the date of cashing if:

(a) The check is drawn by the United States, the state of Washington, or any political subdivision of the state, or by any department or agency of the state or its subdivisions; or

(b) The check is a payroll check drawn by an employer to the order of its employee in payment for services performed by the employee.

(3) Except as otherwise permitted in this chapter, no licensee may agree to hold a check or draft for later deposit. A licensee shall deposit all checks and drafts cashed by the licensee as soon as practicable.

(4) No licensee may issue or cause to be issued any check, draft, or money order, or other commercial paper serving the same purpose, that is drawn upon the trust account of a licensee without concurrently receiving the full principal amount, in cash, or by check, draft, or money order from a third party believed to be valid.

(5) No licensee may advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, any statement or representation that is false, misleading, or deceptive, or that omits material information, or that refers to the supervision of the licensee by the state of Washington or any department or official of the state.

(6) Each licensee shall comply with all applicable federal statutes governing currency transaction reporting. [2003 c 86 § 7; 1995 c 18 § 7; 1994 c 92 § 280; 1991 c 355 § 7.]

31.45.073 Making small loans—Endorsement required—Termination date—Maximum amount—Interest—Fees—Postdated check or draft as security. (1) No licensee may engage in the business of making small loans without first obtaining a small loan endorsement to its license from the director in accordance with this chapter. An endorsement will be required for each location where a licensee engages in the business of making small loans, but a small loan endorsement may authorize a licensee to make small loans at a location different than the licensed locations where it cashes or sells checks. A licensee may have more than one endorsement.

(2) The termination date of a small loan may not exceed the origination date of that same small loan by more than forty-five days, including weekends and holidays, unless the term of the loan is extended by agreement of both the borrower and the licensee and no additional fee or interest is charged. The maximum principal amount of any small loan, or the outstanding principal balances of all small loans made by a licensee to a single borrower at any one time, may not exceed seven hundred dollars.

(3) A licensee that has obtained the required small loan endorsement may charge interest or fees for small loans not to exceed in the aggregate fifteen percent of the first five hundred dollars of principal. If the principal exceeds five hundred dollars, a licensee may charge interest or fees not to exceed in the aggregate ten percent of that portion of the principal in excess of five hundred dollars. If a licensee makes more than one loan to a single borrower, and the aggregated principal of all loans made to that borrower exceeds five hundred dollars at any one time, the licensee may charge interest or fees not to exceed in the aggregate ten percent on that portion of the aggregated principal of all loans at any one time that is in excess of five hundred dollars. The director may determine by rule which fees, if any, are not subject to the interest or fee limitations described in this section. It is a violation of this chapter for any licensee to knowingly loan to a single borrower at any one time, in a single loan or in the aggregate, more than the maximum principal amount described in this section.

(4) In connection with making a small loan, a licensee may advance moneys on the security of a postdated check. The licensee may not accept any other property, title to property, or other evidence of ownership of property as collateral for a small loan. The licensee may accept only one postdated check per loan as security for the loan. A licensee may permit a borrower to redeem a postdated check with a payment of cash or the equivalent of cash. The licensee may disburse the proceeds of a small loan in cash, in the form of a check, or in the form of the electronic equivalent of cash or a check.

(5) No person may at any time cash or advance any moneys on a postdated check or draft in excess of the amount of goods or services purchased without first obtaining a small loan endorsement to a check casher or check seller license. [2003 c 86 § 8; 1995 c 18 § 2.]

31.45.077 Small loan endorsement—Application—Form—Information—Exemption from disclosure—Fees.

(1) Each application for a small loan endorsement to a check casher or check seller license must be in writing and in a form prescribed by the director and shall contain the following information:

(a) The legal name, residence, and business address of the applicant, and if the applicant is a partnership, corporation, or association, the name and address of every member, partner, officer, and director thereof;

(b) The street and mailing address of each location where the licensee will engage in the business of making small loans;

(c) A surety bond, or other security allowed under RCW 31.45.030, in the amount required; and

(d) Any other pertinent information, including financial statements, as the director may require with respect to the lic-

ensee and its directors, officers, trustees, members, or employees.

(2) Any information in the application regarding the licensee's personal residential address or telephone number, and any trade secrets of the licensee as defined under RCW 19.108.010 including any financial statement that is a trade secret, is exempt from the public records disclosure requirements of chapter 42.17 RCW.

(3) The application shall be filed together with an investigation and review fee established by rule by the director. Fees collected shall be deposited to the credit of the financial services regulation fund in accordance with RCW 43.320.110. [2003 c 86 § 9; 2001 c 177 § 13; 1995 c 18 § 3.]

Effective date—2001 c 177: See note following RCW 43.320.080.

31.45.079 Making small loans—Agent for a licensee or exempt entity—Federal preemption. A person may not engage in the business of making small loans as an agent for a licensee or exempt entity without first obtaining a small loan endorsement to a check casher or check seller license under this chapter. An agent of a licensee or exempt entity engaged in the business of making small loans is subject to this chapter. To the extent that federal law preempts the applicability of any part of this chapter, all other parts of this chapter remain in effect. [2003 c 86 § 10.]

31.45.082 Delinquent small loan—Collection by licensee or third party. A licensee shall comply with all applicable state and federal laws when collecting a delinquent small loan. A licensee may charge a one-time fee as determined in rule by the director to any borrower in default on any loan or loans where the borrower's check has been returned unpaid by the financial institution upon which it was drawn. A licensee may take civil action under Title 62A RCW to collect upon a check that has been dishonored. If the licensee takes civil action, a licensee may charge the borrower the cost of collection as allowed under RCW 62A.3-515, but may not collect attorneys' fees or any other interest or damages as allowed under RCW 62A.3-515. A licensee may not threaten criminal prosecution as a method of collecting a delinquent small loan. If a dishonored check is assigned to any third party for collection, this section applies to the third party for the collection of the dishonored check. [2003 c 86 § 11.]

31.45.084 Small loan payment plan—Terms—Restrictions. (1) A licensee and borrower may agree to a payment plan for a small loan at any time. After four successive loans and prior to default upon the last loan, each borrower may convert their small loan to a payment plan. Each agreement for a loan payment plan must be in writing and acknowledged by both the borrower and the licensee. The licensee may charge the borrower, at the time both parties enter into the payment plan, a one-time fee for the payment plan in an amount up to the fee or interest on the outstanding principal of the loan as allowed under RCW 31.45.073(3). The licensee may not assess any other fee, interest charge, or other charge on the borrower as a result of converting the small loan into a payment plan. This payment plan must provide for the payment of the total of payments due on the small

loan over a period not less than sixty days in three or more payments, unless the borrower and licensee agree to a shorter payment period. The borrower may pay the total of payments at any time. The licensee may not charge any penalty, fee, or charge to the borrower for prepayment of the loan payment plan by the borrower. Each licensee shall conspicuously disclose to each borrower in the small loan agreement or small loan note that the borrower has access to such a payment plan after four successive loans. A licensee's violation of such a payment plan constitutes a violation of this chapter.

(2) The licensee may take postdated checks at the initiation of the payment plan for the payments agreed to under the plan. If any check accepted by the licensee as payment under the payment plan is dishonored, the licensee may not charge the borrower any fee for the dishonored check.

(3) If the borrower defaults on the payment plan, the licensee may initiate action to collect the total of payments under RCW 31.45.082. The licensee may charge the borrower a one-time payment plan default fee of twenty-five dollars.

(4) If the licensee enters into a payment plan with the borrower through an accredited third party, with certified credit counselors, that is representing the borrower, the licensee's failure to comply with the terms of that payment plan constitutes a violation of this chapter. [2003 c 86 § 12.]

Effective date—2003 c 86 § 12: "Section 12 of this act takes effect October 1, 2003." [2003 c 86 § 20.]

31.45.086 Small loans—Right of rescission. A borrower may rescind a loan, on or before the close of business on the next day of business at the location where the loan was originated, by returning the principal in cash or the original check disbursed by the licensee to fund the small loan. The licensee may not charge the borrower for rescinding the loan and shall return to the borrower any postdated check taken as security for the loan or any electronic equivalent. The licensee shall conspicuously disclose to the borrower this right of rescission in writing in the small loan agreement or small loan note. [2003 c 86 § 13.]

31.45.088 Small loans—Disclosure requirements—Advertising—Making loan. (1) When advertising the availability of small loans, if a licensee includes in an advertisement the fee or interest rate charged by the licensee for a small loan, then the licensee shall also disclose the annual percentage rate resulting from this fee or interest rate.

(2) When advertising the availability of small loans, compliance with all applicable state and federal laws and regulations, including the truth in lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226 constitutes compliance with subsection (1) of this section.

(3) When making a small loan, each licensee shall disclose to the borrower the terms of the small loan, including the principal amount of the small loan, the total of payments of the small loan, the fee or interest rate charged by the licensee on the small loan, and the annual percentage rate resulting from this fee or interest rate.

(4) When making a small loan, disclosure of the terms of the small loan in compliance with all applicable state and federal laws and regulations, including the truth in lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226

constitutes compliance with subsection (3) of this section. [2003 c 86 § 14.]

31.45.090 Report requirements—Disclosure of information—Rules. (1) Each licensee shall submit to the director, in a form approved by the director, a report containing financial statements covering the calendar year or, if the licensee has an established fiscal year, then for such fiscal year, within one hundred five days after the close of each calendar or fiscal year. The licensee shall also file such additional relevant information as the director may require. Any information provided by a licensee in an annual report that constitutes a trade secret under chapter 19.108 RCW is exempt from disclosure under chapter 42.17 RCW, unless aggregated with information supplied by other licensees in such a manner that the licensee's individual information is not identifiable. Any information provided by the licensee that allows identification of the licensee may only be used for purposes reasonably related to the regulation of licensees to ensure compliance with this chapter.

(2) A licensee whose license has been suspended or revoked shall submit to the director, at the licensee's expense, within one hundred five days after the effective date of such surrender or revocation, a closing audit report containing audited financial statements as of such effective date for the twelve months ending with such effective date.

(3) The director shall adopt rules specifying the form and content of such audit reports and may require additional reporting as is necessary for the director to ensure compliance with this chapter. [2003 c 86 § 15; 1994 c 92 § 282; 1991 c 355 § 9.]

31.45.100 Examination or investigation—Director's authority—Costs. The director or the director's designee may at any time examine and investigate the business and examine the books, accounts, records, and files, or other information, wherever located, of any licensee or person who the director has reason to believe is engaging in the business governed by this chapter. For these purposes, the director or the director's designee may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of the investigation. The director or the director's designee may require the production of original books, accounts, records, files, or other information, or may make copies of such original books, accounts, records, files, or other information. The director or the director's designee may issue a subpoena or subpoena duces tecum requiring attendance and testimony, or the production of the books, accounts, records, files, or other information. The director shall collect from the licensee the actual cost of the examination or investigation. [2003 c 86 § 16; 1994 c 92 § 283; 1991 c 355 § 10.]

31.45.110 Violations or unsound financial practices—Statement of charges—Hearing—Sanctions—Director's authority. (1) The director may issue and serve upon a licensee or applicant a statement of charges if, in the opinion of the director, any licensee or applicant:

(a) Is engaging or has engaged in an unsafe or unsound financial practice in conducting the business of a check seller governed by this chapter;

(b) Is violating or has violated this chapter, including rules, orders, or subpoenas, any rule adopted under chapter 86, Laws of 2003, any order issued under chapter 86, Laws of 2003, any subpoena issued under chapter 86, Laws of 2003, or any condition imposed in writing by the director or the director's designee in connection with the granting of any application or other request by the licensee or any written agreement made with the director;

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause;

(d) Obtains a license by means of fraud, misrepresentation, concealment, or through mistake or inadvertence of the director;

(e) Provides false statements or omissions of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(f) Fails to pay a fee required by the director or maintain the required bond;

(g) Commits a crime against the laws of the state of Washington or any other state or government involving moral turpitude, financial misconduct, or dishonest dealings;

(h) Knowingly commits or is a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person relying upon the word, representation, or conduct acts to his or her injury or damage;

(i) Converts any money or its equivalent to his or her own use or to the use of his or her principal or of any other person;

(j) Fails, upon demand by the director or the director's designee, to disclose any information within his or her knowledge to, or to produce any document, book, or record in his or her possession for inspection of, the director or the director's designee;

(k) Commits any act of fraudulent or dishonest dealing, and a certified copy of the final holding of any court, tribunal, agency, or administrative body of competent jurisdiction regarding that act is conclusive evidence in any hearing under this chapter; or

(l) Commits an act or engages in conduct that demonstrates incompetence or untrustworthiness, or is a source of injury and loss to the public.

(2) The statement of charges shall be issued under chapter 34.05 RCW. The director or the director's designee may impose the following sanctions against any licensee or applicant, or any director, officer, sole proprietor, partner, controlling person, or employee of a licensee or applicant:

(a) Deny, revoke, suspend, or condition the license;

(b) Order the licensee to cease and desist from practices in violation of this chapter or practices that constitute unsafe and unsound financial practices in the sale of checks;

(c) Impose a fine not to exceed one hundred dollars per day for each day's violation of this chapter;

(d) Order restitution to borrowers or other parties damaged by the licensee's violation of this chapter or take other

affirmative action as necessary to comply with this chapter; and

(e) Remove from office or ban from participation in the affairs of any licensee any director, officer, sole proprietor, partner, controlling person, or employee of a licensee.

(3) The proceedings to impose the sanctions described in subsection (2) of this section, including any hearing or appeal of the statement of charges, are governed by chapter 34.05 RCW.

Unless the licensee personally appears at the hearing or is represented by a duly authorized representative, the licensee is deemed to have consented to the statement of charges and the sanctions imposed in the statement of charges. [2003 c 86 § 17; 1994 c 92 § 284; 1991 c 355 § 11.]

31.45.120 Violations or unsound practices—Temporary cease and desist order—Director's authority. Whenever the director determines that the acts specified in RCW 31.45.110 or their continuation is likely to cause insolvency or substantial injury to the public, the director may also issue a temporary cease and desist order requiring the licensee to cease and desist from the violation or practice. The order becomes effective upon service upon the licensee and remains effective unless set aside, limited, or suspended by a court under RCW 31.45.130 pending the completion of the administrative proceedings under the notice and until such time as the director dismisses the charges specified in the notice or until the effective date of the cease and desist order issued against the licensee under RCW 31.45.110. [2003 c 86 § 18; 1994 c 92 § 285; 1991 c 355 § 12.]

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

Title 32

MUTUAL SAVINGS BANKS

Chapters

32.04 General provisions.

32.08 Organization and powers.

32.24 Insolvency and liquidation.

32.32 Conversion of mutual savings bank to capital stock savings bank.

Chapter 32.04 RCW

GENERAL PROVISIONS

Sections

32.04.100 Penalty for falsification. (*Effective July 1, 2004.*)

32.04.110 Penalty for concealing or destroying evidence. (*Effective July 1, 2004.*)

32.04.100 Penalty for falsification. (*Effective July 1, 2004.*) Every person who knowingly subscribes to or makes or causes to be made any false statement or false entry in the books of any savings bank, or knowingly subscribes to or exhibits any false or fictitious security, document or paper, with the intent to deceive any person authorized to examine into the affairs of any savings bank, or makes or publishes any false statement of the amount of the assets or liabilities of

any such savings bank is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 194; 1955 c 13 § 32.04.100. Prior: 1931 c 132 § 11; RRS § 3379b.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

32.04.110 Penalty for concealing or destroying evidence. (*Effective July 1, 2004.*) Every trustee, officer, employee, or agent of any savings bank who for the purpose of concealing any fact suppresses any evidence against himself or herself, or against any other person, or who abstracts, removes, mutilates, destroys, or secretes any paper, book, or record of any savings bank, or of the director, or anyone connected with his or her office is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 195; 1994 c 92 § 299; 1955 c 13 § 32.04.110. Prior: 1931 c 132 § 12; RRS § 3379c.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 32.08 RCW

ORGANIZATION AND POWERS

Sections

- 32.08.142 Additional powers—Powers of federal mutual savings bank.
- 32.08.146 Additional powers—Powers and authorities granted to federal mutual savings banks after July 27, 2003—Restrictions.
- 32.08.153 Additional powers—Powers and authorities of national banks as of July 27, 2003.
- 32.08.155 Additional powers—Powers and authorities conferred upon national banks after July 27, 2003—Restrictions.
- 32.08.157 Additional powers—Powers and authorities of banks.

32.08.142 Additional powers—Powers of federal mutual savings bank. Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under the laws of this state, a mutual savings bank shall have the powers and authorities that any federal mutual savings bank had on July 28, 1985, or a subsequent date not later than July 27, 2003. As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of federal mutual savings banks shall apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section. [2003 c 24 § 7; 1999 c 14 § 18; 1996 c 2 § 24; 1994 c 256 § 98; 1985 c 56 § 3; 1981 c 86 § 10.]

Severability—2003 c 24: See RCW 30.04.901.

Severability—1999 c 14: See RCW 32.35.900.

Severability—1996 c 2: See RCW 30.38.900.

Findings—Construction—1994 c 256: See RCW 43.320.007.

Severability—1981 c 86: See note following RCW 32.08.140.

32.08.146 Additional powers—Powers and authorities granted to federal mutual savings banks after July 27, 2003—Restrictions. A mutual savings bank may exercise the powers and authorities granted, after July 27, 2003, to

federal mutual savings banks or their successors under federal law, only if the director finds that the exercise of such powers and authorities:

- (1) Serves the convenience and advantage of depositors and borrowers; and
- (2) Maintains the fairness of competition and parity between state-chartered savings banks and federal savings banks or their successors under federal law.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of federal mutual savings banks or their successors under federal law shall apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section. [2003 c 24 § 8; 1999 c 14 § 19; 1996 c 2 § 25; 1994 c 256 § 99.]

Severability—2003 c 24: See RCW 30.04.901.

Severability—1999 c 14: See RCW 32.35.900.

Severability—1996 c 2: See RCW 30.38.900.

Findings—Construction—1994 c 256: See RCW 43.320.007.

32.08.153 Additional powers—Powers and authorities of national banks as of July 27, 2003. Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under the laws of this state, a mutual savings bank shall have the powers and authorities that national banks had on July 27, 2003.

The restrictions, limitations, and requirements applicable to specific powers or authorities of national banks apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section. [2003 c 24 § 4.]

Severability—2003 c 24: See RCW 30.04.901.

32.08.155 Additional powers—Powers and authorities conferred upon national banks after July 27, 2003—Restrictions. Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under the laws of this state, a mutual savings bank shall have the powers and authorities conferred upon a national bank after July 27, 2003, only if the director finds that the exercise of such powers and authorities:

- (1) Serves the convenience and advantage of depositors, borrowers, or the general public; and
- (2) Maintains the fairness of competition and parity between mutual savings banks and national banks.

As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of national banks apply to mutual savings banks exercising those powers or authori-

ties permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section. [2003 c 24 § 5.]

Severability—2003 c 24: See RCW 30.04.901.

32.08.157 Additional powers—Powers and authorities of banks. Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under this title, a mutual savings bank has the powers and authorities that a bank has under Title 30 RCW. As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

The restrictions, limitations, and requirements applicable to specific powers or authorities of banks apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section. [2003 c 24 § 6.]

Severability—2003 c 24: See RCW 30.04.901.

Chapter 32.24 RCW

INSOLVENCY AND LIQUIDATION

Sections

32.24.080 Transfer of assets when insolvent—Penalty. (*Effective July 1, 2004.*)

32.24.080 Transfer of assets when insolvent—Penalty. (*Effective July 1, 2004.*) (1) Every transfer of its property or assets by any mutual savings bank in this state, made (a) after it has become insolvent, (b) within ninety days before the date the director takes possession of such savings bank under RCW 32.24.050 or the federal deposit insurance corporation is appointed as receiver or liquidator of such savings bank under RCW 32.24.090, and (c) with the view to the preference of one creditor over another or to prevent equal distribution of its property and assets among its creditors, shall be void.

(2) Every trustee, officer, or employee making any transfer described in subsection (1) of this section is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 196; 1994 c 92 § 346; 1985 c 56 § 15; 1955 c 13 § 32.24.080. Prior: 1931 c 132 § 10; RRS § 3379a.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 32.32 RCW

CONVERSION OF MUTUAL SAVINGS BANK TO CAPITAL STOCK SAVINGS BANK

Sections

32.32.500 Merger, consolidation, conversion, etc.—Approval—Concentration limits.

32.32.500 Merger, consolidation, conversion, etc.—Approval—Concentration limits. (1) A savings bank may merge with, consolidate with, convert into, acquire a branch or branches of, or sell its branch or branches to any deposi-

tory institution as defined in 12 U.S.C. Sec. 461, any financial institution chartered or authorized to do business under the laws of any state, territory, province, or other jurisdiction of the United States or another nation, or any holding company or subsidiary of such an institution, subject to the approval of (a) the director of financial institutions if the surviving institution is one chartered under Title 30, 31, 32, or 33 RCW, or (b) if the surviving institution is to be a bank, savings bank, savings and loan association, or other depository institution that is federally chartered under the laws of the United States, the federal regulatory authority having jurisdiction over the transaction under the applicable laws, or (c) if the surviving institution is to be a bank, savings bank, savings and loan association, or other depository or financial institution that is chartered under the laws of another state or territory of the United States, the regulatory authority having jurisdiction over that transaction under the applicable laws, or (d) if the surviving institution is to be a bank, savings bank, savings and loan association, or other depository or financial institution that is chartered under the laws of a nation other than the United States or of a state, territory, province, or other jurisdiction of such nation, the director of financial institutions, or (e) if the surviving institution is to be a bank holding company or financial holding company, the Federal Reserve Board or its successor under 12 U.S.C. Sec. 1842 (a) and (d).

(2) In the case of a liquidation, acquisition, merger, consolidation, or conversion of a converted savings bank, chapter 32.34 RCW shall apply.

(3) The concentration limits applicable to these transactions, pursuant to 12 U.S.C. Sec. 1831u(b)(2)(C) with respect to interstate transactions, shall be those imposed pursuant to 12 U.S.C. Sec. 1828(c)(5), as applied by the federal regulatory authority having jurisdiction over that transaction under the applicable law, in lieu of the concentration limits of 12 U.S.C. Sec. 1831u(b)(2)(B). [2003 c 24 § 9; 1999 c 14 § 30; 1996 c 2 § 28. Prior: 1994 c 256 § 111; 1994 c 92 § 404; 1985 c 56 § 31; 1981 c 85 § 99.]

Severability—2003 c 24: See RCW 30.04.901.

Severability—1999 c 14: See RCW 32.35.900.

Severability—1996 c 2: See RCW 30.38.900.

Findings—Construction—1994 c 256: See RCW 43.320.007.

Title 33

SAVINGS AND LOAN ASSOCIATIONS

Chapters

33.24 Loans and investments.

Chapter 33.24 RCW

LOANS AND INVESTMENTS

Sections

33.24.360 Acquisition of control of association—Unlawful, when—Application—Contents—Notice to other associations—Penalty. (*Effective July 1, 2004.*)

33.24.380 Repealed. (*Effective July 1, 2004.*)

33.24.360 Acquisition of control of association—Unlawful, when—Application—Contents—Notice to

other associations—Penalty. (*Effective July 1, 2004.*) (1) It is unlawful for any acquiring party to acquire control of an association until thirty days after the date of filing with the director an application containing substantially all of the following information and any additional information that the director may prescribe as necessary or appropriate in the public interest or for the protection of deposit account holders, borrowers or stockholders:

(a) The identity, character, and experience of each acquiring party by whom or on whose behalf acquisition is to be made;

(b) The financial and managerial resources and future prospects of each acquiring party involved in the acquisition;

(c) The terms and conditions of any proposed acquisition and the manner in which such acquisition is to be made;

(d) The source and amount of the funds or other consideration used or to be used in making the acquisition and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction and the names of the parties. However, where a source of funds is a loan made in the lender's ordinary course of business, if the person filing the statement so requests, the director shall not disclose the name of the lender to the public;

(e) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the association to sell its assets, to merge it with any company, or to make any other major changes in its business or corporate structure or management;

(f) The identification of any persons employed, retained or to be compensated by the acquiring party, or by any person on his or her behalf, who makes solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and brief description of the terms of such employment, retainer, or arrangements for compensation;

(g) Copies of all invitations for tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

(2) When an unincorporated company is required to file the statements under subsection (1)(a), (b), and (f) of this section, the director may require that the information be given with respect to each partner of a partnership or limited partnership, by each member of a syndicate or group, and by each person who controls a partner or member. When an incorporated company is required to file the statements under subsection (1)(a), (b), and (f) of this section, the director may require that the information be given for the corporation and for each officer and director of the corporation and for each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation. If any tender offer, request or invitation for tenders or other agreement to acquire control is proposed to be made by means of a registration statement under the federal securities act of 1933 (48 Stat. 74, 15 U.S.C. Sec. 77a), as amended, or in circumstances requiring the disclosure of similar information under the federal securities exchange act of 1934 (48 Stat. 881; 15 U.S.C. Sec. 77b), as amended, or in an application filed with the federal home loan bank board requiring similar disclosure, such registration statement or application may be filed with the director in lieu of the requirements of this section.

(3) The director shall give notice by mail to all associations doing business within the state of the filing of an application to acquire control of an association. The association shall transmit a check to the director for two hundred dollars when filing the application to cover the expense of notification. Persons interested in protesting the application may contact the director in person or by writing prior to a date which shall be given in the notice.

(4) Any person who willfully violates this section, or any regulation or order thereunder, is guilty of a misdemeanor and shall be fined not more than one thousand dollars for each day during which the violation continues. [2003 c 53 § 197; 1994 c 92 § 447; 1982 c 3 § 54; 1979 c 113 § 13; 1973 c 130 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1979 c 113: See note following RCW 33.04.020.

Severability—1973 c 130: See note following RCW 33.24.350.

33.24.380 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 34

ADMINISTRATIVE LAW

Chapters

34.05 Administrative procedure act.

Chapter 34.05 RCW

ADMINISTRATIVE PROCEDURE ACT

Sections

34.05.220	Rules for agency procedure—Indexes of opinions and statements.
34.05.312	Rules coordinator.
34.05.320	Notice of proposed rule—Contents—Distribution by agency—Institutions of higher education.
34.05.328	Significant legislative rules, other selected rules.
34.05.362	Postadoption notice.
34.05.518	Direct review by court of appeals.

34.05.220 Rules for agency procedure—Indexes of opinions and statements. (1) In addition to other rule-making requirements imposed by law:

(a) Each agency may adopt rules governing the formal and informal procedures prescribed or authorized by this chapter and rules of practice before the agency, together with forms and instructions. If an agency has not adopted procedural rules under this section, the model rules adopted by the chief administrative law judge under RCW 34.05.250 govern procedures before the agency.

(b) To assist interested persons dealing with it, each agency shall adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information and make submissions or requests. No person may be required to comply with agency procedure not adopted as a rule as herein required.

(2) To the extent not prohibited by federal law or regulation, nor prohibited for reasons of confidentiality by state law, each agency shall keep on file for public inspection all final orders, decisions, and opinions in adjudicative proceedings, interpretive statements, policy statements, and any digest or index to those orders, decisions, opinions, or statements prepared by or for the agency.

(3) No agency order, decision, or opinion is valid or effective against any person, nor may it be invoked by the agency for any purpose, unless it is available for public inspection. This subsection is not applicable in favor of any person who has actual knowledge of the order, decision, or opinion. The agency has the burden of proving that knowledge, but may meet that burden by proving that the person has been properly served with a copy of the order.

(4) Each agency that is authorized by law to exercise discretion in deciding individual cases is encouraged to formalize the general principles that may evolve from these decisions by adopting the principles as rules that the agency will follow until they are amended or repealed.

(5) To the extent practicable, any rule proposed or adopted by an agency should be clearly and simply stated, so that it can be understood by those required to comply.

(6) The departments of employment security, labor and industries, ecology, and revenue shall develop and use a notification process to communicate information to the public regarding the postadoption notice required by RCW 34.05.362. [2003 c 246 § 2; 1994 c 249 § 24; 1989 c 175 § 4; 1988 c 288 § 202; 1981 c 67 § 13; 1967 c 237 § 2; 1959 c 234 § 2. Formerly RCW 34.04.020.]

Finding—2003 c 246: See note following RCW 34.05.362.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

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

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.05.312 Rules coordinator. Each agency shall designate a rules coordinator, who shall have knowledge of the subjects of rules being proposed or prepared within the agency for proposal, maintain the records of any such action, and respond to public inquiries about possible, proposed, or adopted rules and the identity of agency personnel working, reviewing, or commenting on them. The office and mailing address of the rules coordinator shall be published in the state register at the time of designation and in the first issue of each calendar year thereafter for the duration of the designation. The rules coordinator may be an employee of another agency. [2003 c 246 § 4; 1993 c 202 § 3.]

Finding—2003 c 246: See note following RCW 34.05.362.

Finding—Intent—1993 c 202: See note following RCW 34.05.310.

34.05.320 Notice of proposed rule—Contents—Distribution by agency—Institutions of higher education. (1) At least twenty days before the rule-making hearing at which the agency receives public comment regarding adoption of a rule, the agency shall cause notice of the hearing to be published in the state register. The publication constitutes the proposal of a rule. The notice shall include all of the following:

(a) A title, a description of the rule's purpose, and any other information which may be of assistance in identifying the rule or its purpose;

(b) Citations of the statutory authority for adopting the rule and the specific statute the rule is intended to implement;

(c) A summary of the rule and a statement of the reasons supporting the proposed action;

(d) The agency personnel, with their office location and telephone number, who are responsible for the drafting, implementation, and enforcement of the rule;

(e) The name of the person or organization, whether private, public, or governmental, proposing the rule;

(f) Agency comments or recommendations, if any, regarding statutory language, implementation, enforcement, and fiscal matters pertaining to the rule;

(g) Whether the rule is necessary as the result of federal law or federal or state court action, and if so, a copy of such law or court decision shall be attached to the purpose statement;

(h) When, where, and how persons may present their views on the proposed rule;

(i) The date on which the agency intends to adopt the rule;

(j) A short explanation of the rule, its purpose, and anticipated effects, including in the case of a proposal that would modify existing rules, a short description of the changes the proposal would make;

(k) A copy of the small business economic impact statement prepared under chapter 19.85 RCW, or an explanation for why the agency did not prepare the statement;

(l) A statement indicating whether RCW 34.05.328 applies to the rule adoption; and

(m) If RCW 34.05.328 does apply, a statement indicating that a copy of the preliminary cost-benefit analysis described in RCW 34.05.328(1)(c) is available.

(2) Upon filing notice of the proposed rule with the code reviser, the adopting agency shall have copies of the notice on file and available for public inspection and shall forward three copies of the notice to the rules review committee.

(3) No later than three days after its publication in the state register, the agency shall cause a copy of the notice of proposed rule adoption to be mailed to each person, city, and county that has made a request to the agency for a mailed copy of such notices. An agency may charge for the actual cost of providing a requesting party mailed copies of these notices.

(4) In addition to the notice required by subsections (1) and (2) of this section, an institution of higher education shall cause the notice to be published in the campus or standard newspaper of the institution at least seven days before the rule-making hearing. [2003 c 165 § 1; 1995 c 403 § 302; 1994 c 249 § 14; 1992 c 197 § 8; 1989 c 175 § 7; 1988 c 288 § 303; 1982 c 221 § 2; 1982 c 6 § 7; 1980 c 186 § 10; 1977 ex.s. c 84 § 1. Formerly RCW 34.04.045.]

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

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

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

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

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

Severability—1982 c 6: See RCW 19.85.900.

Severability—1980 c 186: "If any provision of this 1980 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 186 § 29.]

Expedited adoption: RCW 34.05.353.

Small business economic impact statement—Purpose—Contents: RCW 19.85.040.

34.05.328 Significant legislative rules, other selected rules. (1) Before adopting a rule described in subsection (5) of this section, an agency shall:

(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

(c) Provide notification in the notice of proposed rule making under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice shall include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis shall be available when the rule is adopted under RCW 34.05.360;

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

(f) Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law;

(g) Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law;

(h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

(i) A state statute that explicitly allows the agency to differ from federal standards; or

(ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and

(i) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

(2) In making its determinations pursuant to subsection (1)(b) through (h) of this section, the agency shall place in the rule-making file documentation of sufficient quantity and

quality so as to persuade a reasonable person that the determinations are justified.

(3) Before adopting rules described in subsection (5) of this section, an agency shall place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan shall describe how the agency intends to:

(a) Implement and enforce the rule, including a description of the resources the agency intends to use;

(b) Inform and educate affected persons about the rule;

(c) Promote and assist voluntary compliance; and

(d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

(4) After adopting a rule described in subsection (5) of this section regulating the same activity or subject matter as another provision of federal or state law, an agency shall do all of the following:

(a) Provide to the *business assistance center a list citing by reference the other federal and state laws that regulate the same activity or subject matter;

(b) Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to do one or more of the following:

(i) Deferring to the other entity;

(ii) Designating a lead agency; or

(iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to comply with this subsection (4)(b), the agency shall report to the legislature pursuant to (c) of this subsection;

(c) Report to the joint administrative rules review committee:

(i) The existence of any overlap or duplication of other federal or state laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws; and

(ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

(5)(a) Except as provided in (b) of this subsection, this section applies to:

(i) Significant legislative rules of the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the insurance commissioner, and to the legislative rules of the department of fish and wildlife implementing chapter 77.55 RCW; and

(ii) Any rule of any agency, if this section is voluntarily made applicable to the rule by the agency, or is made applicable to the rule by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320.

(b) This section does not apply to:

(i) Emergency rules adopted under RCW 34.05.350;

(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(iii) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(iv) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(v) Rules the content of which is explicitly and specifically dictated by statute;

(vi) Rules that set or adjust fees or rates pursuant to legislative standards; or

(vii) Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

(c) For purposes of this subsection:

(i) A "procedural rule" is a rule that adopts, amends, or repeals (A) any procedure, practice, or requirement relating to any agency hearings; (B) any filing or related process requirement for making application to an agency for a license or permit; or (C) any policy statement pertaining to the consistent internal operations of an agency.

(ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.

(iii) A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

(d) In the notice of proposed rule making under RCW 34.05.320, an agency shall state whether this section applies to the proposed rule pursuant to (a)(i) of this subsection, or if the agency will apply this section voluntarily.

(6) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of financial management, after consulting with state agencies, counties, and cities, and business, labor, and environmental organizations, shall report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report shall document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

(e) The extent to which this section has improved the acceptability of state rules to those regulated; and

(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section. [2003 c 165 § 2; 2003 c 39 § 13; 1997 c 430 § 1; 1995 c 403 § 201.]

Reviser's note: *(1) The business assistance center and its powers and duties were terminated June 30, 1995. RCW 43.31.083, 43.31.085, 43.31.087, and 43.31.089 were repealed by 1993 c 280 § 81, effective June 30, 1996.

(2) This section was amended by 2003 c 39 § 13 and by 2003 c 165 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Short title—Intent—1995 c 403: "(1) The legislature finds that:

(a) One of its fundamental responsibilities, to the benefit of all the citizens of the state, is the protection of public health and safety, including health and safety in the workplace, and the preservation of the extraordinary natural environment with which Washington is endowed;

(b) Essential to this mission is the delegation of authority to state agencies to implement the policies established by the legislature; and that the adoption of administrative rules by these agencies helps assure that these policies are clearly understood, fairly applied, and uniformly enforced;

(c) Despite its importance, Washington's regulatory system must not impose excessive, unreasonable, or unnecessary obligations; to do so serves only to discredit government, makes enforcement of essential regulations more difficult, and detrimentally affects the economy of the state and the well-being of our citizens.

(2) The legislature therefore enacts chapter 403, Laws of 1995, to be known as the regulatory reform act of 1995, to ensure that the citizens and environment of this state receive the highest level of protection, in an effective and efficient manner, without stifling legitimate activities and responsible economic growth. To that end, it is the intent of the legislature, in the adoption of chapter 403, Laws of 1995, that:

(a) Unless otherwise authorized, substantial policy decisions affecting the public be made by those directly accountable to the public, namely the legislature, and that state agencies not use their administrative authority to create or amend regulatory programs;

(b) When an agency is authorized to adopt rules imposing obligations on the public, that it do so responsibly: The rules it adopts should be justified and reasonable, with the agency having determined, based on common sense criteria established by the legislature, that the obligations imposed are truly in the public interest;

(c) Governments at all levels better coordinate their regulatory efforts to avoid confusing and frustrating the public with overlapping or contradictory requirements;

(d) The public respect the process whereby administrative rules are adopted, whether or not they agree with the result: Members of the public affected by administrative rules must have the opportunity for a meaningful role in their development; the bases for agency action must be legitimate and clearly articulated;

(e) Members of the public have adequate opportunity to challenge administrative rules with which they have legitimate concerns through meaningful review of the rule by the executive, the legislature, and the judiciary. While it is the intent of the legislature that upon judicial review of a rule, a court should not substitute its judgment for that of an administrative agency, the court should determine whether the agency decision making was rigorous and deliberative; whether the agency reached its result through a process of reason; and whether the agency took a hard look at the rule before its adoption;

(f) In order to achieve greater compliance with administrative rules at less cost, that a cooperative partnership exist between agencies and regulated parties that emphasizes education and assistance before the imposition of penalties; and

(g) Workplace safety and health in this state not be diminished, whether provided by constitution, by statute, or by rule." [1995 c 403 § 1.]

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: "Sections 201, 301 through 305, 401 through 405, and 801 of this act shall apply

to all rule making for which a statement of proposed rule making under RCW 34.05.320 is filed after July 23, 1995." [1995 c 403 § 1102.]

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

Expedited adoption: RCW 34.05.353.

34.05.362 Postadoption notice. Either before or within two hundred days after the effective date of an adopted rule that imposes additional requirements on businesses the violation of which subjects the business to a penalty, assessment, or administrative sanction, an agency identified in RCW 34.05.220(6) shall notify businesses affected by the rule of the requirements of the rule and how to obtain technical assistance to comply. Notification must be provided by e-mail, if possible, to every person identified to receive the postadoption notice under RCW 34.05.220(6).

The notification must announce the rule change, briefly summarize the rule change, refer to appeal procedures under RCW 34.05.330, and include a contact for more information. Failure to notify a specific business under this section does not invalidate a rule or waive the requirement to comply with the rule. The requirements of this section do not apply to emergency rules adopted under RCW 34.05.350. [2003 c 246 § 3.]

Finding—2003 c 246: "The legislature finds that many businesses in the state are frustrated by the complexity of the regulatory system. The Washington Administrative Code containing agency rules now fills twelve volumes, and appears to be growing each year. While the vast majority of businesses make a good faith attempt to comply with applicable laws and rules, many find it extremely difficult to keep up with agencies' issuance of new rules and requirements. Therefore, state agencies are directed to make a good faith attempt to notify businesses affected by rule changes that may subject noncomplying businesses to penalties." [2003 c 246 § 1.]

34.05.518 Direct review by court of appeals. (1) The final decision of an administrative agency in an adjudicative proceeding under this chapter may, except as otherwise provided in chapter 43.21L RCW, be directly reviewed by the court of appeals either (a) upon certification by the superior court pursuant to this section or (b) if the final decision is from an environmental board as defined in subsection (3) of this section, upon acceptance by the court of appeals after a certificate of appealability has been filed by the environmental board that rendered the final decision.

(2) For direct review upon certification by the superior court, an application for direct review must be filed with the superior court within thirty days of the filing of the petition for review in superior court. The superior court may certify a case for direct review only if the judicial review is limited to the record of the agency proceeding and the court finds that:

(a) Fundamental and urgent issues affecting the future administrative process or the public interest are involved which require a prompt determination;

(b) Delay in obtaining a final and prompt determination of such issues would be detrimental to any party or the public interest;

(c) An appeal to the court of appeals would be likely regardless of the determination in superior court; and

(d) The appellate court's determination in the proceeding would have significant precedential value.

Procedures for certification shall be established by court rule.

[2003 RCW Supp—page 410]

(3)(a) For the purposes of direct review of final decisions of environmental boards, environmental boards include those boards identified in RCW 43.21B.005 and growth management hearings boards as identified in RCW 36.70A.250.

(b) An environmental board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest and either:

(i) Fundamental and urgent statewide or regional issues are raised; or

(ii) The proceeding is likely to have significant precedential value.

(4) The environmental board shall state in the certificate of appealability which criteria it applied, explain how that criteria was met, and file with the certificate a copy of the final decision.

(5) For an appellate court to accept direct review of a final decision of an environmental board, it shall consider the same criteria outlined in subsection (3) of this section, except as otherwise provided in chapter 43.21L RCW.

(6) The procedures for direct review of final decisions of environmental boards include:

(a) Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review with the superior court and serve the appropriate environmental board and all parties of record. The application shall request the environmental board to file a certificate of appealability.

(b) If an issue on review is the jurisdiction of the environmental board, the board may file an application for direct review on that issue.

(c) The environmental board shall have thirty days to grant or deny the request for a certificate of appealability and its decision shall be filed with the superior court and served on all parties of record.

(d) If a certificate of appealability is issued, the parties shall have fifteen days from the date of service to file a notice of discretionary review in the superior court, and the notice shall include a copy of the certificate of appealability and a copy of the final decision.

(e) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(f) If a certificate of appealability is denied, review shall be by the superior court. The superior court's decision may be appealed to the court of appeals. [2003 c 393 § 16; 1995 c 382 § 5; 1988 c 288 § 503; 1980 c 76 § 1. Formerly RCW 34.04.133.]

Implementation—Effective date—2003 c 393: See RCW 43.21L.900 and 43.21L.901.

Title 35

CITIES AND TOWNS

Chapters

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Chapter 35.13 RCW

ANNEXATION OF UNINCORPORATED AREAS

Sections

- 35.13.410 Alternative direct petition method—Commencement of proceedings—Notice to legislative body—Meeting—Assumption of indebtedness—Comprehensive plan.
- 35.13.420 Alternative direct petition method—Petition—Signers—Content.
- 35.13.430 Alternative direct petition method—Notice of hearing.
- 35.13.440 Alternative direct petition method—Ordinance providing for annexation.
- 35.13.450 Alternative direct petition method—Effective date of annexation and comprehensive plan—Assessment, taxation of territory annexed.
- 35.13.460 Alternative direct petition method—Method is alternative.
- 35.13.470 Annexation of territory within urban growth areas—Interlocal agreement—Public hearing—Ordinance providing for annexation.
- 35.13.480 Annexation of territory within urban growth areas—County may initiate process with other cities or towns, when—Interlocal agreement—Public hearing—Ordinance providing for annexation—Referendum—Election, when necessary.

35.13.410 Alternative direct petition method—Commencement of proceedings—Notice to legislative body—Meeting—Assumption of indebtedness—Comprehensive plan. Proceedings for the annexation of territory pursuant to this section and RCW 35.13.420 shall be commenced as provided in this section. Before the circulation of a petition for annexation, the initiating party or parties who, except as provided in RCW 28A.335.110, shall be either not less than ten percent of the residents of the area to be annexed or the owners of not less than ten percent of the acreage for which annexation is petitioned, shall notify the legislative body of the city or town in writing of their intention to commence annexation proceedings. The legislative body shall set a date, not later than sixty days after the filing of the request, for a meeting with the initiating parties to determine whether the city or town will accept, reject, or geographically modify the proposed annexation, whether it shall require the simultaneous adoption of the comprehensive plan if such plan has been prepared and filed for the area to be annexed as provided for in RCW 35.13.177 and 35.13.178, and whether it shall require the assumption of all or any portion of existing city or town indebtedness by the area to be annexed. If the legislative body requires the assumption of all or any portion of indebtedness and/or the adoption of a comprehensive plan, it shall record this action in its minutes and the petition for annexation shall be so drawn as to clearly indicate this fact.

There shall be no appeal from the decision of the legislative body. [2003 c 331 § 2.]

Intent—2003 c 331: "The legislature recognizes that on March 14, 2002, the Washington state supreme court decided in *Grant County Fire Protection District No. 5 v. City of Moses Lake*, 145 Wn.2d 702 (2002), that the petition method of annexation authorized by RCW 35.13.125 through 35.13.160 and 35A.14.120 through 35A.14.150 is unconstitutional. The legislature also recognizes that on October 11, 2002, the Washington state supreme court granted a motion for reconsideration of this decision. The legislature intends to provide a new method of direct petition annexation that enables property owners and registered voters to participate in an annexation process without the constitutional defect identified by the court." [2003 c 331 § 1.]

Severability—2003 c 331: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 331 § 14.]

Effective date—2003 c 331: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2003]." [2003 c 331 § 15.]

35.13.420 Alternative direct petition method—Petition—Signers—Content. (1) A petition for annexation of an area contiguous to a city or town may be made in writing addressed to and filed with the legislative body of the municipality to which annexation is desired. Except where all the property sought to be annexed is property of a school district, and the school directors thereof file the petition for annexation as in RCW 28A.335.110, the petition must be signed by the owners of a majority of the acreage for which annexation is petitioned and a majority of the registered voters residing in the area for which annexation is petitioned.

(2) If no residents exist within the area proposed for annexation, the petition must be signed by the owners of a majority of the acreage for which annexation is petitioned.

(3) The petition shall set forth a legal description of the property proposed to be annexed that complies with RCW 35.02.170, and shall be accompanied by a drawing that outlines the boundaries of the property sought to be annexed. If the legislative body has required the assumption of all or any portion of city or town indebtedness by the area annexed, and/or the adoption of a comprehensive plan for the area to be annexed, these facts, together with a quotation of the minute entry of such requirement or requirements, shall be set forth in the petition. [2003 c 331 § 3.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

35.13.430 Alternative direct petition method—Notice of hearing. When a petition for annexation is filed with the city or town council, or commission in those cities having a commission form of government, that meets the requirements of RCW 35.13.410, 35.13.420, and 35.21.005, of which fact satisfactory proof may be required by the council or commission, the council or commission may entertain the same, fix a date for a public hearing thereon and cause notice of the hearing to be published in one issue of a newspaper of general circulation in the city or town. The notice shall also be posted in three public places within the territory proposed for annexation, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation. The expense of

publication and posting of the notice shall be borne by the signers of the petition. [2003 c 331 § 4.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

35.13.440 Alternative direct petition method—Ordinance providing for annexation. Following the hearing, the council or commission shall determine by ordinance whether annexation shall be made. Subject to the provisions of RCW 35.13.410, 35.13.460, and 35.21.005, they may annex all or any portion of the proposed area but may not include in the annexation any property not described in the petition. Upon passage of the ordinance a certified copy shall be filed with the board of county commissioners of the county in which the annexed property is located. [2003 c 331 § 5.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

35.13.450 Alternative direct petition method—Effective date of annexation and comprehensive plan—Assessment, taxation of territory annexed. Upon the date fixed in the ordinance of annexation, the area annexed shall become part of the city or town. All property within the annexed territory shall, if the annexation petition so provided, be assessed and taxed at the same rate and on the same basis as the property of such annexing city or town is assessed and taxed to pay for all or of any portion of the then outstanding indebtedness of the city or town to which the area is annexed, approved by the voters, contracted, or incurred before, or existing at, the date of annexation. If the annexation petition so provided, all property in the annexed area is subject to and is a part of the comprehensive plan as prepared and filed as provided for in RCW 35.13.177 and 35.13.178. [2003 c 331 § 6.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

35.13.460 Alternative direct petition method—Method is alternative. The method of annexation provided for in RCW 35.13.410 through 35.13.450 is an alternative method, and does not supersede any other method. [2003 c 331 § 7.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

35.13.470 Annexation of territory within urban growth areas—Interlocal agreement—Public hearing—Ordinance providing for annexation. (1) The legislative body of a county, city, or town planning under chapter 36.70A RCW and subject to the requirements of RCW 36.70A.215 may initiate an annexation process for unincorporated territory by adopting a resolution commencing negotiations for an interlocal agreement as provided in chapter 39.34 RCW between a county and any city or town within the county. The territory proposed for annexation must meet the following criteria: (a) Be within the city or town urban growth area designated under RCW 36.70A.110, and (b) at least sixty percent of the boundaries of the territory proposed for annexation must be contiguous to the annexing city or town or one or more cities or towns.

(2) If the territory proposed for annexation has been designated in an adopted county comprehensive plan as part of an urban growth area, urban service area, or potential annexation area for a specific city or town, or if the urban growth area territory proposed for annexation has been designated in a written agreement between a city or town and a county for annexation to a specific city or town, the designation or designations shall receive full consideration before a city or county may initiate the annexation process provided for in RCW 35.13.480.

(3) The agreement shall describe the boundaries of the territory to be annexed. A public hearing shall be held by each legislative body, separately or jointly, before the agreement is executed. Each legislative body holding a public hearing shall, separately or jointly, publish the agreement at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the territory proposed for annexation.

(4) Following adoption and execution of the agreement by both legislative bodies, the city or town legislative body shall adopt an ordinance providing for the annexation of the territory described in the agreement. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the territory to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of the requirements. Any territory to be annexed through an ordinance adopted under this section is annexed and becomes a part of the city or town upon the date fixed in the ordinance of annexation, which date may not be fewer than forty-five days after adoption of the ordinance. [2003 c 299 § 1.]

35.13.480 Annexation of territory within urban growth areas—County may initiate process with other cities or towns, when—Interlocal agreement—Public hearing—Ordinance providing for annexation—Referendum—Election, when necessary. (1) The legislative body of any county planning under chapter 36.70A RCW and subject to the requirements of RCW 36.70A.215 may initiate an annexation process with the legislative body of any other cities or towns that are contiguous to the territory proposed for annexation in RCW 35.13.470 if:

(a) The county legislative body initiated an annexation process as provided in RCW 35.13.470; and

(b) The affected city or town legislative body adopted a responsive resolution rejecting the proposed annexation or declined to create the requested interlocal agreement with the county; or

(c) More than one hundred eighty days have passed since adoption of a county resolution as provided for in RCW 35.13.470 and the parties have not adopted or executed an interlocal agreement providing for the annexation of unincorporated territory. The legislative body for either the county or an affected city or town may, however, pass a resolution extending the negotiation period for one or more six-month

periods if a public hearing is held and findings of fact are made prior to each extension.

(2) Any county initiating the process provided for in subsection (1) of this section must do so by adopting a resolution commencing negotiations for an interlocal agreement as provided in chapter 39.34 RCW between the county and any city or town within the county. The annexation area must be within an urban growth area designated under RCW 36.70A.110 and at least sixty percent of the boundaries of the territory to be annexed must be contiguous to one or more cities or towns.

(3) The agreement shall describe the boundaries of the territory to be annexed. A public hearing shall be held by each legislative body, separately or jointly, before the agreement is executed. Each legislative body holding a public hearing shall, separately or jointly, publish the agreement at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the territory proposed for annexation.

(4) Following adoption and execution of the agreement by both legislative bodies, the city or town legislative body shall adopt an ordinance providing for the annexation. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the territory to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of the requirements. Any area to be annexed through an ordinance adopted under this section is annexed and becomes a part of the city or town upon the date fixed in the ordinance of annexation, which date may not be less than forty-five days after adoption of the ordinance.

(5) The annexation ordinances provided for in RCW 35.13.470(4) and subsection (4) of this section are subject to referendum for forty-five days after passage. Upon the filing of a timely and sufficient referendum petition with the legislative body, signed by registered voters in number equal to not less than fifteen percent of the votes cast in the last general state election in the area to be annexed, the question of annexation shall be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose not less than forty-five days nor more than ninety days after the filing of the referendum petition. Notice of the election shall be given as provided in RCW 35.13.080 and the election shall be conducted as provided in the general election law. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation ordinance, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the city or town upon the date fixed in the ordinance of annexation.

(6) If more than one city or town adopts interlocal agreements providing for annexation of the same unincorporated territory as provided by this section, an election shall be held in the area to be annexed pursuant to RCW 35.13.070 and

35.13.080. In addition to the provisions of RCW 35.13.070 and 35.13.080, the ballot shall also contain a separate proposition allowing voters to cast votes in favor of annexation to any one city or town participating in an interlocal agreement as provided by this section. If a majority of voters voting on the proposition vote against annexation, the proposition is defeated. If, however, a majority of voters voting in the election approve annexation, the area shall be annexed to the city or town receiving the highest number of votes among those cast in favor of annexation.

(7) Costs for an election required under subsection (6) of this section shall be borne by the county. [2003 c 299 § 2.]

Chapter 35.21 RCW

MISCELLANEOUS PROVISIONS

Sections

35.21.005	Sufficiency of petitions.
35.21.210	Sewerage, drainage, and water supply.
35.21.404	Fish enhancement project—City's or town's liability.
35.21.688	Family day-care provider's home facility—City or town may not prohibit in residential or commercial area—Conditions.
35.21.855	Taxation of intellectual property creating activities—Gross receipts tax prohibited—Exceptions.

35.21.005 Sufficiency of petitions. Wherever in this title petitions are required to be signed and filed, the following rules shall govern the sufficiency thereof:

(1) A petition may include any page or group of pages containing an identical text or prayer intended by the circulators, signers or sponsors to be presented and considered as one petition and containing the following essential elements when applicable, except that the elements referred to in (d) and (e) of this subsection are essential for petitions referring or initiating legislative matters to the voters, but are directory as to other petitions:

(a) The text or prayer of the petition which shall be a concise statement of the action or relief sought by petitioners and shall include a reference to the applicable state statute or city ordinance, if any;

(b) If the petition initiates or refers an ordinance, a true copy thereof;

(c) If the petition seeks the annexation, incorporation, withdrawal, or reduction of an area for any purpose, an accurate legal description of the area proposed for such action and if practical, a map of the area;

(d) Numbered lines for signatures with space provided beside each signature for the name and address of the signer and the date of signing;

(e) The warning statement prescribed in subsection (2) of this section.

(2) Petitions shall be printed or typed on single sheets of white paper of good quality and each sheet of petition paper having a space thereon for signatures shall contain the text or prayer of the petition and the following warning:

WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise

not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature shall be executed in ink or indelible pencil and shall be followed by the name and address of the signer and the date of signing.

(3) The term "signer" means any person who signs his or her own name to the petition.

(4) To be sufficient a petition must contain valid signatures of qualified registered voters or property owners, as the case may be, in the number required by the applicable statute or ordinance. Within three working days after the filing of a petition, the officer with whom the petition is filed shall transmit the petition to the county auditor for petitions signed by registered voters, or to the county assessor for petitions signed by property owners for determination of sufficiency. The officer or officers whose duty it is to determine the sufficiency of the petition shall proceed to make such a determination with reasonable promptness and shall file with the officer receiving the petition for filing a certificate stating the date upon which such determination was begun, which date shall be referred to as the terminal date. Additional pages of one or more signatures may be added to the petition by filing the same with the appropriate filing officer prior to such terminal date. Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the receiving officer prior to such terminal date. Such written request shall so sufficiently describe the petition as to make identification of the person and the petition certain. The name of any person seeking to withdraw shall be signed exactly the same as contained on the petition and, after the filing of such request for withdrawal, prior to the terminal date, the signature of any person seeking such withdrawal shall be deemed withdrawn.

(5) Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.

(6) A variation on petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.

(7) Signatures, including the original, of any person who has signed a petition two or more times shall be stricken.

(8) Signatures followed by a date of signing which is more than six months prior to the date of filing of the petition shall be stricken.

(9) When petitions are required to be signed by the owners of property, the determination shall be made by the county assessor. Where validation of signatures to the petition is required, the following shall apply:

(a) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse;

(b) In the case of mortgaged property, the signature of the mortgagor shall be sufficient, without the signature of his or her spouse;

(c) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor, shall be deemed sufficient, without the signature of his or her spouse;

(d) Any officer of a corporation owning land within the area involved who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign on behalf of such corporation, and shall attach to the petition a certified excerpt from the bylaws of such corporation showing such authority;

(e) When property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property; and

(f) When a parcel of property is owned by multiple owners, the signature of an owner designated by the multiple owners is sufficient.

(10) The officer or officers responsible for determining the sufficiency of the petition shall do so in writing and transmit the written certificate to the officer with whom the petition was originally filed. [2003 c 331 § 8; 1996 c 286 § 6.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

35.21.210 Sewerage, drainage, and water supply.

Any city or town shall have power to provide for the sewerage, drainage, and water supply thereof, and to establish, construct, and maintain a system or systems of sewers and drains and a system or systems of water supply, within or without the corporate limits of such city or town, and to control, regulate, and manage the same. In addition, any city or town may, as part of maintaining a system of sewers and drains or a system of water supply, or independently of such a system or systems, participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other inter-governmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 11; 1965 c 7 § 35.21.210. Prior: 1911 c 98 § 3; RRS § 9354.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

35.21.404 Fish enhancement project—City's or town's liability. A city or town is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of RCW 77.55.290 and has been permitted by the department of fish and wildlife. [2003 c 39 § 14; 1998 c 249 § 9.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.290.

35.21.688 Family day-care provider's home facility—City or town may not prohibit in residential or commercial area—Conditions. (1) Except as provided in subsections (2) and (3) of this section, no city or town may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's facility serving twelve or fewer children.

(2) A city or town may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size,

setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the office of child care policy licensor as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care who work a nonstandard work shift.

(3) A city or town may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

(4) This section may not be construed to prohibit a city or town from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home serving twelve or fewer children in an area zoned for residential or commercial use, if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 74.15.020. [2003 c 286 § 1.]

35.21.855 Taxation of intellectual property creating activities—Gross receipts tax prohibited—Exceptions.

(1) A city may not impose a gross receipts tax on intellectual property creating activities.

(2) A city may impose a gross receipts tax measured by gross receipts from royalties only on taxpayers domiciled in the city. For the purposes of this section, "royalties" does not include gross receipts from casual or isolated sales as defined in RCW 82.04.040, grants, capital contributions, donations, or endowments.

(3) This section does not prohibit a city from imposing a gross receipts tax measured by the value of products manufactured in the city merely because intellectual property creating activities are involved in the design or manufacturing of the products. An intellectual property creating activity shall not constitute an activity defined within the meaning of the term "to manufacture" under chapter 82.04 RCW.

(4) This section does not prohibit a city from imposing a gross receipts tax measured by the gross proceeds of sales made in the city merely because intellectual property creating activities are involved in creation of the articles sold.

(5) This section does not prohibit a city from imposing a gross receipts tax measured by the gross income received for services rendered in the city merely because intellectual property creating activities are some part of services rendered.

(6) A tax in effect on January 1, 2002, is not subject to this section until January 1, 2004.

(7) The definitions in this subsection apply to this section.

(a) "Gross receipts tax" means a tax measured by gross proceeds of sales, gross income of the business, or value proceeding or accruing.

(b) "City" includes cities, code cities, and towns.

(c) "Domicile" means the principal place from which the trade or business of the taxpayer is directed and managed. A taxpayer has only one domicile.

(d) "Intellectual property creating activity" means research, development, authorship, creation, or general or specific inventive activity without regard to whether the intellectual property creating activity actually results in the creation of patents, trademarks, trade secrets, subject matter subject to copyright, or other intellectual property.

(e) "Manufacture," "gross proceeds of sales," "gross income of the business," "value proceeding or accruing," and "royalties" have the same meanings as under chapter 82.04 RCW.

(f) "Value of products" means the value of products as determined under RCW 82.04.450. [2003 c 69 § 1.]

Chapter 35.22 RCW

FIRST CLASS CITIES

Sections

35.22.235	First class mayor-council cities—Twelve councilmembers. (<i>Effective July 1, 2004.</i>)
35.22.245	First class mayor-council cities—Seven councilmembers. (<i>Effective July 1, 2004.</i>)
35.22.705	Purchase of electric power and energy from joint operating agency.

35.22.235 First class mayor-council cities—Twelve councilmembers. (*Effective July 1, 2004.*) All regular elections in first class cities having a mayor-council form of government whose charters provide for twelve councilmembers elected for a term of two years, two being elected from each of six wards, and for the election of a mayor, treasurer, and comptroller for terms of two years, shall be held biennially as provided in RCW 29A.04.330. The term of each councilmember, mayor, treasurer, and comptroller shall be four years and until his or her successor is elected and qualified and assumes office in accordance with RCW 29A.20.040. The terms of the councilmembers shall be so staggered that six councilmembers shall be elected to office at each regular election. [2003 c 111 § 2301. Prior: 1981 c 213 § 3; 1979 ex.s. c 126 § 11; 1965 c 9 § 29.13.023; prior: 1963 c 200 § 2; 1957 c 168 § 1. Formerly RCW 29.13.023.]

Effective date—2003 c 111: See RCW 29A.04.903.

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

35.22.245 First class mayor-council cities—Seven councilmembers. (*Effective July 1, 2004.*) All regular elections in first class cities having a mayor-council form of government whose charters provide for seven councilmembers, one to be elected from each of six wards and one at large, for a term of two years, and for the election of a mayor, comptroller, treasurer and attorney for two year terms, shall be held biennially as provided in RCW 29A.04.330. The terms of the six councilmembers to be elected by wards shall be four years and until their successors are elected and qualified and the term of the councilmember to be elected at large shall be two years and until their successors are elected and qualified. The terms of the councilmembers shall be so staggered that three ward councilmembers and the councilmember at large shall be elected at each regular election. The term of the mayor, attorney, treasurer, and comptroller shall be four years and

until their successors are elected and qualified and assume office in accordance with RCW 29A.20.040. [2003 c 111 § 2302. Prior: 1981 c 213 § 4; 1979 ex.s. c 126 § 12; 1965 c 9 § 29.13.024; prior: 1963 c 200 § 3; 1957 c 168 § 2. Formerly RCW 29.13.024.]

Effective date—2003 c 111: See RCW 29A.04.903.

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

35.22.705 Purchase of electric power and energy from joint operating agency. A city of the first class may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the city must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or public utility district under the contract or other instrument. [2003 c 138 § 4.]

Chapter 35.23 RCW SECOND CLASS CITIES

Sections

35.23.705 Purchase of electric power and energy from joint operating agency.

35.23.705 Purchase of electric power and energy from joint operating agency. A city of the second class may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the city must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or public utility district under the contract or other instrument. [2003 c 138 § 5.]

Chapter 35.27 RCW TOWNS

Sections

35.27.610 Purchase of electric power and energy from joint operating agency.

35.27.610 Purchase of electric power and energy from joint operating agency. A town may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the town must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or public utility district under the contract or other instrument. [2003 c 138 § 6.]

Chapter 35.30 RCW UNCLASSIFIED CITIES

Sections

35.30.070 Adoption of powers granted to code cities—Resolution required.

35.30.080 Alternative election procedures—Resolution required.

35.30.070 Adoption of powers granted to code cities—Resolution required. If the legislative body of an unclassified city determines that it would serve the best interests and general welfare of such municipality, the body may by resolution adopt any powers granted to cities classified under Title 35A RCW including, but not limited to, the power to define the functions, powers, and duties of its officers and employees. [2003 c 42 § 1.]

35.30.080 Alternative election procedures—Resolution required. (1) When a majority of the legislative body of an unclassified city determines that it would serve the best interests and general welfare of such municipality to change the election procedures of such city to the procedures specified in this section, such legislative body may, by resolution, declare its intention to adopt such procedures for the city. Such resolution must be adopted at least one hundred eighty days before the general municipal election at which the new election procedures are implemented. Within ten days after the passage of the resolution, the legislative body shall cause it to be published at least once in a newspaper of general circulation within the city.

(2) All general municipal elections in an unclassified city adopting a resolution under subsection (1) of this section shall be held biennially in the odd-numbered years as provided in *RCW 29.13.020 and shall be held in accordance with the general election laws of the state.

The term of the treasurer shall not commence in the same biennium in which the term of the mayor commences. Candidates for the city council shall run for specific council positions. The staggering of terms of city officers shall be established at the first election, where the simple majority of the persons elected as councilmembers receiving the greatest

numbers of votes shall be elected to four-year terms of office and the remainder of the persons elected as councilmembers and the treasurer shall be elected to two-year terms of office. Thereafter, all elected city officers shall be elected for four-year terms and until their successors are elected and qualified and assume office in accordance with **RCW 29.04.170. [2003 c 42 § 2.]

Reviser's note: *(1) RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

** (2) RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Chapter 35.32A RCW

BUDGETS IN CITIES OVER 300,000

Sections

35.32A.090 Budget mandatory—Other expenditures void—Liability of public officials—Penalty. (*Effective July 1, 2004.*)

35.32A.090 Budget mandatory—Other expenditures void—Liability of public officials—Penalty. (*Effective July 1, 2004.*) (1) There shall be no orders, authorizations, allowances, contracts or payments made or attempted to be made in excess of the expenditure allowances authorized in the final budget as adopted or modified as provided in this chapter, and any such attempted excess expenditure shall be void and shall never be the foundation of a claim against the city.

(2) Any public official authorizing, auditing, allowing, or paying any claims or demands against the city in violation of the provisions of this chapter shall be jointly and severally liable to the city in person and upon their official bonds to the extent of any payments upon such claims or demands.

(3) Any person violating any of the provisions of this chapter, in addition to any other liability or penalty provided therefor, is guilty of a misdemeanor. [2003 c 53 § 198; 1967 c 7 § 11.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 35.36 RCW

EXECUTION OF BONDS BY PROXY—FIRST CLASS CITIES

Sections

35.36.040 Designation of bonds to be signed. (*Effective July 1, 2004.*)

35.36.040 Designation of bonds to be signed. (*Effective July 1, 2004.*) (1) The officer whose duty it is to cause any bonds to be printed, engraved, or lithographed, shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds to be printed, engraved, or lithographed and the manner of numbering them.

(2) Every printer, engraver, or lithographer who prints, engraves, or lithographs a greater number of bonds than that specified or who prints, engraves, or lithographs more than one bond bearing the same number is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 199; 1965 c 7 § 35.36.040. Prior: 1929 c 212 § 6; RRS § 9005-10.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 35.45 RCW

LOCAL IMPROVEMENTS—BONDS AND WARRANTS

Sections

35.45.050 Call of bonds.
35.45.180 Transfer from general fund to local improvement fund authorized—Ordinance.

35.45.050 Call of bonds. Except when bonds have been issued with a fixed maturity schedule or with a fixed maximum annual retirement schedule as authorized in RCW 35.45.020, the city or town treasurer shall call in and pay the principal of one or more bonds of any issue (1) in their numerical order; or (2) where bonds are issued with an estimated redemption schedule, in either numerical order or chronological order by maturity and within each maturity by date of estimated redemption as determined in the bond authorizing ordinance, whenever there is sufficient money in any local improvement fund, against which the bonds have been issued, over and above that which is sufficient for the payment of interest on all unpaid bonds of that issue. The call shall be made for publication in the city or town official newspaper in its first publication following the date of delinquency of any installment of the assessment or as soon thereafter as practicable. The call shall state that bonds No. . . . (giving the serial number or numbers of the bonds called) will be paid on the day the next interest payments are due and that interest on those bonds will cease upon that date. [2003 c 139 § 2; 1983 c 167 § 43; 1971 ex.s. c 116 § 11; 1965 c 7 § 35.45.050. Prior: 1911 c 98 § 54, part; RRS § 9407, part.]

Effective date—2003 c 139: See note following RCW 35.45.180.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

35.45.180 Transfer from general fund to local improvement fund authorized—Ordinance. Any city or town, when authorized by ordinance, may transfer permanently or temporarily, money from its general fund, or from any other municipal fund as its council shall specify in that ordinance, to its local improvement guaranty fund or any of its local improvement funds to be used for the purposes of these local improvement funds, including the payment of bonds, interest coupons, warrants, or other short-term obligations. The powers granted by this section are to be exercised at the discretion of a council when found to be in the public interest, but money transferred by means of these powers shall not be pledged to the payment of any local improvement district obligations. [2003 c 139 § 1.]

Effective date—2003 c 139: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 139 § 4.]

Chapter 35.58 RCW

METROPOLITAN MUNICIPAL CORPORATIONS

Sections

35.58.273 Public transportation systems—Motor vehicle excise tax authorized—Credits—Public hearing on route and design—

- Rules—Sales and use tax on rental cars. (*Effective if Initiative Measure No. 776 is upheld by pending court action.*)
- 35.58.273 Public transportation systems—Motor vehicle excise tax authorized—Credits—Public hearing on route and design—Rules—Sales and use tax on rental cars. (*Effective if Initiative Measure No. 776 is declared unconstitutional by pending court action.*)
- 35.58.274 through 35.58.278 Repealed.

35.58.273 Public transportation systems—Motor vehicle excise tax authorized—Credits—Public hearing on route and design—Rules—Sales and use tax on rental cars. (*Effective if Initiative Measure No. 776 is upheld by pending court action.*) (1) Before utilization of any tax moneys collected under authorization of this section for acquisition of right of way or construction of a mass transit facility on a separate right of way the municipality shall adopt rules affording the public an opportunity for "corridor public hearings" and "design public hearings" as herein defined, which rule shall provide in detail the procedures necessary for public participation in the following instances: (a) Prior to adoption of location and design plans having a substantial social, economic or environmental effect upon the locality upon which they are to be constructed or (b) on such mass rapid transit systems operating on a separate right of way whenever a substantial change is proposed relating to location or design in the adopted plan. In adopting rules the municipality shall adhere to the provisions of the Administrative Procedure Act.

(2) A "corridor public hearing" is a public hearing that: (a) Is held before the municipality is committed to a specific mass transit route proposal, and before a route location is established; (b) is held to afford an opportunity for participation by those interested in the determination of the need for, and the location of, the mass rapid transit system; (c) provides a public forum that affords a full opportunity for presenting views on the mass rapid transit system route location, and the social, economic and environmental effects on that location and alternate locations: PROVIDED, That such hearing shall not be deemed to be necessary before adoption of an overall mass rapid transit system plan by a vote of the electorate of the municipality.

(3) A "design public hearing" is a public hearing that: (a) Is held after the location is established but before the design is adopted; and (b) is held to afford an opportunity for participation by those interested in the determination of major design features of the mass rapid transit system; and (c) provides a public forum to afford a full opportunity for presenting views on the mass rapid transit system design, and the social, economic, environmental effects of that design and alternate designs.

(4) A municipality may impose a sales and use tax, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the municipality that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax shall not exceed 1.944 percent. The base of the tax shall be the selling price in the case of a sales tax or the rental value of the vehicle used in the case of a use tax. The tax imposed under this section shall be deducted from the amount of tax otherwise due under RCW 82.08.020(2). The revenue collected under this section shall be collected and distributed in the same manner as sales and use taxes under chapter 82.14 RCW.

Any motor vehicle (special) excise tax previously imposed under the provisions of RCW 35.58.273 shall be repealed, terminated and expire on December 5, 2002. [2003 c 1 § 4 (Initiative Measure No. 776, approved November 5, 2002); 1998 c 321 § 25 (Referendum Bill No. 49, approved November 3, 1998); 1992 c 194 § 11; 1991 c 339 § 29; 1991 c 309 § 1; (1991 c 363 § 40 repealed by 1991 c 309 § 6); 1990 c 42 § 316; 1987 c 428 § 2; 1979 ex.s. c 175 § 2; 1969 ex.s. c 255 § 8.]

Reviser's note: RCW 35.58.273 was also repealed by 2002 c 6 § 2 without cognizance of its amendment by 2003 c 1 § 4 (Initiative Measure No. 776). For rule of construction, see RCW 1.12.025.

Construction—Intent—2003 c 1 (Initiative Measure No. 776): See notes following RCW 46.16.0621.

Severability—Savings—2003 c 1 (Initiative Measure No. 776): See note following RCW 81.104.160.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Contingent effective dates—1998 c 321 §§ 23-42: "(2) Sections 23 through 30 and 32 through 42 of this act take effect January 1, 1999, and section 31 of this act takes effect June 30, 2000, if sections 1 through 21 and 44 through 46 of this act are validly submitted to and are approved and ratified by the voters at a general election held in November 1998. If sections 1 through 21 and 44 through 46 of this act are not approved and ratified, sec-

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tions 23 through 42 of this act are null and void in their entirety." [1998 c 321 § 47 (Referendum Bill No. 49, approved November 3, 1998).]

***Reviser's note:** Subsection (1) of this section was vetoed by the governor. The vetoed language is as follows:

"(1) Section 22 of this act takes effect ninety days after the end of the legislative session as provided in Article 2, section 1 of the state Constitution."

Legislative intent—1992 c 194: See note following RCW 82.08.020.

Effective dates—1992 c 194: See note following RCW 46.04.466.

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

Effective date—1987 c 428: See note following RCW 47.78.010.

Administrative procedure act: Chapter 34.05 RCW.

35.58.273 Public transportation systems—Motor vehicle excise tax authorized—Credits—Public hearing on route and design—Rules—Sales and use tax on rental cars. (*Effective if Initiative Measure No. 776 is declared unconstitutional by pending court action.*) [1998 c 321 § 25 (Referendum Bill No. 49, approved November 3, 1998); 1992 c 194 § 11; 1991 c 339 § 29; 1991 c 309 § 1; (1991 c 363 § 40 repealed by 1991 c 309 § 6); 1990 c 42 § 316; 1987 c 428 § 2; 1979 ex.s. c 175 § 2; 1969 ex.s. c 255 § 8.] Repealed by 2002 c 6 § 2.

Reviser's note: (1) RCW 35.58.273 was also amended by 2003 c 1 § 4 (Initiative Measure No. 776) without cognizance of its repeal by 2002 c 6 § 2. For rule of construction, see RCW 1.12.025.

(2) The constitutionality of Initiative Measure No. 776 is being challenged in *Pierce Co. v. State of Washington*, King Co. Superior Ct. No. 02-2-35125-5 SEA.

35.58.274 through 35.58.278 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 35.63 RCW PLANNING COMMISSIONS

Sections

- 35.63.185 Family day-care provider's home facility—City may not prohibit in residential or commercial area—Conditions.
- 35.63.230 Watershed restoration projects—Permit processing—Fish habitat enhancement project.

35.63.185 Family day-care provider's home facility—City may not prohibit in residential or commercial area—Conditions. (1) Except as provided in subsections (2) and (3) of this section, no city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.

(2) A city may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the office of child care policy licenser as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(3) A city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property

owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

(4) Nothing in this section shall be construed to prohibit a city from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 74.15.020. [2003 c 286 § 3; 1995 c 49 § 1; 1994 c 273 § 14.]

35.63.230 Watershed restoration projects—Permit processing—Fish habitat enhancement project. A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of RCW 77.55.290(1) shall be reviewed and approved according to the provisions of RCW 77.55.290. [2003 c 39 § 15; 1998 c 249 § 5; 1995 c 378 § 8.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.290.

Chapter 35.67 RCW

SEWERAGE SYSTEMS—REFUSE COLLECTION AND DISPOSAL

Sections

35.67.020	Authority to construct system and fix rates and charges—Classification of services and facilities—Assistance for low-income persons.
35.67.370	Mobile home parks—Replacement of septic systems—Charges for unused sewer service.
35.67.380	Cooperative watershed management.

35.67.020 Authority to construct system and fix rates and charges—Classification of services and facilities—Assistance for low-income persons. (1) Every city and town may construct, condemn and purchase, acquire, add to, maintain, conduct, and operate systems of sewerage and systems and plants for refuse collection and disposal together with additions, extensions, and betterments thereto, within and without its limits. Every city and town has full jurisdiction and authority to manage, regulate, and control them and, except as provided in subsection (3) of this section, to fix, alter, regulate, and control the rates and charges for their use.

(2) Subject to subsection (3) of this section, the rates charged under this section must be uniform for the same class of customers or service and facilities furnished. In classifying customers served or service and facilities furnished by such system of sewerage, the city or town legislative body may in its discretion consider any or all of the following factors:

(a) The difference in cost of service and facilities to the various customers;

(b) The location of the various customers within and without the city or town;

(c) The difference in cost of maintenance, operation, repair, and replacement of the various parts of the system;

(d) The different character of the service and facilities furnished various customers;

(e) The quantity and quality of the sewage delivered and the time of its delivery;

(f) The achievement of water conservation goals and the discouragement of wasteful water use practices;

(g) Capital contributions made to the system, including but not limited to, assessments;

(h) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; and

(i) Any other matters which present a reasonable difference as a ground for distinction.

(3) The rate a city or town may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

(5) A city or town may provide assistance to aid low-income persons in connection with services provided under this chapter.

(6) Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer.

(7) Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

(8) A city or town shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using city or town employees unless the on-site system is connected by a publicly owned collection system to the city or town's sewerage system, and the on-site system represents the first step in the sewage disposal process. Nothing in this section shall affect the authority of state or local health officers to carry out their responsibilities under any other applicable law. [2003 c 394 § 1; 1997 c 447 § 8; 1995 c 124 § 3; 1991 c 347 § 17; 1965 c 7 § 35.67.020. Prior: 1959 c 90 § 1; 1955 c 266 § 3; prior: 1941 c 193 § 1, part; Rem. Supp. 1941 § 9354-4, part.]

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

35.67.370 Mobile home parks—Replacement of septic systems—Charges for unused sewer service. (1) Cities, towns, or counties may not require existing mobile home parks to replace existing, functional septic systems with a sewer system within the community unless the local board of health determines that the septic system is failing.

(2) Cities, towns, and counties are prohibited from requiring existing mobile home parks to pay a sewer service availability charge, standby charge, consumption charge, or any other similar types of charges associated with available but unused sewer service, including any interest or penalties for nonpayment or enforcement charges, until the mobile home park connects to the sewer service. When a mobile home park connects to a sewer, cities, towns, and counties may only charge mobile home parks prospectively from the date of connection for their sewer service. Chapter 297, Laws of 2003 is remedial in nature and applies retroactively to 1993. [2003 c 297 § 1; 1998 c 61 § 1.]

35.67.380 Cooperative watershed management. In addition to the authority provided in RCW 35.67.020, a city may, as part of maintaining a system sewerage, participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 12.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

Chapter 35.84 RCW

UTILITY AND OTHER SERVICES BEYOND CITY LIMITS

Sections

35.84.060 Street railway extensions.

35.84.060 Street railway extensions. Every municipal corporation which owns or operates an urban public transportation system as defined in RCW 47.04.082 within its corporate limits may acquire, construct, extend, own, or operate such urban public transportation system to any point or points not to exceed fifteen miles outside of its corporate limits: PROVIDED, That no municipal corporation shall extend its urban public transportation system beyond its corporate limits to operate in any territory already served by a privately operated auto transportation company holding a certificate of public convenience and necessity from the utilities and transportation commission.

As a condition of receiving state funding, the municipal corporation shall submit a maintenance management plan for certification by the transportation commission or its successor entity. The plan must inventory all transportation system assets within the direction and control of the municipality, and provide a preservation plan based on lowest life-cycle cost methodologies. [2003 c 363 § 302; 1969 ex.s. c 281 § 26; 1965 c 7 § 35.84.060. Prior: 1919 c 138 § 1; 1917 c 59 § 1; RRS § 9213.]

Finding—Intent—2003 c 363: "The legislature finds that roads, streets, bridges, and highways in the state represent public assets worth over

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one hundred billion dollars. These investments require regular maintenance and preservation, or rehabilitation, to provide cost-effective transportation services. Many of these facilities are in poor condition. Given the magnitude of public investment and the importance of safe, reliable roadways to the motoring public, the legislature intends to create stronger accountability to ensure that cost-effective maintenance and preservation is provided for these transportation facilities." [2003 c 363 § 301.]

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

Chapter 35.92 RCW

MUNICIPAL UTILITIES

Sections

35.92.020 Authority to acquire and operate sewerage and solid waste handling systems, plants, sites, or facilities—Classification of services and facilities for rates—Assistance for low-income persons.

35.92.420 Purchase of electric power and energy from joint operating agency.

35.92.020 Authority to acquire and operate sewerage and solid waste handling systems, plants, sites, or facilities—Classification of services and facilities for rates—Assistance for low-income persons. (1) A city or town may construct, condemn and purchase, purchase, acquire, add to, alter, maintain, and operate systems, plants, sites, or other facilities of sewerage as defined in RCW 35.67.010, or solid waste handling as defined by RCW 70.95.030. A city or town shall have full authority to manage, regulate, operate, control, and, except as provided in subsection (3) of this section, to fix the price of service and facilities of those systems, plants, sites, or other facilities within and without the limits of the city or town.

(2) Subject to subsection (3) of this section, the rates charged shall be uniform for the same class of customers or service and facilities. In classifying customers served or service and facilities furnished by a system or systems of sewerage, the legislative authority of the city or town may in its discretion consider any or all of the following factors:

- (a) The difference in cost of service and facilities to customers;
- (b) The location of customers within and without the city or town;
- (c) The difference in cost of maintenance, operation, repair, and replacement of the parts of the system;
- (d) The different character of the service and facilities furnished to customers;
- (e) The quantity and quality of the sewage delivered and the time of its delivery;
- (f) Capital contributions made to the systems, plants, sites, or other facilities, including but not limited to, assessments;
- (g) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; and
- (h) Any other factors that present a reasonable difference as a ground for distinction.

(3) The rate a city or town may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting sys-

tems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

(5) A city or town may provide assistance to aid low-income persons in connection with services provided under this chapter.

(6) Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer.

(7) Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

(8) A city or town shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using city or town employees unless the on-site system is connected by a publicly owned collection system to the city or town's sewerage system, and the on-site system represents the first step in the sewage disposal process. Nothing in this section shall affect the authority of state or local health officers to carry out their responsibilities under any other applicable law. [2003 c 394 § 2; 1997 c 447 § 9; 1995 c 124 § 5; 1989 c 399 § 6; 1985 c 445 § 5; 1965 c 7 § 35.92.020. Prior: 1959 c 90 § 7; 1957 c 288 § 3; 1957 c 209 § 3; prior: 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.020.]

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

35.92.420 Purchase of electric power and energy from joint operating agency. A city or town may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the city or town must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned

upon the performance or nonperformance of the joint operating agency or a city, town, or public utility district under the contract or other instrument. [2003 c 138 § 3.]

Chapter 35.95A RCW

CITY TRANSPORTATION AUTHORITY— MONORAIL TRANSPORTATION

Sections

35.95A.120 Dissolution of authority.

35.95A.120 Dissolution of authority. The city transportation authority may be dissolved by a vote of the people residing within the boundaries of the authority if the authority is faced with significant financial problems. However, the authority may covenant with holders of its bonds that it may not be dissolved and shall continue to exist solely for the purpose of continuing to levy and collect any taxes or assessments levied by it and pledged to the repayment of debt and to take other actions, including the appointment of a trustee, as necessary to allow it to repay any remaining debt. No such debt may be incurred by the authority on a project until thirty days after a final environmental impact statement on that project has been issued as required by chapter 43.21C RCW. The amount of the authority's initial bond issue is limited to the amount of the project costs in the subsequent two years as documented by a certified engineer or by submitted bids, plus any reimbursable capital expenses already incurred at the time of the bond issue. The authority may size the first bond issue consistent with the internal revenue service five-year spend down schedule if an independent financial advisor recommends such an approach is financially advisable. Any referendum petition to dissolve the city transportation authority must be filed with the city council and contain provisions for dissolution of the authority. Within seven days, the city prosecutor must review the validity of the petition and submit its report to the petitioner and city council. If the petitioner's claims are deemed valid by the city prosecutor, within ten days of the petitioner's filing, the city council will confer with the petitioner concerning the form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title must be posed as a question and an affirmative vote on the measure results in authority retention and a negative vote on the measure results in the authority's dissolution. The petitioner will be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner has ninety days in which to secure on petition forms, the signatures of not less than fifteen percent of the registered voters in the authority area and to file the signed petitions with the filing officer. Each petition form must contain the ballot title and the full text of the measure to be referred. The filing officer will verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the filing officer shall submit the initiative to the authority area voters at a general or special election held on one of the dates provided in *RCW 29.13.010 as determined by the city council, which election will not take place later than one hundred twenty days after the signed petition has been filed with the filing officer. [2003 c 147 § 14; 2002 c 248 § 13.]

*Reviser's note: RCW 29.13.010 was recodified as RCW 29A.04.320 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Effective date—2003 c 147: See note following RCW 47.10.861.

Chapter 35.101 RCW TOURISM PROMOTION AREAS

Sections

35.101.010	Definitions.
35.101.020	Establishment—Petition.
35.101.030	Resolution of intention to establish area—Hearing.
35.101.040	Limitations on area included—Interlocal agreements.
35.101.050	Lodging charge—Limitations.
35.101.060	Notice of hearing.
35.101.070	Conduct of hearing—Termination of proceedings.
35.101.080	Establishment of area—Ordinance.
35.101.090	Administration, collection of lodging charge.
35.101.100	Local tourism promotion account created.
35.101.110	Charges are in addition to special assessments.
35.101.120	Charges are not a tax on sale of lodging.
35.101.130	Legislative authority has sole discretion concerning use for tourism promotion—Contracts for operation of area.
35.101.140	Disestablishment of area—Hearing—Resolution.

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

(1) "Area" means a tourism promotion area.

(2) "Legislative authority" means the legislative authority of any county with a population greater than forty thousand but less than one million, or of any city or town within such a county, including unclassified cities or towns operating under special charters.

(3) "Lodging business" means a person that furnishes lodging taxable by the state under chapter 82.08 RCW that has forty or more lodging units.

(4) "Tourism promotion" means activities and expenditures designed to increase tourism and convention business, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists, and operating tourism destination marketing organizations. [2003 c 148 § 1.]

35.101.020 Establishment—Petition. For the purpose of establishing a tourism promotion area, an initiation petition must be presented to the legislative authority having jurisdiction of the area in which the proposed tourism promotion area is to be located. The initiation petition must include the following:

(1) A description of the boundaries of the proposed area;

(2) The proposed uses and projects to which the proposed revenue from the charge shall be put and the total estimated costs;

(3) The estimated rate for the charge with a proposed breakdown by class of lodging business if such classification is to be used; and

(4) The signatures of the persons who operate lodging businesses in the proposed area who would pay sixty percent or more of the proposed charges. [2003 c 148 § 2.]

35.101.030 Resolution of intention to establish area—Hearing. A legislative authority shall, after receiving a valid initiation petition under RCW 35.101.020, adopt a resolution of intention to establish an area. The resolution must state:

(1) The time and place of a hearing to be held by the legislative authority to consider the establishment of an area;

(2) A description of boundaries in the proposed area;

(3) The proposed area uses and projects to which the proposed revenues from the charge shall be dedicated and the total estimated cost of projects; and

(4) The estimated rate or rates of the charge with a proposed breakdown of classifications as described in RCW 35.101.050. [2003 c 148 § 3.]

35.101.040 Limitations on area included—Interlocal agreements. (1) Except as provided in subsection (2) of this section, no legislative authority may establish a tourism promotion area that includes within the boundaries of the area:

(a) Any portion of an incorporated city or town, if the legislative authority is that of the county; and

(b) Any portion of the county outside of an incorporated city or town, if the legislative authority is that of the city or town.

(2) By interlocal agreement adopted pursuant to chapter 39.34 RCW, a county, city, or town may establish a tourism promotion area that includes within the boundaries of the area portions of its own jurisdiction and another jurisdiction, if the other jurisdiction is party to the agreement. [2003 c 148 § 4.]

35.101.050 Lodging charge—Limitations. A legislative authority may impose a charge on the furnishing of lodging by a lodging business located in the area.

(1) There shall not be more than six classifications upon which a charge can be imposed.

(2) Classifications can be based upon the number of rooms, room revenue, or location within the area.

(3) Each classification may have its own rate, which shall be expressed in terms of nights of stay.

(4) In no case may the rate under this section be in excess of two dollars per night of stay. [2003 c 148 § 5.]

35.101.060 Notice of hearing. Notice of a hearing held under RCW 35.101.030 shall be given by:

(1) One publication of the resolution of intention in a newspaper of general circulation in the city or county in which the area is to be established; and

(2) Mailing a complete copy of the resolution of intention to each lodging business in the proposed area.

Publication and mailing shall be completed at least ten days prior to the date and time of the hearing. [2003 c 148 § 6.]

35.101.070 Conduct of hearing—Termination of proceedings. Whenever a hearing is held under RCW 35.101.030, the legislative authority shall hear all protests and receive evidence for or against the proposed action. The legislative authority may continue the hearing from time to time. Proceedings shall terminate if protest is made by the lodging businesses in the area which would pay a majority of the proposed charges. [2003 c 148 § 7.]

35.101.080 Establishment of area—Ordinance. Only after an initiation petition has been presented to the legisla-

tive authority under RCW 35.101.020 and only after the legislative authority has conducted a hearing under RCW 35.101.030, may the legislative authority adopt an ordinance to establish an area. If the legislative authority adopts an ordinance to establish an area, the ordinance shall contain the following information:

- (1) The number, date, and title of the resolution of intention pursuant to which it was adopted;
- (2) The time and place the hearing was held concerning the formation of the area;
- (3) The description of the boundaries of the area;
- (4) The initial or additional rate of charges to be imposed with a breakdown by classification, if such classification is used;
- (5) A statement that an area has been established; and
- (6) The uses to which the charge revenue shall be put. Uses shall conform to the uses declared in the initiation petition under RCW 35.101.020. [2003 c 148 § 8.]

35.101.090 Administration, collection of lodging charge. (1) The charge authorized by this chapter shall be administered by the department of revenue and shall be collected by lodging businesses from those persons who are taxable by the state under chapter 82.08 RCW. Chapter 82.32 RCW applies to the charge imposed under this chapter.

(2) At least seventy-five days prior to the effective date of the resolution or ordinance imposing the charge, the legislative authority shall contract for the administration and collection by the department of revenue.

(3) The charges authorized by this chapter that are collected by the department of revenue shall be deposited by the department in the local tourism promotion account created in RCW 35.101.100. [2003 c 148 § 9.]

35.101.100 Local tourism promotion account created. The local tourism promotion account is created in the custody of the state treasurer. All receipts from the charges for tourism promotion must be deposited into this account. Expenditures from the account may only be used for tourism promotion. The state treasurer shall distribute the money in the account on a monthly basis to the legislative authority on whose behalf the money was collected. [2003 c 148 § 10.]

35.101.110 Charges are in addition to special assessments. The charges imposed under this chapter are in addition to the special assessments that may be levied under chapter 35.87A RCW. [2003 c 148 § 11.]

35.101.120 Charges are not a tax on sale of lodging. The charges imposed under this chapter are not a tax on the "sale of lodging" for the purposes of RCW 82.14.410. [2003 c 148 § 12.]

35.101.130 Legislative authority has sole discretion concerning use for tourism promotion—Contracts for operation of area. (1) The legislative authority imposing the charge shall have sole discretion as to how the revenue derived from the charge is to be used to promote tourism. However, the legislative authority may appoint existing advisory boards or commissions to make recommendations as to

its use, or the legislative authority may create a new advisory board or commission for the [that] purpose.

(2) The legislative authority may contract with tourism destination marketing organizations or other similar organizations to administer the operation of the area, so long as the administration complies with all applicable provisions of law, including this chapter, and with all county, city, or town resolutions and ordinances, and with all regulations lawfully imposed by the state auditor or other state agencies. [2003 c 148 § 13.]

35.101.140 Disestablishment of area—Hearing—Resolution. The legislative authority may disestablish an area by ordinance after a hearing before the legislative authority. The legislative authority shall adopt a resolution of intention to disestablish the area at least fifteen days prior to the hearing required by this section. The resolution shall give the time and place of the hearing. [2003 c 148 § 14.]

Chapter 35.102 RCW

MUNICIPAL BUSINESS AND OCCUPATION TAX

Sections

35.102.010	Findings—Intent.
35.102.020	Limited scope.
35.102.030	Definitions.
35.102.040	Model ordinance—Mandatory provisions.
35.102.050	Nexus required.
35.102.060	Multiple taxation—Credit system.
35.102.070	Reporting frequency.
35.102.080	Computation of interest.
35.102.090	Penalties.
35.102.100	Claim period.
35.102.110	Refund period.
35.102.120	Definitions—Tax classifications.
35.102.130	Allocation and apportionment of income. (<i>Effective January 1, 2008.</i>)
35.102.1301	Municipal business and occupation tax—Study of potential net fiscal impacts.
35.102.140	Municipal business and occupation tax—Implementation by cities—Contingent authority.
35.102.900	Captions not law—2003 c 79.

35.102.010 Findings—Intent. The legislature finds that businesses in Washington are concerned about the potential for multiple taxation that arises due to the various city business and occupation taxes and are concerned about the lack of uniformity among city jurisdictions. The current system has a negative impact on Washington's business climate. The legislature further finds that local business and occupation tax revenue provides a sizable portion of city revenue that is used for essential services. The legislature recognizes that local government services contribute to a healthy business climate.

The legislature intends to provide for a more uniform system of city business and occupation taxes that eliminates multiple taxation, while allowing for some continued local control and flexibility to cities. [2003 c 79 § 1.]

35.102.020 Limited scope. Chapter 79, Laws of 2003 does not apply to taxes on any service that historically or traditionally has been taxed as a utility business for municipal tax purposes, such as:

- (1) A light and power business or a natural gas distribution business, as defined in RCW 82.16.010;
- (2) A telephone business, as defined in RCW 82.04.065;

- (3) Cable television services;
- (4) Sewer or water services;
- (5) Drainage services;
- (6) Solid waste services; or
- (7) Steam services. [2003 c 79 § 2.]

35.102.030 Definitions. The definitions in this section apply throughout chapter 79, Laws of 2003, unless the context clearly requires otherwise.

(1) "Business" has the same meaning as given in chapter 82.04 RCW.

(2) "City" means a city, town, or code city.

(3) "Business and occupation tax" or "gross receipts tax" means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.

(4) "Value of products" has the same meaning as given in chapter 82.04 RCW.

(5) "Gross income of the business" has the same meaning as given in chapter 82.04 RCW.

(6) "Gross proceeds of sales" has the same meaning as given in chapter 82.04 RCW. [2003 c 79 § 3.]

35.102.040 Model ordinance—Mandatory provisions. (1)(a) The cities, working through the association of Washington cities, shall form a model ordinance development committee made up of a representative sampling of cities that as of July 27, 2003, impose a business and occupation tax. This committee shall work through the association of Washington cities to adopt a model ordinance on municipal gross receipts business and occupation tax. The model ordinance and subsequent amendments shall be adopted using a process that includes opportunity for substantial input from business stakeholders and other members of the public. Input shall be solicited from statewide business associations and from local chambers of commerce and downtown business associations in cities that levy a business and occupation tax.

(b) The municipal research council shall contract to post the model ordinance on an internet web site and to make paper copies available for inspection upon request. The department of revenue and the department of licensing shall post copies of or links to the model ordinance on their internet web sites. Additionally, a city that imposes a business and occupation tax must make copies of its ordinance available for inspection and copying as provided in chapter 42.17 RCW.

(c) The definitions and tax classifications in the model ordinance may not be amended more frequently than once every four years, however the model ordinance may be amended at any time to comply with changes in state law. Any amendment to a mandatory provision of the model ordinance must be adopted with the same effective date by all cities.

(2) A city that imposes a business and occupation tax must adopt the mandatory provisions of the model ordinance. The following provisions are mandatory:

(a) A system of credits that meets the requirements of RCW 35.102.060 and a form for such use;

(b) A uniform, minimum small business tax threshold of at least the equivalent of twenty thousand dollars in gross

income annually. A city may elect to deviate from this requirement by creating a higher threshold or exemption but it shall not deviate lower than the level required in this subsection. If a city has a small business threshold or exemption in excess of that provided in this subsection as of January 1, 2003, and chooses to deviate below the threshold or exemption level that was in place as of January 1, 2003, the city must notify all businesses licensed to do business within the city at least one hundred twenty days prior to the potential implementation of a lower threshold or exemption amount;

(c) Tax reporting frequencies that meet the requirements of RCW 35.102.070;

(d) Penalty and interest provisions that meet the requirements of RCW 35.102.080 and 35.102.090;

(e) Claim periods that meet the requirements of RCW 35.102.100;

(f) Refund provisions that meet the requirements of RCW 35.102.110; and

(g) Definitions, which at a minimum, must include the definitions enumerated in RCW 35.102.030 and 35.102.120. The definitions in chapter 82.04 RCW shall be used as the baseline for all definitions in the model ordinance, and any deviation in the model ordinance from these definitions must be described by a comment in the model ordinance.

(3) Except for the system of credits developed to address multiple taxation under subsection (2)(a) of this section, a city may adopt its own provisions for tax exemptions, tax credits, and tax deductions.

(4) Any city that adopts an ordinance that deviates from the nonmandatory provisions of the model ordinance shall make a description of such differences available to the public, in written and electronic form. [2003 c 79 § 4.]

35.102.050 Nexus required. A city may not impose a business and occupation tax on a person unless that person has nexus with the city. For the purposes of this section, the term "nexus" means business activities conducted by a person sufficient to subject that person to the taxing jurisdiction of a city under the standards established for interstate commerce under the commerce clause of the United States Constitution. [2003 c 79 § 5.]

35.102.060 Multiple taxation—Credit system. (1) A city that imposes a business and occupation tax shall provide for a system of credits to avoid multiple taxation as follows:

(a) Persons who engage in business activities that are within the purview of more than one classification of the tax shall be taxable under each applicable classification.

(b) Notwithstanding anything to the contrary in this section, if imposition of the tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit only to the extent necessary to preserve the validity of the tax.

(c) Persons taxable under the retailing or wholesaling classification with respect to selling products in a city shall be allowed a credit against those taxes for any eligible gross receipts taxes paid by the person (i) with respect to the manufacturing of the products sold in the city, and (ii) with respect to the extracting of the products, or the ingredients used in the products, sold in the city. The amount of the

credit shall not exceed the tax liability arising with respect to the sale of those products.

(d) Persons taxable under the manufacturing classification with respect to manufacturing products in a city shall be allowed a credit against that tax for any eligible gross receipts tax paid by the person with respect to extracting the ingredients of the products manufactured in the city and with respect to manufacturing the products other than in the city. The amount of the credit shall not exceed the tax liability arising with respect to the manufacturing of those products.

(e) Persons taxable under the retailing or wholesaling classification with respect to selling products in a city shall be allowed a credit against those taxes for any eligible gross receipts taxes paid by the person with respect to the printing, or the printing and publishing, of the products sold within the city. The amount of the credit shall not exceed the tax liability arising with respect to the sale of those products.

(2) The model ordinance shall be drafted to address the issue of multiple taxation for those tax classifications that are in addition to those enumerated in subsection (1)(c) through (e) of this section. The objective of any such provisions shall be to eliminate multiple taxation of the same income by two or more cities. [2003 c 79 § 6.]

35.102.070 Reporting frequency. A city that imposes a business and occupation tax shall allow reporting and payment of tax on a monthly, quarterly, or annual basis. The frequency for any particular person may be assigned at the discretion of the city, except that monthly reporting may be assigned only if it can be demonstrated that the taxpayer is remitting excise tax to the state on a monthly basis. For persons assigned a monthly frequency, payment is due within the same time period provided for monthly taxpayers under RCW 82.32.045. For persons assigned a quarterly or annual frequency, payment is due within the same time period as provided for quarterly or annual frequency under RCW 82.32.045. [2003 c 79 § 7.]

35.102.080 Computation of interest. (1) A city that imposes a business and occupation tax shall compute interest charged a taxpayer on an underpaid tax or penalty in accordance with RCW 82.32.050.

(2) A city that imposes a business and occupation tax shall compute interest paid on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060. [2003 c 79 § 8.]

35.102.090 Penalties. A city that imposes a business and occupation tax shall provide for the imposition of penalties in accordance with chapter 82.32 RCW. [2003 c 79 § 9.]

35.102.100 Claim period. The provisions relating to the time period allowed for an assessment or correction of an assessment for additional taxes, penalties, or interest shall be in accordance with chapter 82.32 RCW. [2003 c 79 § 10.]

35.102.110 Refund period. The provisions relating to the time period allowed for a refund of taxes paid shall be in accordance with chapter 82.32 RCW. [2003 c 79 § 11.]

35.102.120 Definitions—Tax classifications. (1) In addition to the definitions in RCW 35.102.030, the following terms and phrases must be defined in the model ordinance under RCW 35.102.040, and such definitions shall include any specific requirements as noted in this subsection:

(a) Eligible gross receipts tax.

(b) Extracting.

(c) Manufacturing. Software development may not be defined as a manufacturing activity.

(d) Retailing.

(e) Retail sale.

(f) Services. The term "services" excludes retail or wholesale services.

(g) Wholesale sale.

(h) Wholesaling.

(i) To manufacture.

(j) Commercial and industrial use.

(k) Engaging in business.

(l) Person.

(2) Any tax classifications in addition to those enumerated in subsection (1) of this section that are included in the model ordinance must be uniform among all cities. [2003 c 79 § 12.]

35.102.130 Allocation and apportionment of income. (*Effective January 1, 2008.*) A city that imposes a business and occupation tax shall provide for the allocation and apportionment of a person's gross income, other than persons subject to the provisions of chapter 82.14A RCW, as follows:

(1) Gross income derived from all activities other than those taxed as service or royalties shall be allocated to the location where the activity takes place.

(a) In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

(b) If a business activity allocated under this subsection (1) takes place in more than one city and all cities impose a gross receipts tax, a credit shall be allowed as provided in RCW 35.102.060; if not all of the cities impose a gross receipts tax, the affected cities shall allow another credit or allocation system as they and the taxpayer agree.

(2) Gross income derived as royalties from the granting of intangible rights shall be allocated to the commercial domicile of the taxpayer.

(3) Gross income derived from activities taxed as services shall be apportioned to a city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two.

(a) The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:

(i) The individual is primarily assigned within the city;

(ii) The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent or more of his or her service for the tax period in the city; or

(iii) The individual is not primarily assigned to any place of business for the tax period, the individual does not perform

fifty percent or more of his or her service in any city[,] and the employee resides in the city.

(b) The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if:

(i) The customer location is in the city; or

(ii) The income-producing activity is performed in more than one location and a greater proportion of the service-income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or

(iii) The service-income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.

(c) If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer does business, the taxpayer may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, that one of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable:

(i) Separate accounting;

(ii) The use of a single factor;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

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

(a) "Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

(b) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.

(c) "Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(d) "Customer location" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.

(e) "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.

(f) "Service-taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.

(g) "Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting

in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

(h) "Taxable in the customer location" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so. [2003 c 79 § 13.]

Effective date—2003 c 79 § 13: "Section 13 of this act takes effect January 1, 2008." [2003 c 79 § 19.]

35.102.1301 Municipal business and occupation tax—Study of potential net fiscal impacts. (1) The department of revenue shall conduct a study of the net fiscal impacts of chapter 79, Laws of 2003, with particular emphasis on the revenue impacts of the apportionment and allocation method contained in RCW 35.102.130 and any revenue impact resulting from the increased uniformity and consistency provided through the model ordinance. In conducting the study, the department shall use, and regularly consult with, a committee composed of an equal representation from interested business representatives and from a representative sampling of cities imposing business and occupation taxes. The department shall report the final results of the study to the governor and the fiscal committees of the legislature by November 30, 2005. In addition, the department shall provide progress reports to the governor and the fiscal committees of the legislature on November 30, 2003, and November 30, 2004. As part of its report, the department shall examine and recommend options to address any adverse revenue impacts to local jurisdictions.

(2) For the purposes of this section, "net fiscal impacts" means accounting for the potential of both positive and negative fiscal impacts on local jurisdictions that may result from chapter 79, Laws of 2003.

(3) It is the intent of the legislature through this study to provide accurate fiscal impact analysis and recommended options to alleviate revenue impacts from chapter 79, Laws of 2003 so as to allow local jurisdictions to anticipate and appropriately address any potential adverse revenue impacts from chapter 79, Laws of 2003. [2003 c 79 § 15.]

35.102.140 Municipal business and occupation tax—Implementation by cities—Contingent authority. Cities imposing business and occupation taxes must comply with all requirements of RCW 35.102.020 through 35.102.130 by December 31, 2004. A city that has not complied with the requirements of RCW 35.102.020 through 35.102.130 by December 31, 2004, may not impose a tax that is imposed by a city on the privilege of engaging in business activities. Cities imposing business and occupation taxes after December 31, 2004, must comply with RCW 35.102.020 through 35.102.130. [2003 c 79 § 14.]

35.102.900 Captions not law—2003 c 79. Captions used in this act are not any part of the law. [2003 c 79 § 17.]

Title 35A
OPTIONAL MUNICIPAL CODE

Chapters

- 35A.01 Interpretation of terms.**
35A.14 Annexation by code cities.
35A.21 Provisions affecting all code cities.
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35A.63 Planning and zoning in code cities.
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35A.80 Public utilities.

Municipal business and occupation tax: Chapter 35.102 RCW.

Tourism promotion areas: Chapter 35.101 RCW.

Chapter 35A.01 RCW
INTERPRETATION OF TERMS

Sections

35A.01.040 Sufficiency of petitions.

35A.01.040 Sufficiency of petitions. Wherever in this title petitions are required to be signed and filed, the following rules shall govern the sufficiency thereof:

(1) A petition may include any page or group of pages containing an identical text or prayer intended by the circulators, signers or sponsors to be presented and considered as one petition and containing the following essential elements when applicable, except that the elements referred to in (d) and (e) of this subsection are essential for petitions referring or initiating legislative matters to the voters, but are directory as to other petitions:

(a) The text or prayer of the petition which shall be a concise statement of the action or relief sought by petitioners and shall include a reference to the applicable state statute or city ordinance, if any;

(b) If the petition initiates or refers an ordinance, a true copy thereof;

(c) If the petition seeks the annexation, incorporation, withdrawal, or reduction of an area for any purpose, an accurate legal description of the area proposed for such action and if practical, a map of the area;

(d) Numbered lines for signatures with space provided beside each signature for the name and address of the signer and the date of signing;

(e) The warning statement prescribed in subsection (2) of this section.

(2) Petitions shall be printed or typed on single sheets of white paper of good quality and each sheet of petition paper having a space thereon for signatures shall contain the text or prayer of the petition and the following warning:

WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature shall be executed in ink or indelible pencil and shall be followed by the name and address of the signer and the date of signing.

(3) The term "signer" means any person who signs his or her own name to the petition.

(4) To be sufficient a petition must contain valid signatures of qualified registered voters or property owners, as the case may be, in the number required by the applicable statute or ordinance. Within three working days after the filing of a petition, the officer with whom the petition is filed shall transmit the petition to the county auditor for petitions signed by registered voters, or to the county assessor for petitions signed by property owners for determination of sufficiency. The officer or officers whose duty it is to determine the sufficiency of the petition shall proceed to make such a determination with reasonable promptness and shall file with the officer receiving the petition for filing a certificate stating the date upon which such determination was begun, which date shall be referred to as the terminal date. Additional pages of one or more signatures may be added to the petition by filing the same with the appropriate filing officer prior to such terminal date. Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the receiving officer prior to such terminal date. Such written request shall so sufficiently describe the petition as to make identification of the person and the petition certain. The name of any person seeking to withdraw shall be signed exactly the same as contained on the petition and, after the filing of such request for withdrawal, prior to the terminal date, the signature of any person seeking such withdrawal shall be deemed withdrawn.

(5) Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.

(6) A variation on petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.

(7) Signatures, including the original, of any person who has signed a petition two or more times shall be stricken.

(8) Signatures followed by a date of signing which is more than six months prior to the date of filing of the petition shall be stricken.

(9) When petitions are required to be signed by the owners of property, the determination shall be made by the county assessor. Where validation of signatures to the petition is required, the following shall apply:

(a) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse;

(b) In the case of mortgaged property, the signature of the mortgagor shall be sufficient, without the signature of his or her spouse;

(c) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor, shall be deemed sufficient, without the signature of his or her spouse;

(d) Any officer of a corporation owning land within the area involved who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign on

behalf of such corporation, and shall attach to the petition a certified excerpt from the bylaws of such corporation showing such authority;

(e) When property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property; and

(f) When a parcel of property is owned by multiple owners, the signature of an owner designated by the multiple owners is sufficient.

(10) The officer or officers responsible for determining the sufficiency of the petition shall do so in writing and transmit the written certificate to the officer with whom the petition was originally filed. [2003 c 331 § 9; 1996 c 286 § 7; 1985 c 281 § 26; 1967 ex.s. c 119 § 35A.01.040.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

Severability—1985 c 281: See RCW 35.10.905.

Chapter 35A.14 RCW

ANNEXATION BY CODE CITIES

Sections

- 35A.14.420 Alternative direct petition method—Notice to legislative body—Meeting—Assumption of indebtedness—Proposed zoning regulation—Contents of petition.
- 35A.14.430 Alternative direct petition method—Notice of hearing.
- 35A.14.440 Alternative direct petition method—Ordinance providing for annexation.
- 35A.14.450 Alternative direct petition method—Effective date of annexation.
- 35A.14.460 Annexation of territory within urban growth areas—Interlocal agreement—Public hearing—Ordinance providing for annexation.
- 35A.14.470 Annexation of territory within urban growth areas—County may initiate process with other cities or towns, when—Interlocal agreement—Public hearing—Ordinance providing for annexation—Referendum—Election, when necessary.

35A.14.420 Alternative direct petition method—Notice to legislative body—Meeting—Assumption of indebtedness—Proposed zoning regulation—Contents of petition. (1) Proceedings for initiating annexation of unincorporated territory to a charter code city or noncharter code city may be commenced by the filing of a petition of property owners of the territory proposed to be annexed, in the following manner which is alternative to other methods provided in this chapter:

(a) Before the circulation of a petition for annexation, the initiating party or parties, who shall be the owners of not less than ten percent of the acreage for which annexation is sought, shall notify the legislative body of the code city in writing of their intention to commence annexation proceedings;

(b) The legislative body shall set a date, not later than sixty days after the filing of the request, for a meeting with the initiating parties to determine whether the code city will accept, reject, or geographically modify the proposed annexation, whether it shall require the simultaneous adoption of a proposed zoning regulation, if such a proposal has been prepared and filed for the area to be annexed as provided for in RCW 35A.14.330 and 35A.14.340, and whether it shall require the assumption of all or any portion of existing city indebtedness by the area to be annexed;

(c) If the legislative body requires the assumption of all or any portion of indebtedness and/or the adoption of a proposed zoning regulation, it shall record this action in its minutes and the petition for annexation shall be so drawn as to clearly indicate these facts;

(d) Approval by the legislative body shall be a condition precedent to circulation of the petition; and

(e) There shall be no appeal from the decision of the legislative body.

(2) A petition for annexation of an area contiguous to a code city may be filed with the legislative body of the municipality to which annexation is desired. The petition for annexation must be signed by the owners of a majority of the acreage for which annexation is petitioned and a majority of the registered voters residing in the area for which annexation is petitioned.

(3) If no residents exist within the area proposed for annexation, the petition must be signed by the owners of a majority of the acreage for which annexation is petitioned.

(4) The petition shall set forth a legal description of the property proposed to be annexed that complies with RCW 35A.14.410, and shall be accompanied by a drawing that outlines the boundaries of the property sought to be annexed. If the legislative body has required the assumption of all or any portion of city indebtedness by the area annexed or the adoption of a proposed zoning regulation, these facts, together with a quotation of the minute entry of such requirement, or requirements, shall also be set forth in the petition. [2003 c 331 § 10.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

35A.14.430 Alternative direct petition method—Notice of hearing. When a petition for annexation is filed with the legislative body of a code city, that meets the requirements of RCW 35A.01.040 and 35A.14.420, the legislative body may entertain the same, fix a date for a public hearing thereon and cause notice of the hearing to be published in one or more issues of a newspaper of general circulation in the city. The notice shall also be posted in three public places within the territory proposed for annexation, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation. [2003 c 331 § 11.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

35A.14.440 Alternative direct petition method—Ordinance providing for annexation. Following the hearing, if the legislative body determines to effect the annexation, they shall do so by ordinance. Subject to RCW 35A.14.410, the ordinance may annex all or any portion of the proposed area but may not include in the annexation any property not described in the petition. Upon passage of the annexation ordinance, a certified copy shall be filed with the board of county commissioners of the county in which the annexed property is located. [2003 c 331 § 12.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

35A.14.450 Alternative direct petition method—Effective date of annexation. Upon the date fixed in the ordinance of annexation, the area annexed shall become part of the city. All property within the annexed territory shall, if the annexation petition so provided, be assessed and taxed at the same rate and on the same basis as the property of the annexing code city is assessed and taxed to pay for the portion of any then-outstanding indebtedness of the city to which the area is annexed, which indebtedness has been approved by the voters, contracted for, or incurred before, or existing at, the date of annexation and that the city has required to be assumed. If the annexation petition so provided, all property in the annexed area shall be subject to and a part of the proposed zoning regulation as prepared and filed as provided for in RCW 35A.14.330 and 35A.14.340. [2003 c 331 § 13.]

Intent—Severability—Effective date—2003 c 331: See notes following RCW 35.13.410.

35A.14.460 Annexation of territory within urban growth areas—Interlocal agreement—Public hearing—Ordinance providing for annexation. (1) The legislative body of a county or code city planning under chapter 36.70A RCW and subject to the requirements of RCW 36.70A.215 may initiate an annexation process for unincorporated territory by adopting a resolution commencing negotiations for an interlocal agreement as provided in chapter 39.34 RCW between a county and any code city within the county. The territory proposed for annexation must meet the following criteria: (a) Be within the code city urban growth area designated under RCW 36.70A.110, and (b) at least sixty percent of the boundaries of the territory proposed for annexation must be contiguous to the annexing code city or one or more cities or towns.

(2) If the territory proposed for annexation has been designated in an adopted county comprehensive plan as part of an urban growth area, urban service area, or potential annexation area for a specific city, or if the urban growth area territory proposed for annexation has been designated in a written agreement between a city and a county for annexation to a specific city or town, the designation or designations shall receive full consideration before a city or county may initiate the annexation process provided for in RCW 35A.14.470.

(3) The agreement shall describe the boundaries of the territory to be annexed. A public hearing shall be held by each legislative body, separately or jointly, before the agreement is executed. Each legislative body holding a public hearing shall, separately or jointly, publish the agreement at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the territory proposed for annexation.

(4) Following adoption and execution of the agreement by both legislative bodies, the city legislative body shall adopt an ordinance providing for the annexation of the territory described in the agreement. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the territory to be annexed. If the annexation ordinance provides for assumption

of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of the requirements. Any territory to be annexed through an ordinance adopted under this section is annexed and becomes a part of the city upon the date fixed in the ordinance of annexation, which date may not be fewer than forty-five days after adoption of the ordinance. [2003 c 299 § 3.]

35A.14.470 Annexation of territory within urban growth areas—County may initiate process with other cities or towns, when—Interlocal agreement—Public hearing—Ordinance providing for annexation—Referendum—Election, when necessary. (1) The legislative body of any county planning under chapter 36.70A RCW and subject to the requirements of RCW 36.70A.215 may initiate an annexation process with the legislative body of any other cities or towns that are contiguous to the territory proposed for annexation in RCW 35A.14.460 if:

(a) The county legislative body initiated an annexation process as provided in RCW 35A.14.460; and

(b) The affected city legislative body adopted a responsive resolution rejecting the proposed annexation or declined to create the requested interlocal agreement with the county; or

(c) More than one hundred eighty days have passed since adoption of a county resolution as provided for in RCW 35A.14.460 and the parties have not adopted or executed an interlocal agreement providing for the annexation of unincorporated territory. The legislative body for either the county or an affected city may, however, pass a resolution extending the negotiation period for one or more six-month periods if a public hearing is held and findings of fact are made prior to each extension.

(2) Any county initiating the process provided for in subsection (1) of this section must do so by adopting a resolution commencing negotiations for an interlocal agreement as provided in chapter 39.34 RCW between the county and any city or town within the county. The annexation area must be within an urban growth area designated under RCW 36.70A.110 and at least sixty percent of the boundaries of the territory to be annexed must be contiguous to one or more cities or towns.

(3) The agreement shall describe the boundaries of the territory to be annexed. A public hearing shall be held by each legislative body, separately or jointly, before the agreement is executed. Each legislative body holding a public hearing shall, separately or jointly, publish the agreement at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the territory proposed for annexation.

(4) Following adoption and execution of the agreement by both legislative bodies, the city or town legislative body shall adopt an ordinance providing for the annexation. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the territory to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of

a proposed zoning regulation, the notice shall include a statement of the requirements. Any area to be annexed through an ordinance adopted under this section is annexed and becomes a part of the city or town upon the date fixed in the ordinance of annexation, which date may not be less than forty-five days after adoption of the ordinance.

(5) The annexation ordinances provided for in RCW 35A.14.460(4) and subsection (4) of this section are subject to referendum for forty-five days after passage. Upon the filing of a timely and sufficient referendum petition with the legislative body, signed by registered voters in number equal to not less than fifteen percent of the votes cast in the last general state election in the area to be annexed, the question of annexation shall be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose not less than forty-five days nor more than ninety days after the filing of the referendum petition. Notice of the election shall be given as provided in RCW 35A.14.070 and the election shall be conducted as provided in the general election law. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation ordinance, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the city or town upon the date fixed in the ordinance of annexation.

(6) If more than one city or town adopts interlocal agreements providing for annexation of the same unincorporated territory as provided by this section, an election shall be held in the area to be annexed pursuant to RCW 35A.14.070. In addition to the provisions of RCW 35A.14.070, the ballot shall also contain a separate proposition allowing voters to cast votes in favor of annexation to any one city or town participating in an interlocal agreement as provided by this section. If a majority of voters voting on the proposition vote against annexation, the proposition is defeated. If, however, a majority of voters voting in the election approve annexation, the area shall be annexed to the city or town receiving the highest number of votes among those cast in favor of annexation.

(7) Costs for an election required under subsection (6) of this section shall be borne by the county. [2003 c 299 § 4.]

Chapter 35A.21 RCW

PROVISIONS AFFECTING ALL CODE CITIES

Sections

35A.21.290 Fish enhancement project—Code city's liability.

35A.21.290 Fish enhancement project—Code city's liability. A code city is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of RCW 77.55.290 and has been permitted by the department of fish and wildlife. [2003 c 39 § 16; 1998 c 249 § 10.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.290.

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Chapter 35A.36 RCW

EXECUTION OF BONDS BY PROXY IN CODE CITIES

Sections

35A.36.040 Designation of bonds to be signed. (*Effective July 1, 2004.*)

35A.36.040 Designation of bonds to be signed. (*Effective July 1, 2004.*) (1) The officer of a code city whose duty it is to cause any bonds to be printed, engraved, or lithographed, shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds to be printed, engraved or lithographed and the manner of numbering them.

(2) Every printer, engraver, or lithographer who knowingly prints, engraves, or lithographs a greater number of bonds than that specified or who knowingly prints, engraves, or lithographs more than one bond bearing the same number is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 200; 1967 ex.s. c 119 § 35A.36.040.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 35A.63 RCW

PLANNING AND ZONING IN CODE CITIES

Sections

35A.63.215 Family day-care provider's home facility—City may not prohibit in residential or commercial area—Conditions.

35A.63.250 Watershed restoration projects—Permit processing—Fish habitat enhancement project.

35A.63.215 Family day-care provider's home facility—City may not prohibit in residential or commercial area—Conditions. (1) Except as provided in subsections (2) and (3) of this section, no city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.

(2) A city may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the office of child care policy licensor as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(3) A city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

(4) Nothing in this section shall be construed to prohibit a city from imposing zoning conditions on the establishment

and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 74.15.020. [2003 c 286 § 4; 1995 c 49 § 2; 1994 c 273 § 16.]

35A.63.250 Watershed restoration projects—Permit processing—Fish habitat enhancement project. A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of RCW 77.55.290(1) shall be reviewed and approved according to the provisions of RCW 77.55.290. [2003 c 39 § 17; 1998 c 249 § 6; 1995 c 378 § 9.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.290.

Chapter 35A.69 RCW FOOD AND DRUG

Sections

35A.69.010 Powers and duties prescribed.

35A.69.010 Powers and duties prescribed. Every code city shall have the powers, perform the functions and duties and enforce the regulations prescribed by general laws relating to food and drugs for any class of city as provided by Title 69 RCW; relating to water pollution control as provided by chapter 90.48 RCW; and relating to food fish and shellfish as provided by Title 77 RCW. [2003 c 39 § 18; 1999 c 291 § 31; 1994 c 143 § 512. Prior: 1983 1st ex.s. c 46 § 177; 1983 c 3 § 71; 1967 ex.s. c 119 § 35A.69.010.]

Chapter 35A.80 RCW PUBLIC UTILITIES

Sections

35A.80.050 Purchase of electric power and energy from joint operating agency.

35A.80.050 Purchase of electric power and energy from joint operating agency. A code city may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the code city must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operat-

ing agency or a city, town, or public utility district under the contract or other instrument. [2003 c 138 § 7.]

Title 36 COUNTIES

Chapters

- 36.01 General provisions.
- 36.16 County officers—General.
- 36.18 Fees of county officers.
- 36.22 County auditor.
- 36.23 County clerk.
- 36.28 County sheriff.
- 36.28A Association of sheriffs and police chiefs.
- 36.29 County treasurer.
- 36.32 County commissioners.
- 36.54 Ferries—County owned.
- 36.56 Metropolitan municipal corporation functions, etc.—Assumption by counties.
- 36.57A Public transportation benefit areas.
- 36.68 Parks and recreational facilities.
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- 36.70C Judicial review of land use decisions.
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- 36.75 Roads and bridges—General provisions.
- 36.78 Roads and bridges—County road administration board.
- 36.88 County road improvement districts.
- 36.89 Highways—Open spaces—Parks—Other public facilities—Storm water control.
- 36.94 Sewerage, water, and drainage systems.
- 36.100 Public facilities districts.
- 36.120 Regional transportation investment districts.

Tourism promotion areas: Chapter 35.101 RCW.

Chapter 36.01 RCW GENERAL PROVISIONS

Sections

36.01.230 Cooperative watershed management.

36.01.230 Cooperative watershed management. A county may, acting through the county legislative authority, participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 8.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

Chapter 36.16 RCW COUNTY OFFICERS—GENERAL

Sections

36.16.110 Vacancies in office. (*Effective if the proposed amendment to Article II, section 15 of the state Constitution is approved at the November 2003 general election.*)

36.16.110 Vacancies in office. (*Effective if the proposed amendment to Article II, section 15 of the state Constitution is approved at the November 2003 general election.*) The county legislative authority in each county shall, at its next regular or special meeting after being appraised of any vacancy in any county, township, precinct, or road district office of the county, fill the vacancy by the appointment of some person qualified to hold such office, and the officers thus appointed shall hold office until the next general election, and until their successors are elected and qualified.

If a vacancy occurs in a partisan county office after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in *RCW 29.01.135 and shall continue through the term for which he or she was elected. [2003 c 238 § 1; 1963 c 4 § 36.16.110. Prior: 1927 c 163 § 1; RRS § 4059; prior: Code 1881 § 2689; 1867 p 57 § 28.]

***Reviser's note:** RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Contingent effective date—2003 c 238: "This act takes effect January 1, 2004, if the proposed amendment to Article II, section 15 of the state Constitution (HJR 4206) is validly submitted to and is approved and ratified by the voters at a general election held in November 2003. If the proposed amendment is not approved and ratified, this act is void in its entirety." [2003 c 238 § 5.]

Chapter 36.18 RCW

FEES OF COUNTY OFFICERS

Sections

36.18.170 Penalty for failure to pay over fees. (*Effective July 1, 2004.*)

36.18.170 Penalty for failure to pay over fees. (*Effective July 1, 2004.*) Any salaried county or precinct officer, who fails to pay to the county treasury all sums that have come into the officer's hands for fees and charges for the county, or by virtue of the officer's office, whether under the laws of this state or of the United States, is guilty of a class C felony, and upon conviction thereof shall be punished by imprisonment in a state correctional facility not less than one year nor more than three years: PROVIDED, That upon conviction, his or her office shall be declared to be vacant by the court pronouncing sentence. [2003 c 53 § 201; 1992 c 7 § 33; 1963 c 4 § 36.18.170. Prior: 1893 c 81 § 2; RRS § 4226. Cf. RCW 42.20.070.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 36.22 RCW

COUNTY AUDITOR

Sections

36.22.070 Original claims to be retained.
 36.22.175 Surcharge for local government archives and records management—Records management training—Eastern Washington regional facility.
 36.22.181 Surcharge for prosecution of mortgage lending fraud—Transmittal to state treasurer. (*Expires June 30, 2006.*)

36.22.070 Original claims to be retained. (1) The auditor shall also retain all original bills and indorse thereon claimant's name, nature of claim, the action had, and if a war-

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rant was issued, date and number the voucher or claim the same as the warrant.

(2) The auditor may retain all claims, bills, and associated records referenced in subsection (1) of this section in an electronic format sufficient for the conduct of official business.

(3) For the purposes of this section, "claims" shall exclude claims filed against the county in accordance with the provisions of chapter 4.96 RCW. [2003 c 72 § 1; 1963 c 4 § 36.22.070. Prior: 1893 c 119 § 1, part; Code 1881 § 2710, part; 1869 p 310 § 5, part; 1863 p 549 § 5, part; 1854 p 425 § 5, part; RRS § 4086, part.]

36.22.175 Surcharge for local government archives and records management—Records management training—Eastern Washington regional facility.

(1) In addition to any other charge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for each document recorded. Revenue generated through this surcharge shall be transmitted monthly to the state treasurer for deposit in the local government archives account under RCW 40.14.024. These funds shall be used solely for providing records scheduling, security microfilm inspection and storage, archival preservation, cataloging, and indexing for local government records and digital data and access to those records and data through the regional branch archives of the division of archives and records management.

The division of archives and records management within the office of the secretary of state shall provide records management training for local governments and shall establish a competitive grant program to solicit and prioritize project proposals from local governments for potential funding to be paid for by funds from the auditor surcharge and tax warrant surcharge revenues. Application for specific projects may be made by local government agencies only. The state archivist in consultation with the advisory committee established under RCW 40.14.027 shall adopt rules governing project eligibility, evaluation, awarding of grants, and other criteria including requirements for records management training for grant recipients.

(2) The advisory committee established under RCW 40.14.027 shall review grant proposals and establish a prioritized list of projects to be considered for funding by January 1st of each even-numbered year, beginning in 2002. The evaluation of proposals and development of the prioritized list must be developed through open public meetings. Funding for projects shall be granted according to the ranking of each application on the prioritized list and projects will be funded only to the extent that funds are available. A grant award may have an effective date other than the date the project is placed on the prioritized list.

(3) In addition to any other surcharge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for every document recorded after January 1, 2002. Revenue generated through this surcharge shall be transmitted to the state treasurer monthly for deposit in the local government archives account under RCW 40.14.024 to be used exclusively for the construction and improvement of a specialized regional facility located in eastern Washington designed to serve the archives, records management, and digital data management needs of local government.

To the extent the facilities are used for the storage and retrieval of state agency records and digital data, that portion of the construction of such facilities used for state government records and data shall be supported by other charges and fees paid by state agencies and shall not be supported by the surcharge authorized in this subsection.

At such time that all debt service from construction on such facility has been paid, fifty percent of the surcharge authorized by this subsection shall be reverted to the centennial document preservation and modernization account as prescribed in RCW 36.22.170 and fifty percent of the surcharge authorized by this section shall be reverted to the state treasurer for deposit in the archives and records management account to serve the archives, records management, and digital data management needs of local government. [2003 c 163 § 5; 2001 2nd sp.s. c 13 § 1; 1996 c 245 § 1.]

Effective date—2001 2nd sp.s. c 13: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2001." [2001 2nd sp.s. c 13 § 3.]

Effective date—1996 c 245: See note following RCW 40.14.025.

36.22.181 Surcharge for prosecution of mortgage lending fraud—Transmittal to state treasurer. (Expires June 30, 2006.) (1) Except as provided in subsection (2) of this section, a surcharge of one dollar shall be charged by the county auditor at the time of recording of each deed of trust, which will be in addition to any other charge authorized by law. The auditor may retain up to five percent of the funds collected to administer collection. The remaining funds shall be transmitted monthly to the state treasurer who will deposit the funds into the mortgage lending fraud prosecution account created in RCW 43.320.140. The department of financial institutions is responsible for the distribution of the funds in the account and shall, in consultation with the attorney general and local prosecutors, develop rules for the use of these funds to pursue criminal prosecution of fraudulent activities within the mortgage lending process.

(2) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust.

(3) This section expires June 30, 2006. [2003 c 289 § 1.]

Chapter 36.23 RCW COUNTY CLERK

Sections

36.23.110 Legal financial obligations—Report on collections.

36.23.110 Legal financial obligations—Report on collections. The Washington association of county officials, in consultation with county clerks, shall determine a funding formula for allocation of moneys to counties for purposes of collecting legal financial obligations, and report this formula to the legislature and the administrative office of the courts by September 1, 2003. The Washington association of county officials shall report on the amounts of legal financial obligations collected by the county clerks to the appropriate committees of the legislature no later than December 1, 2004, and annually thereafter. [2003 c 379 § 20.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Chapter 36.28 RCW COUNTY SHERIFF

Sections

36.28.060 Duplicate receipts—Penalties. (*Effective July 1, 2004.*)
36.28.070 Repealed. (*Effective July 1, 2004.*)
36.28.080 Repealed. (*Effective July 1, 2004.*)
36.28.140 Repealed. (*Effective July 1, 2004.*)

36.28.060 Duplicate receipts—Penalties. (Effective July 1, 2004.) (1) The sheriff shall make duplicate receipts for all payments for his or her services specifying the particular items thereof, at the time of payment, whether paid by virtue of the laws of this state or of the United States. Such duplicate receipts shall be numbered consecutively for each month commencing with number one. One of such receipts shall have written or printed upon it the word "original"; and the other shall have written or printed upon it the word "duplicate."

(2) At the time of payment of any fees, the sheriff shall deliver to the person making payment, either personally or by mail, the copy of the receipt designated "duplicate."

(3) The receipts designated "original" for each month shall be attached to the verified statement of fees for the corresponding month and the sheriff shall file with the county treasurer of his or her county all original receipts for each month with such verified statement.

(4) A sheriff shall not receive his or her salary for the preceding month until the provisions of this section have been complied with.

(5) Any sheriff violating this section, or failing to perform any of the duties required thereby, is guilty of a misdemeanor and shall be fined in any sum not less than ten dollars nor more than fifty dollars for each offense. [2003 c 53 § 202; 1963 c 4 § 36.28.060. Prior: (i) 1909 c 105 § 1; RRS § 4161. (ii) 1909 c 105 § 2; RRS § 4162.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

36.28.070 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

36.28.080 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

36.28.140 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 36.28A RCW ASSOCIATION OF SHERIFFS AND POLICE CHIEFS

Sections

36.28A.060 Statewide first responder building mapping information system—Creation—Data must be available to law enforcement,

military, and fire safety agencies—Standards—Public disclosure exemption.

36.28A.070 Statewide first responder building mapping information system—Committee established—Development of guidelines.

36.28A.080 Immunity from liability.

36.28A.060 Statewide first responder building mapping information system—Creation—Data must be available to law enforcement, military, and fire safety agencies—Standards—Public disclosure exemption. (1) When funded, the Washington association of sheriffs and police chiefs shall create and operate a statewide first responder building mapping information system.

(2) All state agencies and local governments must utilize building mapping software that complies with the building mapping software standards established under RCW 36.28A.070 for any building mapped for this purpose after the statewide first responder building mapping information system is operational. If, prior to creation of the statewide building mapping information system, a local government has utilized building mapping software standards established under RCW 36.28A.070, the local government may continue to use its own building mapping system unless the Washington association of sheriffs and police chiefs provides funding to bring the local government's system in compliance with the standards established under RCW 36.28A.070.

(3) All state and local government-owned buildings that are occupied by state or local government employees must be mapped when funding is provided by the Washington association of sheriffs and police chiefs, or from other sources. Nothing in chapter 102, Laws of 2003 requires any state agency or local government to map a building unless the entire cost of mapping the building is provided by the Washington association of sheriffs and police chiefs, or from other sources.

(4) Once the statewide first responder building mapping information system is operational, all state and local government buildings that are mapped must forward their building mapping information data to the Washington association of sheriffs and police chiefs. All participating privately, federally, and tribally owned buildings may voluntarily forward their mapping and emergency information data to the Washington association of sheriffs and police chiefs. The Washington association of sheriffs and police chiefs may refuse any building mapping information that does not comply with the specifications described in RCW 36.28A.070.

(5) Consistent with the guidelines developed under RCW 36.28A.070, the Washington association of sheriffs and police chiefs shall electronically make the building mapping information available to all state, local, federal, and tribal law enforcement agencies, the military department of Washington state, and fire departments.

(6) Consistent with the guidelines developed under RCW 36.28A.070, the Washington association of sheriffs and police chiefs shall develop building mapping software standards that must be used to participate in the statewide first responder building mapping information system.

(7) The Washington association of sheriffs and police chiefs shall pursue federal funds to:

(a) Create the statewide first responder building mapping information system; and

(b) Develop grants for the mapping of all state and local government buildings in the order determined under RCW 36.28A.070.

(8) All tactical and intelligence information provided to the Washington association of sheriffs and police chiefs under chapter 102, Laws of 2003 is exempt from public disclosure as provided in RCW 42.17.310(1)(d). [2003 c 102 § 2.]

Intent—2003 c 102: "The legislature recognizes the extreme dangers present when the safety of our citizens requires first responders such as police and fire fighters to evacuate and secure a building. In an effort to prepare for responding to unintended disasters, criminal acts, and acts of terrorism, the legislature intends to create a statewide first responder building mapping information system that will provide all first responders with the information they need to be successful when disaster strikes. The first responder building mapping system in this act is to be developed for a limited and specific purpose and is in no way to be construed as imposing standards or system requirements on any other mapping systems developed and used for any other local government purposes." [2003 c 102 § 1.]

36.28A.070 Statewide first responder building mapping information system—Committee established—Development of guidelines. (1) The Washington association of sheriffs and police chiefs in consultation with the Washington state emergency management office, the Washington association of county officials, the Washington association of cities, the information services board, the Washington state fire chiefs' association, and the Washington state patrol shall convene a committee to establish guidelines related to the statewide first responder building mapping information system. The committee shall have the following responsibilities:

(a) Develop the type of information to be included in the statewide first responder building mapping information system. The information shall include, but is not limited to: Floor plans, fire protection information, evacuation plans, utility information, known hazards, and text and digital images showing emergency personnel contact information;

(b) Develop building mapping software standards that must be utilized by all entities participating in the statewide first responder building mapping information system;

(c) Determine the order in which buildings shall be mapped when funding is received;

(d) Develop guidelines on how the information shall be made available. These guidelines shall include detailed procedures and security systems to ensure that the information is only made available to the government entity that either owns the building or is responding to an incident at the building;

(e) Recommend training guidelines regarding using the statewide first responder building mapping information system to the criminal justice training commission and the Washington state patrol fire protection bureau.

(2)(a) Nothing in this section supersedes the authority of the information services board under chapter 43.105 RCW.

(b) Nothing in this section supersedes the authority of state agencies and local governments to control and maintain access to information within their independent systems. [2003 c 102 § 3.]

Intent—2003 c 102: See note following RCW 36.28A.060.

36.28A.080 Immunity from liability. Units of local government and their employees, as provided in RCW

36.28A.010, are immune from civil liability for damages arising out of the creation and use of the statewide first responder building mapping information system, unless it is shown that an employee acted with gross negligence or bad faith. [2003 c 102 § 4.]

Intent—2003 c 102: See note following RCW 36.28A.060.

Chapter 36.29 RCW COUNTY TREASURER

Sections

- 36.29.060 Warrant calls—Penalty for failure to call. (*Effective July 1, 2004.*)
 36.29.070 Repealed. (*Effective July 1, 2004.*)
 36.29.190 Acceptance of payment by credit cards, charge cards, and other electronic communications authorized—Costs borne by payer—Exception.

36.29.060 Warrant calls—Penalty for failure to call. (*Effective July 1, 2004.*) (1) Whenever the county treasurer has funds belonging to any fund upon which "interest-bearing" warrants are outstanding, the treasurer shall have the discretion to call warrants. The county treasurer shall give notice as provided for in RCW 36.29.010(4). The treasurer shall pay on demand, in the order of their issue, any warrants when there shall be in the treasury sufficient funds applicable to such payment.

(2) Any treasurer who knowingly fails to call for or pay any warrant in accordance with this section is guilty of a misdemeanor and shall be fined not less than twenty-five dollars nor more than five hundred dollars, and such conviction shall be sufficient cause for removal from office. [2003 c 53 § 203; 1991 c 245 § 6; 1985 c 469 § 44; 1980 c 100 § 4; 1963 c 4 § 36.29.060. Prior: 1895 c 152 § 1, part; RRS § 4118, part.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

36.29.070 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

36.29.190 Acceptance of payment by credit cards, charge cards, and other electronic communications authorized—Costs borne by payer—Exception. County treasurers are authorized to accept credit cards, charge cards, debit cards, smart cards, stored value cards, federal wire, and automatic clearinghouse system transactions, or other electronic communication, for any payment of any kind including, but not limited to, taxes, fines, interest, penalties, special assessments, fees, rates, charges, or moneys due counties. A payer desiring to pay by a credit card, charge card, debit card, smart card, stored value card, federal wire, automatic clearinghouse system, or other electronic communication shall bear the cost of processing the transaction in an amount determined by the treasurer, unless the county legislative authority or the legislative authority of a district where the county treasurer serves as ex officio treasurer finds that it is in the best interests of the county or district to not charge transaction processing costs for all payment transactions made for a specific category of nontax payments received by the county treasurer, including, but not limited to, fines, interest not associated with taxes, penalties not associated with taxes,

special assessments, fees, rates, and charges. The treasurer's cost determination shall be based upon costs incurred by the treasurer and may not, in any event, exceed the additional direct costs incurred by the county to accept the specific form of payment utilized by the payer. [2003 c 23 § 8; 1997 c 393 § 19; 1996 c 153 § 3.]

Applicability—1996 c 153: See note following RCW 84.56.020.

Chapter 36.32 RCW COUNTY COMMISSIONERS

Sections

- 36.32.0558 Five-member commissions—Vacancies. (*Effective if the proposed amendment to Article II, section 15 of the state Constitution is approved at the November 2003 general election.*)
 36.32.070 Vacancies on board. (*Effective if the proposed amendment to Article II, section 15 of the state Constitution is approved at the November 2003 general election.*)
 36.32.120 Powers of legislative authorities.
 36.32.210 Inventory of county capitalized assets—County commission inventory statement—Filing and public inspection—Penalty—Prosecutions—Taxpayer's action. (*Effective July 1, 2004.*)
 36.32.215 Repealed. (*Effective July 1, 2004.*)
 36.32.220 Repealed. (*Effective July 1, 2004.*)
 36.32.225 Repealed. (*Effective July 1, 2004.*)
 36.32.230 Repealed. (*Effective July 1, 2004.*)

36.32.0558 Five-member commissions—Vacancies. (*Effective if the proposed amendment to Article II, section 15 of the state Constitution is approved at the November 2003 general election.*) Vacancies on a board of county commissioners consisting of five members shall be filled as provided in RCW 36.32.070, except that:

(1) Whenever there are three or more vacancies, the governor shall appoint one or more commissioners until there are a total of three commissioners;

(2) Whenever there are two vacancies, the three commissioners shall fill one of the vacancies;

(3) Whenever there is one vacancy, the four commissioners shall fill the single vacancy; and

(4) Whenever there is a vacancy after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in *RCW 29.01.135 and shall continue through the term for which he or she was elected. [2003 c 238 § 2; 1990 c 252 § 6.]

***Reviser's note:** RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Contingent effective date—2003 c 238: See note following RCW 36.16.110.

36.32.070 Vacancies on board. (*Effective if the proposed amendment to Article II, section 15 of the state Constitution is approved at the November 2003 general election.*) Whenever there is a vacancy in the board of county commissioners, except as provided in RCW 36.32.0558, it shall be filled as follows:

(1) If there are three vacancies, the governor of the state shall appoint two of the officers. The two commissioners thus appointed shall then meet and select the third commissioner. If the two appointed commissioners fail to agree upon selection of the third after the expiration of five days from the

day they were appointed, the governor shall appoint the remaining commissioner.

(2) Whenever there are two vacancies in the office of county commissioner, the governor shall appoint one commissioner, and the two commissioners then in office shall appoint the third commissioner. If they fail to agree upon a selection after the expiration of five days from the day of the governor's appointment, the governor shall appoint the third commissioner.

(3) Whenever there is one vacancy in the office of county commissioner, the two remaining commissioners shall fill the vacancy. If the two commissioners fail to agree upon a selection after the expiration of five days from the day the vacancy occurred, the governor shall appoint the third commissioner.

(4) Whenever there is a vacancy in the office of county commissioner after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in *RCW 29.01.135 and shall continue through the term for which he or she was elected. [2003 c 238 § 3; 1990 c 252 § 7; 1963 c 4 § 36.32.070. Prior: 1933 c 100 § 1; RRS § 4038-1.]

***Reviser's note:** RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Contingent effective date—2003 c 238: See note following RCW 36.16.110.

36.32.120 Powers of legislative authorities. The legislative authorities of the several counties shall:

(1) Provide for the erection and repairing of court houses, jails, and other necessary public buildings for the use of the county;

(2) Lay out, discontinue, or alter county roads and highways within their respective counties, and do all other necessary acts relating thereto according to law, except within cities and towns which have jurisdiction over the roads within their limits;

(3) License and fix the rates of ferriage; grant grocery and other licenses authorized by law to be by them granted at fees set by the legislative authorities which shall not exceed the costs of administration and operation of such licensed activities;

(4) Fix the amount of county taxes to be assessed according to the provisions of law, and cause the same to be collected as prescribed by law;

(5) Allow all accounts legally chargeable against the county not otherwise provided for, and audit the accounts of all officers having the care, management, collection, or disbursement of any money belonging to the county or appropriated to its benefit;

(6) Have the care of the county property and the management of the county funds and business and in the name of the county prosecute and defend all actions for and against the county, and such other powers as are or may be conferred by law;

(7) Make and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law, and within the unincorporated area of the county may adopt by reference Washington state statutes and recognized codes and/or compilations printed in book

form relating to the construction of buildings, the installation of plumbing, the installation of electric wiring, health, or other subjects, and may adopt such codes and/or compilations or portions thereof, together with amendments thereto, or additions thereto: PROVIDED, That except for Washington state statutes, there shall be filed in the county auditor's office one copy of such codes and compilations ten days prior to their adoption by reference, and additional copies may also be filed in library or city offices within the county as deemed necessary by the county legislative authority: PROVIDED FURTHER, That no such regulation, code, compilation, and/or statute shall be effective unless before its adoption, a public hearing has been held thereon by the county legislative authority of which at least ten days' notice has been given. Any violation of such regulations, ordinances, codes, compilations, and/or statutes or resolutions shall constitute a misdemeanor or a civil violation subject to a monetary penalty: PROVIDED FURTHER, That violation of a regulation, ordinance, code, compilation, and/or statute relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of a regulation, ordinance, code, compilation, and/or statute equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime and no act that is a state crime may be made a civil violation. The notice must set out a copy of the proposed regulations or summarize the content of each proposed regulation; or if a code is adopted by reference the notice shall set forth the full official title and a statement describing the general purpose of such code. For purposes of this subsection, a summary shall mean a brief description which succinctly describes the main points of the proposed regulation. When the county publishes a summary, the publication shall include a statement that the full text of the proposed regulation will be mailed upon request. An inadvertent mistake or omission in publishing the text or a summary of the content of a proposed regulation shall not render the regulation invalid if it is adopted. The notice shall also include the day, hour, and place of hearing and must be given by publication in the newspaper in which legal notices of the county are printed;

(8) Have power to compound and release in whole or in part any debt due to the county when in their opinion the interest of their county will not be prejudiced thereby, except in cases where they or any of them are personally interested;

(9) Have power to administer oaths or affirmations necessary in the discharge of their duties and commit for contempt any witness refusing to testify before them with the same power as district judges;

(10) Have power to declare by ordinance what shall be deemed a nuisance within the county, including but not limited to "litter" and "potentially dangerous litter" as defined in RCW 70.93.030; to prevent, remove, and abate a nuisance at the expense of the parties creating, causing, or committing the nuisance; and to levy a special assessment on the land or premises on which the nuisance is situated to defray the cost, or to reimburse the county for the cost of abating it. This assessment shall constitute a lien against the property which shall be of equal rank with state, county, and municipal taxes. [2003 c 337 § 6; 1994 c 301 § 8; 1993 c 83 § 9; 1989 c 378 §

39; 1988 c 168 § 8; 1987 c 202 § 206; 1986 c 278 § 2; 1985 c 91 § 1; 1982 c 226 § 3; 1979 ex.s. c 136 § 35; 1975 1st ex.s. c 216 § 1; 1967 ex.s. c 59 § 1; 1963 c 4 § 36.32.120. Prior: 1961 c 27 § 2; prior: (i) 1947 c 61 § 1; 1943 c 99 § 1; Code 1881 § 2673; 1869 p 305 § 11; 1867 p 54 § 11; 1863 p 542 § 11; 1854 p 421 § 11; Rem. Supp. 1947 § 4056. (ii) Code 1881 § 2681; 1869 p 307 § 20; 1867 p 56 § 20; 1863 p 543 § 20; 1854 p 422 § 20; RRS § 4061. (iii) Code 1881 § 2687; 1869 p 308 § 26; 1867 p 57 § 26; 1863 p 545 § 28; 1854 p 423 § 22; RRS § 4071.]

Findings—2003 c 337: See note following RCW 70.93.060.

Effective date—1993 c 83: See note following RCW 35.21.163.

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

Severability—1986 c 278: See note following RCW 36.01.010.

Effective date—1982 c 226: See note following RCW 35.21.180.

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

36.32.210 Inventory of county capitalized assets—County commission inventory statement—Filing and public inspection—Penalty—Prosecutions—Taxpayer's action. (Effective July 1, 2004.) (1) Each board of county commissioners of the several counties of the state of Washington shall, on the first Monday of March of each year, file with the auditor of the county a statement verified by oath showing for the twelve months period ending December 31st of the preceding year, the following:

(a) A full and complete inventory of all capitalized assets shall be kept in accordance with standards established by the state auditor. This inventory shall be segregated to show the following subheads:

(i) The assets, including equipment, on hand, together with a statement of the date when acquired, the amount paid therefor, the estimated life thereof and a sufficient description to fully identify such property;

(ii) All equipment of every kind or nature sold or disposed of in any manner during such preceding twelve months period, together with the name of the purchaser, the amount paid therefor, whether or not the same was sold at public or private sale, the reason for such disposal and a sufficient description to fully identify the same; and

(iii) All the equipment purchased during the period, together with the date of purchase, the amount paid therefor, whether or not the same was bought under competitive bidding, the price paid therefor and the probable life thereof, the reason for making the purchase and a sufficient description to fully identify such property; and

(b) The person to whom such money or any part thereof was paid and why so paid and the date of such payment.

(2) Inventories shall be filed with the county auditor as a public record and shall be open to the inspection of the public.

(3) Any county commissioner failing to file such statement or willfully making any false or incorrect statement therein or aiding or abetting in the making of any false or incorrect statement is guilty of a gross misdemeanor.

(4) It is the duty of the prosecuting attorney of each county to within three days from the calling to his or her attention of any violation to institute proceedings against

such offending official and in addition thereto to prosecute appropriate action to remove such commissioner from office.

(5) Any taxpayer of such county is hereby authorized to institute the action in conjunction with or independent of the action of the prosecuting attorney. [2003 c 53 § 204; 1997 c 245 § 3; 1995 c 194 § 5; 1969 ex.s. c 182 § 2; 1963 c 108 § 1; 1963 c 4 § 36.32.210. Prior: 1931 c 95 § 1; RRS § 4056-1. FORMER PARTS OF SECTION: (i) 1931 c 95 § 2; RRS § 4056-2, now codified as RCW 36.32.213. (ii) 1931 c 95 § 3; RRS § 4056-3, now codified as RCW 36.32.215.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

State building code: Chapter 19.27 RCW.

36.32.215 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

36.32.220 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

36.32.225 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

36.32.230 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 36.54 RCW

FERRIES—COUNTY OWNED

Sections

36.54.110	County ferry districts—Authorized—Powers—Governing body.
36.54.120	County ferry districts—District may construct, purchase, operate, and maintain passenger-only ferries and wharves.
36.54.130	County ferry districts—Tax levy authorized—Uses.
36.54.140	County ferry districts—Excess levies.
36.54.150	County ferry districts—Budget of fund requirements.
36.54.160	County ferry districts—General property tax levies.
36.54.170	County ferry districts—Treasurer—Ferry district fund.
36.54.180	County ferry districts—Not subject to Washington utilities and transportation commission.
36.54.190	County ferry districts—Dissolution.

36.54.110 County ferry districts—Authorized—Powers—Governing body. (1) The legislative authority of a county with a population over one million persons and having a boundary on Puget Sound may adopt an ordinance creating a ferry district in all or a portion of the area of the county, including the area within the corporate limits of any city or town within the county. The ordinance may be adopted only after a public hearing has been held on the creation of a ferry district, and the county legislative authority makes a finding that it is in the public interest to create the district. A ferry district is limited to providing passenger-only ferry service.

(2) A ferry district is a municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(3) A ferry district is a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

(4) The members of the county legislative authority, acting ex officio and independently, shall compose the governing body of any ferry district that is created within the county. The voters of a ferry district must be registered voters residing within the boundaries of the district.

(5) For the purposes of this section, Puget Sound is considered as extending north as far as the Canadian border and west as far as Port Angeles. [2003 c 83 § 301.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.120 County ferry districts—District may construct, purchase, operate, and maintain passenger-only ferries and wharves. A ferry district may construct, purchase, operate, and maintain passenger-only ferries or wharves at any unfordable stream, lake, estuary, or bay within or bordering the ferry district, or between portions of the ferry district, or between the ferry district and other ferry districts, together with all the necessary boats, grounds, roads, approaches, and landings appertaining thereto under the direction and control of the governing body of the ferry district, free or for toll as the governing body determines by resolution. [2003 c 83 § 302.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.130 County ferry districts—Tax levy authorized—Uses. (1) To carry out the purposes for which ferry districts are created, the governing body of a ferry district may levy each year an ad valorem tax on all taxable property located in the district not to exceed seventy-five cents per thousand dollars of assessed value. The levy must be sufficient for the provision of ferry services as shown to be required by the budget prepared by the governing body of the ferry district.

(2) A tax imposed under this section may be used only for providing passenger-only ferry services, including the purchase, lease, or rental of passenger-only ferry vessels and dock facilities, the operation and maintenance of passenger-only ferry vessels and dock facilities, and related personnel costs. [2003 c 83 § 303.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.140 County ferry districts—Excess levies. A ferry district may impose excess levies upon the property included within the district for a one-year period to be used for operating or capital purposes whenever authorized by the electors of the district under RCW 84.52.052 and Article VII, section 2(a) of the state Constitution. [2003 c 83 § 304.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.150 County ferry districts—Budget of fund requirements. The governing body of the ferry district shall

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annually prepare a budget of the requirements of each district fund. [2003 c 83 § 305.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.160 County ferry districts—General property tax levies. At the time of making general tax levies in each year, the county legislative authority of the county in which a ferry district is located shall make the required levies for district purposes against the real and personal property in the district. The tax levies must be a part of the general tax roll and be collected as a part of the general taxes against the property in the district. [2003 c 83 § 306.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.170 County ferry districts—Treasurer—Ferry district fund. (1) The treasurer of the county in which a ferry district is located shall be treasurer of the district. The county treasurer shall receive and disburse ferry district revenues, collect taxes authorized and levied under this chapter, and credit district revenues to the proper fund.

(2) The county treasurer shall establish a ferry district fund, into which must be paid all district revenues, and the county treasurer shall also maintain such special funds as may be created by the governing body of a ferry district, into which the county treasurer shall place all money as the governing body of the district may, by resolution, direct.

(3) The county treasurer shall pay out money received for the account of the ferry district on warrants issued by the county auditor against the proper funds of the district.

(4) All district funds must be deposited with the county depositories under the same restrictions, contracts, and security as provided for county depositories.

(5) All interest collected on ferry district funds belongs to the district and must be deposited to its credit in the proper district funds. [2003 c 83 § 307.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.180 County ferry districts—Not subject to Washington utilities and transportation commission. A ferry district is exempt from the provisions of Title 81 RCW and is not subject to the control of the Washington utilities and transportation commission. It is not necessary for a ferry district to apply for a certificate of public convenience and necessity. [2003 c 83 § 308.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.190 County ferry districts—Dissolution. A ferry district formed under this chapter may be dissolved in the manner provided in chapter 53.48 RCW, relating to port districts. [2003 c 83 § 309.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Chapter 36.56 RCW

METROPOLITAN MUNICIPAL CORPORATION
FUNCTIONS, ETC.—ASSUMPTION BY COUNTIES

Sections

36.56.121 Maintenance plan.

36.56.121 Maintenance plan. As a condition of receiving state funding, a county that has assumed the transportation functions of a metropolitan municipal corporation shall submit a maintenance and preservation management plan for certification by the transportation commission or its successor entity. The plan must inventory all transportation system assets within the direction and control of the county, and provide a preservation plan based on lowest life-cycle cost methodologies. [2003 c 363 § 303.]

Finding—Intent—2003 c 363: See note following RCW 35.84.060.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

Chapter 36.57A RCW

PUBLIC TRANSPORTATION BENEFIT AREAS

Sections

36.57A.010 Definitions.

36.57A.100 Agreements with operators of local public transportation services—Operation without agreement prohibited—Purchase or condemnation of assets.

36.57A.191 Maintenance plan.

36.57A.200 Passenger-only ferry service—Authorized—Investment plan.

36.57A.210 Passenger-only ferry service—Taxes, fees, and tolls.

36.57A.010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Public transportation benefit area" means a municipal corporation of the state of Washington created pursuant to this chapter.

(2) "Public transportation benefit area authority" or "authority" means the legislative body of a public transportation benefit area.

(3) "City" means an incorporated city or town.

(4) "Component city" means an incorporated city or town within a public transportation benefit area.

(5) "City council" means the legislative body of any city or town.

(6) "County legislative authority" means the board of county commissioners or the county council.

(7) "Population" means the number of residents as shown by the figures released for the most recent official state, federal, or county census, or population determination made by the office of financial management.

(8) "Public transportation service" means the transportation of packages, passengers, and their incidental baggage by means other than by chartered bus, sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems: PROVIDED, That nothing shall prohibit an authority from leasing its buses to private certified carriers or prohibit the authority from providing school bus service. "Public transportation service" includes passenger-only ferry service for those pub-

lic transportation benefit areas eligible to provide passenger-only ferry service under RCW 36.57A.200.

(9) "Public transportation improvement conference" or "conference" means the body established pursuant to RCW 36.57A.020 which shall be authorized to establish, subject to the provisions of RCW 36.57A.030, a public transportation benefit area pursuant to the provisions of this chapter. [2003 c 83 § 209; 1983 c 65 § 1; 1979 c 151 § 40; 1975 1st ex.s. c 270 § 11.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Severability—Effective date—1975 1st ex.s. c 270: See notes following RCW 35.58.272.

Population determinations, office of financial management: Chapter 43.62 RCW.

36.57A.100 Agreements with operators of local public transportation services—Operation without agreement prohibited—Purchase or condemnation of assets.

Except in accordance with an agreement made as provided in this section or in accordance with the provisions of RCW 36.57A.090(3) as now or hereafter amended, upon the effective date on which the public transportation benefit area commences to perform the public transportation service, no person or private corporation shall operate a local public passenger transportation service, including passenger-only ferry service, within the public transportation benefit area with the exception of taxis, buses owned or operated by a school district or private school, and buses owned or operated by any corporation or organization solely for the purposes of the corporation or organization and for the use of which no fee or fare is charged.

An agreement may be entered into between the public transportation benefit area authority and any person or corporation legally operating a local public passenger transportation service, including passenger-only ferry service, wholly within or partly within and partly without the public transportation benefit area and on said effective date under which such person or corporation may continue to operate such service or any part thereof for such time and upon such terms and conditions as provided in such agreement. Such agreement shall provide for a periodic review of the terms and conditions contained therein. Where any such local public passenger transportation service, including passenger-only ferry service, will be required to cease to operate within the public transportation benefit area, the public transportation benefit area authority may agree with the owner of such service to purchase the assets used in providing such service, or if no agreement can be reached, the public transportation benefit area authority shall condemn such assets in the manner and by the same procedure as is or may be provided by law for the condemnation of other properties for cities of the first class, except insofar as such laws may be inconsistent with the provisions of this chapter.

Wherever a privately owned public carrier operates wholly or partly within a public transportation benefit area, the Washington utilities and transportation commission shall continue to exercise jurisdiction over such operation as provided by law. [2003 c 83 § 210; 1977 ex.s. c 44 § 4; 1975 1st ex.s. c 270 § 20.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Severability—Effective date—1977 ex.s. c 44: See notes following RCW 36.57A.030.

Severability—Effective date—1975 1st ex.s. c 270: See notes following RCW 35.58.272.

36.57A.191 Maintenance plan. As a condition of receiving state funding, a public transportation benefit area authority shall submit a maintenance and preservation management plan for certification by the transportation commission or its successor entity. The plan must inventory all transportation system assets within the direction and control of the authority, and provide a preservation plan based on lowest life-cycle cost methodologies. [2003 c 363 § 304.]

Finding—Intent—2003 c 363: See note following RCW 35.84.060.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

36.57A.200 Passenger-only ferry service—Authorized—Investment plan. A public transportation benefit area having a boundary located on Puget Sound may provide passenger-only ferry service. For the purposes of this chapter and RCW 82.14.440 and 82.80.130, Puget Sound is considered as extending north as far as the Canadian border and west as far as Port Angeles. Before a benefit area may provide passenger-only ferry service, it must develop a passenger-only ferry investment plan including elements to operate or contract for the operation of passenger-only ferry services, purchase, lease, or rental of ferry vessels and dock facilities for the provision of transit service, and identify other activities necessary to implement the plan. The plan must set forth terminal locations to be served, projected costs of providing services, and revenues to be generated from tolls, locally collected tax revenues, and other revenue sources. The plan must ensure that services provided under the plan are for the benefit of the residents of the benefit area. The benefit area may use any of its powers to carry out this purpose, unless otherwise prohibited by law. In addition, the public transportation benefit area may enter into contracts and agreements to operate passenger-only ferry service and public-private partnerships and design-build, general contractor/construction management, or other alternative procurement process substantially consistent with chapter 39.10 RCW. [2003 c 83 § 201.]

Findings—Intent—2003 c 83: "The legislature finds that passenger-only ferry service is a key element to the state's transportation system and that it is in the interest of the state to ensure provision of such services. The legislature further finds that diminished state transportation resources require that regional and local authorities be authorized to develop, operate, and fund needed services.

The legislature recognizes that if the state eliminates passenger-only ferry service on one or more routes, it should provide an opportunity for locally sponsored service and the department of transportation should assist in this effort.

It is the intent of the legislature to encourage interlocal agreements to ensure passenger-only ferry service is reinstated on routes that the Washington state ferry system eliminates." [2003 c 83 § 101.]

Captions, part headings not law—2003 c 83: "Captions and part headings used in this act are not part of the law." [2003 c 83 § 401.]

Severability—2003 c 83: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 83 § 402.]

[2003 RCW Supp—page 440]

Effective date—2003 c 83: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 23, 2003]." [2003 c 83 § 403.]

36.57A.210 Passenger-only ferry service—Taxes, fees, and tolls. (1) A public transportation benefit area may, as part of a passenger-only ferry investment plan, recommend some or all of the following revenue sources as provided in this chapter:

(a) A motor vehicle excise tax, as provided in RCW 82.80.130;

(b) A sales and use tax, as provided in RCW 82.14.440;

(c) Tolls for passengers and packages and, where applicable, parking; and

(d) Charges or licensing fees for advertising, leasing space for services to ferry passengers, and other revenue-generating activities.

(2) Taxes may not be imposed without an affirmative vote of the majority of the voters within the boundaries of the area voting on a single ballot proposition to both approve a passenger-only ferry investment plan and to approve taxes to implement the plan. Revenues from these taxes and fees may be used only to implement the plan and must be used for the benefit of the residents of the benefit area. A district may contract with the state department of revenue or other appropriate entities for administration and collection of any of the taxes or charges authorized in this section. [2003 c 83 § 202.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Chapter 36.68 RCW

PARKS AND RECREATIONAL FACILITIES

Sections

36.68.080 Penalty for violations of regulations. (*Effective July 1, 2004.*)

36.68.080 Penalty for violations of regulations. (*Effective July 1, 2004.*) (1) Except as otherwise provided in this section, any person violating any rules or regulations adopted by the board of county commissioners relating to parks, playgrounds, or other recreational facilities is guilty of a misdemeanor.

(2)(a) Except as provided in (b) of this subsection, violation of such a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(b) Violation of such a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [2003 c 53 § 205; 1979 ex.s. c 136 § 36; 1963 c 4 § 36.68.080. Prior: 1949 c 94 § 8; Rem. Supp. 1949 § 3991-21.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

Chapter 36.69 RCW

PARK AND RECREATION DISTRICTS

(Formerly: Recreation districts act)

Sections

36.69.180 Violation of rules—Penalty. (Effective July 1, 2004.)

36.69.180 Violation of rules—Penalty. (Effective July 1, 2004.) (1) Except as otherwise provided in this section, the violation of any of the rules or regulations of a park and recreation district adopted by its board for the preservation of order, control of traffic, protection of life or property, or for the regulation of the use of park property is a misdemeanor.

(2)(a) Except as provided in (b) of this subsection, violation of such a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(b) Violation of such a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [2003 c 53 § 206; 1979 ex.s. c 136 § 37; 1963 c 4 § 36.69.180. Prior: 1957 c 58 § 19.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

Chapter 36.70 RCW

PLANNING ENABLING ACT

Sections

- 36.70.757 Family day-care provider's home facility—County may not prohibit in residential or commercial area—Conditions.
- 36.70.982 Fish enhancement projects—County's liability.
- 36.70.992 Watershed restoration projects—Permit processing—Fish habitat enhancement project.

36.70.757 Family day-care provider's home facility—County may not prohibit in residential or commercial area—Conditions. (1) Except as provided in subsections (2) and (3) of this section, no county may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's facility serving twelve or fewer children.

(2) A county may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the office of child care policy licensur as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care who work a nonstandard work shift.

(3) A county may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the day-care provider over licensing requirements, the licensur may provide a forum to resolve the dispute.

(4) This section may not be construed to prohibit a county from imposing zoning conditions on the establish-

ment and maintenance of a family day-care provider's home serving twelve or fewer children in an area zoned for residential or commercial use, if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 74.15.020. [2003 c 286 § 2.]

36.70.982 Fish enhancement projects—County's liability. A county is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of RCW 77.55.290 and has been permitted by the department of fish and wildlife. [2003 c 39 § 19; 1998 c 249 § 8.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.290.

36.70.992 Watershed restoration projects—Permit processing—Fish habitat enhancement project. A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of RCW 77.55.290(1) shall be reviewed and approved according to the provisions of RCW 77.55.290. [2003 c 39 § 20; 1998 c 249 § 7; 1995 c 378 § 10.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.290.

Chapter 36.70A RCW

GROWTH MANAGEMENT—PLANNING BY SELECTED COUNTIES AND CITIES

Sections

- 36.70A.070 Comprehensive plans—Mandatory elements.
- 36.70A.110 Comprehensive plans—Urban growth areas.
- 36.70A.115 Comprehensive plans and development regulations must provide sufficient land capacity for development.
- 36.70A.280 Matters subject to board review.
- 36.70A.367 Major industrial developments—Master planned locations.
- 36.70A.450 Family day-care provider's home facility—County or city may not prohibit in residential or commercial area—Conditions.
- 36.70A.460 Watershed restoration projects—Permit processing—Fish habitat enhancement project.
- 36.70A.480 Shorelines of the state.

36.70A.070 Comprehensive plans—Mandatory elements. The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future

population growth. The land use element shall provide for protection of the quality and quantity of ground water used for public water supplies. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. In order to achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and

uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection. An industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) is not required to be principally designed to serve the existing and projected rural population;

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(14). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the

local government according to RCW 36.70A.030(14). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdiction boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's six-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the six-year improvement program developed by the department of transportation as required by RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6) "concurrent

with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

(c) The transportation element described in this subsection (6), and the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. The element shall include: (a) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate; (b) a summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, work force, housing, and natural/cultural resources; and (c) an identification of policies, programs, and projects to foster economic growth and development and to address future needs. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130. [2003 c 152 § 1. Prior: 2002 c 212 § 2; 2002 c 154 § 2; 1998 c 171 § 2; 1997 c 429 § 7; 1996 c 239 § 1; prior: 1995 c 400 § 3; 1995 c 377 § 1; 1990 1st ex.s. c 17 § 7.]

Prospective application—1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Construction—Application—1995 c 400: "A comprehensive plan adopted or amended before May 16, 1995, shall be considered to be in compliance with RCW 36.70A.070 or 36.70A.110, as in effect before their amendment by this act, if the comprehensive plan is in compliance with RCW 36.70A.070 and 36.70A.110 as amended by this act. This section shall not be construed to alter the relationship between a county-wide planning policy and comprehensive plans as specified under RCW 36.70A.210.

As to any appeal relating to compliance with RCW 36.70A.070 or 36.70A.110 pending before a growth management hearings board on May 16, 1995, the board may take up to an additional ninety days to resolve such appeal. By mutual agreement of all parties to the appeal, this additional ninety-day period may be extended." [1995 c 400 § 4.]

Effective date—1995 c 400: See note following RCW 36.70A.040.

36.70A.110 Comprehensive plans—Urban growth areas. (1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area

or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(4) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such

services are financially supportable at rural densities and do not permit urban development.

(5) On or before October 1, 1993, each county that was initially required to plan under RCW 36.70A.040(1) shall adopt development regulations designating interim urban growth areas under this chapter. Within three years and three months of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall adopt development regulations designating interim urban growth areas under this chapter. Adoption of the interim urban growth areas may only occur after public notice; public hearing; and compliance with the state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110. Such action may be appealed to the appropriate growth management hearings board under RCW 36.70A.280. Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

(6) Each county shall include designations of urban growth areas in its comprehensive plan.

(7) An urban growth area designated in accordance with this section may include within its boundaries urban service areas or potential annexation areas designated for specific cities or towns within the county. [2003 c 299 § 5; 1997 c 429 § 24; 1995 c 400 § 2; 1994 c 249 § 27; 1993 sp.s. c 6 § 2; 1991 sp.s. c 32 § 29; 1990 1st ex.s. c 17 § 11.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Construction—Application—1995 c 400: See note following RCW 36.70A.070.

Effective date—1995 c 400: See note following RCW 36.70A.040.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1993 sp.s. c 6: See note following RCW 36.70A.040.

36.70A.115 Comprehensive plans and development regulations must provide sufficient land capacity for development. Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management. [2003 c 333 § 1.]

36.70A.280 Matters subject to board review. (1) A growth management hearings board shall hear and determine only those petitions alleging either:

(a) That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, a board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by a board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by a board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as a "board adjusted population projection". None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes. [2003 c 332 § 2; 1996 c 325 § 2; 1995 c 347 § 108; 1994 c 249 § 31; 1991 sp.s. c 32 § 9.]

Intent—2003 c 332: "This act is intended to codify the Washington State Court of Appeals holding in *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App. 657 (2000), by mandating that to establish participation standing under the growth management act, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the growth management hearings board." [2003 c 332 § 1.]

Severability—Effective date—1996 c 325: See notes following RCW 36.70A.270.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

36.70A.367 Major industrial developments—Master planned locations.

(1) In addition to the major industrial development allowed under RCW 36.70A.365, a county planning under RCW 36.70A.040 that meets the criteria in subsection (9) or (10) of this section may establish, in consultation with cities consistent with provisions of RCW 36.70A.210, a process for designating a bank of no more than two master planned locations for major industrial activity outside urban growth areas.

(2) A master planned location for major industrial developments outside an urban growth area may be included in the urban industrial land bank for the county if criteria including, but not limited to, the following are met:

(a) New infrastructure is provided for and/or applicable impact fees are paid;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the major industrial development and adjacent nonurban areas;

(d) Environmental protection including air and water quality has been addressed and provided for;

(e) Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas;

(f) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands;

(g) The plan for the major industrial development is consistent with the county's development regulations established for protection of critical areas;

(h) An inventory of developable land has been conducted as provided in RCW 36.70A.365;

(i) An interlocal agreement related to infrastructure cost sharing and revenue sharing between the county and interested cities are [is] established;

(j) Provisions are established for determining the availability of alternate sites within urban growth areas and the long-term annexation feasibility of land sites outside of urban growth areas; and

(k) Development regulations require the industrial land bank site to be used primarily for locating industrial and manufacturing businesses and specify that the gross floor area of all commercial and service buildings or facilities locating within the industrial land bank shall not exceed ten percent of the total gross floor area of buildings or facilities in the industrial land bank. The commercial and service businesses operated within the ten percent gross floor area limit shall be necessary to the primary industrial or manufacturing businesses within the industrial land bank. The intent of this provision for commercial or service use is to meet the needs of employees, clients, customers, vendors, and others having business at the industrial site and as an adjunct to the industry to attract and retain a quality work force and to further other public objectives, such as trip reduction. Such uses would not be promoted to attract additional clientele from the surrounding area. The commercial and service businesses should be established concurrently with or subsequent to the industrial or manufacturing businesses.

(3) In selecting master planned locations for inclusion in the urban industrial land bank, priority shall be given to locations that are adjacent to, or in close proximity to, an urban growth area.

(4) Final approval of inclusion of a master planned location in the urban industrial land bank shall be considered an adopted amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070, except that RCW 36.70A.130(2) does not apply so that inclusion or exclusion of master planned locations may be considered at any time.

(5) Once a master planned location has been included in the urban industrial land bank, manufacturing and industrial businesses that qualify as major industrial development under RCW 36.70A.365 may be located there.

(6) Nothing in this section may be construed to alter the requirements for a county to comply with chapter 43.21C RCW.

(7)(a) The authority of a county meeting the criteria of subsection (9) of this section to engage in the process of

including or excluding master planned locations from the urban industrial land bank shall terminate on December 31, 2007. However, any location included in the urban industrial land bank on or before December 31, 2007, shall be available for major industrial development as long as the criteria of subsection (2) of this section are met. A county that has established or proposes to establish an industrial land bank pursuant to this section shall review the need for an industrial land bank within the county, including a review of the availability of land for industrial and manufacturing uses within the urban growth area, during the review and evaluation of comprehensive plans and development regulations required by RCW 36.70A.130.

(b) The authority of a county meeting the criteria of subsection (10) of this section to engage in the process of including or excluding master planned locations from the urban industrial land bank terminates on December 31, 2002. However, any location included in the urban industrial land bank on December 31, 2002, shall be available for major industrial development as long as the criteria of subsection (2) of this section are met.

(8) For the purposes of this section, "major industrial development" means a master planned location suitable for manufacturing or industrial businesses that: (a) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or (b) is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent; or (c) requires a location with characteristics such as proximity to transportation facilities or related industries such that there is no suitable location in an urban growth area. The major industrial development may not be for the purpose of retail commercial development or multitenant office parks.

(9) This section and the termination date specified in subsection (7)(a) of this section apply to a county that at the time the process is established under subsection (1) of this section:

(a) Has a population greater than two hundred fifty thousand and is part of a metropolitan area that includes a city in another state with a population greater than two hundred fifty thousand;

(b) Has a population greater than one hundred forty thousand and is adjacent to another country;

(c) Has a population greater than forty thousand but less than seventy-five thousand and has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

(i) Is bordered by the Pacific Ocean;

(ii) Is located in the Interstate 5 or Interstate 90 corridor;

or

(iii) Is bordered by Hood Canal;

(d) Is east of the Cascade divide; and

(i) Borders another state to the south; or

(ii) Is located wholly south of Interstate 90 and borders the Columbia river to the east; or

(e) Has an average population density of less than one hundred persons per square mile as determined by the office of financial management, and is bordered by the Pacific Ocean and by Hood Canal.

(10) This section and the termination date specified in subsection (7)(b) of this section apply to a county that at the time the process is established under subsection (1) of this section:

(a) Has a population greater than forty thousand but fewer than eighty thousand;

(b) Has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

(c) Is located in the Interstate 5 or Interstate 90 corridor.

(11) Any location included in an industrial land bank pursuant to section 2, chapter 289, Laws of 1998, section 1, chapter 402, Laws of 1997, and section 2, chapter 167, Laws of 1996 shall remain available for major industrial development according to this section as long as the criteria of subsection (2) of this section continue to be satisfied. [2003 c 88 § 1; 2002 c 306 § 1; 2001 c 326 § 1; 1998 c 289 § 2; 1997 c 402 § 1; 1996 c 167 § 2.]

Findings—Purpose—1998 c 289: "The legislature finds that to fulfill the economic development goal of this chapter, it is beneficial to expand the limited authorization for pilot projects for identifying locations for major industrial activity in advance of specific proposals by an applicant. The legislature further finds that land bank availability may provide economically disadvantaged counties the opportunity to attract new industrial activity by offering expeditious siting and therefore promote a community's economic health and vitality. The purpose of this act is to authorize and evaluate additional pilot projects for major industrial activity in economically disadvantaged counties." [1998 c 289 § 1.]

Findings—Purpose—1996 c 167: "In 1995 the legislature addressed the demand for siting of major industrial facilities by passage of Engrossed Senate Bill No. 5019, implementing a process for siting such activities outside urban growth areas. The legislature recognizes that the 1995 act requires consideration of numerous factors necessary to ensure that the community can reasonably accommodate a major industrial development outside an urban growth area.

The legislature finds that the existing case-by-case procedure for evaluating and approving such a site under the 1995 act may operate to a community's economic disadvantage when a firm, for business reasons, must make a business location decision expeditiously. The legislature therefore finds that it would be useful to authorize, on a limited basis, and evaluate a process for identifying locations for major industrial activity in advance of specific proposals by an applicant.

It is the purpose of this act (1) to authorize a pilot project under which a bank of major industrial development locations outside urban growth areas is created for use in expeditiously siting such a development; (2) to evaluate the impact of this process on the county's compliance with chapter 36.70A RCW; and (3) to encourage consolidation and planning, and environmental review procedures under chapter 36.70B RCW." [1996 c 167 § 1.]

Effective date—1996 c 167: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1996]." [1996 c 167 § 3.]

36.70A.450 Family day-care provider's home facility—County or city may not prohibit in residential or commercial area—Conditions. (1) Except as provided in subsections (2) and (3) of this section, no county or city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.

(2) A county or city may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconform-

ing structure; (c) is certified by the office of child care policy licensor as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(3) A county or city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

(4) Nothing in this section shall be construed to prohibit a county or city from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 74.15.020. [2003 c 286 § 5; 1995 c 49 § 3; 1994 c 273 § 17.]

36.70A.460 Watershed restoration projects—Permit processing—Fish habitat enhancement project. A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of RCW 77.55.290(1) shall be reviewed and approved according to the provisions of RCW 77.55.290. [2003 c 39 § 21; 1998 c 249 § 11; 1995 c 378 § 11.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.290.

36.70A.480 Shorelines of the state. (1) For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020 without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(2) The shoreline master program shall be adopted pursuant to the procedures of chapter 90.58 RCW rather than the goals, policies, and procedures set forth in this chapter for the adoption of a comprehensive plan or development regulations.

(3) The policies, goals, and provisions of chapter 90.58 RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program with this chapter except as the shoreline master program is required to comply with the internal consistency provisions

of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105.

(a) As of the date the department of ecology approves a local government's shoreline master program adopted under applicable shoreline guidelines, the protection of critical areas as defined by RCW 36.70A.030(5) within shorelines of the state shall be accomplished only through the local government's shoreline master program and shall not be subject to the procedural and substantive requirements of this chapter, except as provided in subsection (6) of this section.

(b) Critical areas within shorelines of the state that have been identified as meeting the definition of critical areas as defined by RCW 36.70A.030(5), and that are subject to a shoreline master program adopted under applicable shoreline guidelines shall not be subject to the procedural and substantive requirements of this chapter, except as provided in subsection (6) of this section. Nothing in chapter 321, Laws of 2003 is intended to affect whether or to what extent agricultural activities, as defined in RCW 90.58.065, are subject to chapter 36.70A RCW.

(c) The provisions of RCW 36.70A.172 shall not apply to the adoption or subsequent amendment of a local government's shoreline master program and shall not be used to determine compliance of a local government's shoreline master program with chapter 90.58 RCW and applicable guidelines. Nothing in this section, however, is intended to limit or change the quality of information to be applied in protecting critical areas within shorelines of the state, as required by chapter 90.58 RCW and applicable guidelines.

(4) Shoreline master programs shall provide a level of protection to critical areas located within shorelines of the state that is at least equal to the level of protection provided to critical areas by the local government's critical area ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).

(5) Shorelines of the state shall not be considered critical areas under this chapter except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided by RCW 36.70A.030(5) and have been designated as such by a local government pursuant to RCW 36.70A.060(2).

(6) If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized by RCW 90.58.030(2)(f), then the local jurisdiction shall continue to regulate those critical areas and their required buffers pursuant to RCW 36.70A.060(2). [2003 c 321 § 5; 1995 c 347 § 104.]

Finding—Intent—2003 c 321: See note following RCW 90.58.030.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Chapter 36.70C RCW

JUDICIAL REVIEW OF LAND USE DECISIONS

Sections

36.70C.030 Chapter exclusive means of judicial review of land use decisions—Exceptions.

36.70C.030 Chapter exclusive means of judicial review of land use decisions—Exceptions. (1) This chapter

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replaces the writ of certiorari for appeal of land use decisions and shall be the exclusive means of judicial review of land use decisions, except that this chapter does not apply to:

(a) Judicial review of:

(i) Land use decisions made by bodies that are not part of a local jurisdiction;

(ii) Land use decisions of a local jurisdiction that are subject to review by a quasi-judicial body created by state law, such as the shorelines hearings board, the environmental and land use hearings board, or the growth management hearings board;

(b) Judicial review of applications for a writ of mandamus or prohibition; or

(c) Claims provided by any law for monetary damages or compensation. If one or more claims for damages or compensation are set forth in the same complaint with a land use petition brought under this chapter, the claims are not subject to the procedures and standards, including deadlines, provided in this chapter for review of the petition. The judge who hears the land use petition may, if appropriate, preside at a trial for damages or compensation.

(2) The superior court civil rules govern procedural matters under this chapter to the extent that the rules are consistent with this chapter. [2003 c 393 § 17; 1995 c 347 § 704.]

Implementation—Effective date—2003 c 393: See RCW 43.21L.900 and 43.21L.901.

Chapter 36.71 RCW

PEDDLERS' AND HAWKERS' LICENSES

Sections

36.71.060 Peddler's license—Penalty for peddling without license. (*Effective July 1, 2004.*)

36.71.090 Farmers, gardeners, etc., peddling own produce exempt from license requirements—Exception—Valid direct retail endorsement.

36.71.060 Peddler's license—Penalty for peddling without license. (*Effective July 1, 2004.*) Every peddler who sells or offers for sale or exposes for sale, at public or private sale any goods, wares, or merchandise without a county license, is guilty of a misdemeanor and shall be punished by imprisonment for not less than thirty days nor more than ninety days or by fine of not less than fifty dollars nor more than two hundred dollars or by both. [2003 c 53 § 207; 1963 c 4 § 36.71.060. Prior: 1909 c 214 § 2; RRS § 8354.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

36.71.090 Farmers, gardeners, etc., peddling own produce exempt from license requirements—Exception—Valid direct retail endorsement. (1) It shall be lawful for any farmer, gardener, or other person, without license, to sell, deliver, or peddle any fruits, vegetables, berries, eggs, or any farm produce or edibles raised, gathered, produced, or manufactured by such person and no city or town shall pass or enforce any ordinance prohibiting the sale by or requiring license from the producers and manufacturers of farm produce and edibles as defined in this section. However, nothing in this section authorizes any person to sell, deliver, or peddle, without license, in any city or town, any dairy product, meat, poultry, eel, fish, mollusk, or shellfish where a license

is required to engage legally in such activity in such city or town.

(2) It is lawful for an individual in possession of a valid direct retail endorsement, as established in RCW 77.65.510, to sell, deliver, or peddle any legally harvested retail-eligible species, as that term is defined in RCW 77.08.010, that is caught, harvested, or collected under rule of the department of fish and wildlife by such a person at a temporary food service establishment, as that term is defined in RCW 69.06.045, and no city, town, or county may pass or enforce an ordinance prohibiting the sale by or requiring additional licenses or permits from the holder of the valid direct retail endorsement. However, this subsection does not prohibit a city, town, or county from inspecting an individual displaying a direct retail endorsement to verify that the person is in compliance with state board of health and local rules for food service operations. [2003 c 387 § 5; 2002 c 301 § 9; 1984 c 25 § 4; 1963 c 4 § 36.71.090. Prior: 1917 c 45 § 1; 1897 c 62 § 1; RRS § 8343.]

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

Chapter 36.75 RCW

ROADS AND BRIDGES—GENERAL PROVISIONS

Sections

- 36.75.130 Approaches to county roads—Rules regarding construction—Penalty. (*Effective July 1, 2004.*)
 36.75.140 Repealed. (*Effective July 1, 2004.*)
 36.75.150 Repealed. (*Effective July 1, 2004.*)

36.75.130 Approaches to county roads—Rules regarding construction—Penalty. (*Effective July 1, 2004.*)

(1) No person shall be permitted to build or construct any approach to any county road without first obtaining permission therefor from the board.

(2) The boards of the several counties of the state may adopt reasonable rules for the construction of approaches which, when complied with, shall entitle a person to build or construct an approach from any abutting property to any county road. The rules may include provisions for the construction of culverts under the approaches, the depth of fills over the culverts, and for such other drainage facilities as the board deems necessary. The construction of approaches, culverts, fills, or such other drainage facilities as may be required, shall be under the supervision of the county road engineer, and all such construction shall be at the expense of the person benefited by the construction.

(3) Any person violating this section is guilty of a misdemeanor. [2003 c 53 § 208; 1963 c 4 § 36.75.130. Prior: 1943 c 174 § 1; Rem. Supp. 1943 § 6450-95.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

36.75.140 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

36.75.150 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 36.78 RCW

ROADS AND BRIDGES—COUNTY ROAD ADMINISTRATION BOARD

Sections

- 36.78.121 Maintenance.

36.78.121 Maintenance. The county road administration board, or its successor entity, shall establish a standard of good practice for maintenance of transportation system assets. This standard must be implemented by all counties no later than December 31, 2007. The board shall develop a model maintenance management system for use by counties. The board shall develop rules to assist the counties in the implementation of this system. Counties shall annually submit their maintenance plans to the board. The board shall compile the county data regarding maintenance management and annually submit it to the transportation commission or its successor entity. [2003 c 363 § 307.]

Finding—Intent—2003 c 363: See note following RCW 35.84.060.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

Chapter 36.88 RCW

COUNTY ROAD IMPROVEMENT DISTRICTS

Sections

- 36.88.160 District fund—Purposes—Bond redemptions.

36.88.160 District fund—Purposes—Bond redemptions. All moneys collected by the treasurer upon any assessments under this chapter shall be kept as a separate fund to be known as "., county road improvement district No. fund." Such funds shall be used for no other purpose than the payment of costs and expense of construction and improvement in such district and the payment of interest or principal of warrants and bonds drawn or issued upon or against said fund for said purposes. Whenever after payment of the costs and expenses of the improvement there shall be available in the local improvement district fund a sum, over and above the amount necessary to meet the interest payments next accruing on outstanding bonds, sufficient to retire one or more outstanding bonds the treasurer shall forthwith call such bond or bonds for redemption as determined in the bond authorizing ordinance. [2003 c 139 § 3; 1963 c 4 § 36.88.160. Prior: 1951 c 192 § 16.]

Effective date—2003 c 139: See note following RCW 35.45.180.

Chapter 36.89 RCW

HIGHWAYS—OPEN SPACES—PARKS—OTHER PUBLIC FACILITIES—STORM WATER CONTROL

Sections

- 36.89.080 Storm water control facilities—Rates and charges—Limitations—Use.
 36.89.130 Cooperative watershed management.

36.89.080 Storm water control facilities—Rates and charges—Limitations—Use. (1) Subject to subsections (2) and (3) of this section, any county legislative authority may provide by resolution for revenues by fixing rates and charges for the furnishing of service to those served or receive-

ing benefits or to be served or to receive benefits from any storm water control facility or contributing to an increase of surface water runoff. In fixing rates and charges, the county legislative authority may in its discretion consider:

- (a) Services furnished or to be furnished;
- (b) Benefits received or to be received;
- (c) The character and use of land or its water runoff characteristics;
- (d) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user;
- (e) Income level of persons served or provided benefits under this chapter, including senior citizens and disabled persons; or
- (f) Any other matters which present a reasonable difference as a ground for distinction.

(2) The rate a county may charge under this section for storm water control facilities shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(3) Rates and charges authorized under this section may not be imposed on lands taxed as forest land under chapter 84.33 RCW or as timber land under chapter 84.34 RCW.

(4) The service charges and rates collected shall be deposited in a special fund or funds in the county treasury to be used only for the purpose of paying all or any part of the cost and expense of maintaining and operating storm water control facilities, all or any part of the cost and expense of planning, designing, establishing, acquiring, developing, constructing and improving any of such facilities, or to pay or secure the payment of all or any portion of any issue of general obligation or revenue bonds issued for such purpose. [2003 c 394 § 3; 1998 c 74 § 1; 1995 c 124 § 1; 1970 ex.s. c 30 § 7.]

Sewerage, water, and drainage systems: Chapter 36.94 RCW.

36.89.130 Cooperative watershed management. In addition to the authority provided in RCW 36.89.030, a county may, as part of maintaining a system of storm water control facilities, participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 10.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

Chapter 36.94 RCW

SEWERAGE, WATER, AND DRAINAGE SYSTEMS

Sections

- 36.94.140 Authority of county to operate system—Rates and charges, fixing of—Factors to be considered—Assistance for low-income persons.
- 36.94.490 Cooperative watershed management.

36.94.140 Authority of county to operate system—Rates and charges, fixing of—Factors to be considered—

[2003 RCW Supp—page 450]

Assistance for low-income persons. (1) Every county, in the operation of a system of sewerage and/or water, shall have full jurisdiction and authority to manage, regulate, and control it. Except as provided in subsection (3) of this section, every county shall have full jurisdiction and authority to fix, alter, regulate, and control the rates and charges for the service and facilities to those to whom such service and facilities are available, and to levy charges for connection to the system.

(2) The rates for availability of service and facilities, and connection charges so charged must be uniform for the same class of customers or service and facility. In classifying customers served, service furnished or made available by such system of sewerage and/or water, or the connection charges, the county legislative authority may consider any or all of the following factors:

- (a) The difference in cost of service to the various customers within or without the area;
- (b) The difference in cost of maintenance, operation, repair and replacement of the various parts of the systems;
- (c) The different character of the service and facilities furnished various customers;
- (d) The quantity and quality of the sewage and/or water delivered and the time of its delivery;
- (e) Capital contributions made to the system or systems, including, but not limited to, assessments;
- (f) The cost of acquiring the system or portions of the system in making system improvements necessary for the public health and safety;
- (g) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user; and
- (h) Any other matters which present a reasonable difference as a ground for distinction.

(3) The rate a county may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(4) A county may provide assistance to aid low-income persons in connection with services provided under this chapter.

(5) The service charges and rates shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for the efficient and proper operation of the system. [2003 c 394 § 4; 1997 c 447 § 12; 1995 c 124 § 2; 1990 c 133 § 2; 1975 1st ex.s. c 188 § 2; 1967 c 72 § 14.]

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Findings—1990 c 133: "The legislature finds the best interests of the citizens of the state are served if:

- (1) Customers served by public water systems are assured of an adequate quantity and quality of water supply at reasonable rates;
- (2) There is improved coordination between state agencies engaged in water system planning and public health regulation and local governments responsible for land use regulation and public health and safety;

(3) Public water systems in violation of health and safety standards adopted under RCW 43.20.050 remain in operation and continue providing water service providing that public health is not compromised, assuming a suitable replacement purveyor is found and deficiencies are corrected in an expeditious manner consistent with public health and safety; and

(4) The state address[es], in a systematic and comprehensive fashion, new operating requirements which will be imposed on public water systems under the federal Safe Drinking Water Act." [1990 c 133 § 1.]

Severability—1990 c 133: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 133 § 12.]

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

36.94.490 Cooperative watershed management. In addition to the authority provided in RCW 36.94.020, a county may, as part of maintaining a system of sewerage and/or water, participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 9.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

Chapter 36.100 RCW

PUBLIC FACILITIES DISTRICTS

Sections

36.100.030 Facilities—Agreements—Fees.

36.100.030 Facilities—Agreements—Fees. (1) A public facilities district is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate (a) sports facilities, entertainment facilities, convention facilities, or regional centers as defined in RCW 35.57.020, and (b) for districts formed after January 1, 2000, recreational facilities other than ski areas, together with contiguous parking facilities. The taxes that are provided for in this chapter may only be imposed for these purposes.

(2) A public facilities district may enter into agreements under chapter 39.34 RCW for the joint provision and operation of such facilities and may enter into contracts under chapter 39.34 RCW where any party to the contract provides and operates such facilities for the other party or parties to the contract.

(3) Notwithstanding the establishment of a career, civil, or merit service system, a public facilities district may contract with a public or private entity for the operation or management of its public facilities.

(4) A public facilities district is authorized to use the supplemental alternative public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction, remodel, or alteration of any of its public facilities.

(5) A public facilities district may impose charges and fees for the use of its facilities, and may accept and expend or use gifts, grants, and donations. [2003 c 376 § 1; 1999 c 165 § 16; 1995 1st sp.s. c 14 § 3; 1995 c 396 § 3; 1989 1st ex.s. c 8 § 3; 1988 ex.s. c 1 § 13.]

Severability—1999 c 164: See RCW 35.57.900.

Severability—Effective dates—1995 1st sp.s. c 14: See notes following RCW 36.100.010.

Severability—1995 c 396: See note following RCW 36.100.010.

Chapter 36.120 RCW

REGIONAL TRANSPORTATION INVESTMENT DISTRICTS

Sections

36.120.040 Planning committee duties.

36.120.050 Taxes, fees, and tolls.

36.120.130 Indebtedness—Bonds—Limitation.

36.120.140 Transportation project or plan modification—Accountability.

36.120.040 Planning committee duties. (1) A regional transportation investment district planning committee shall adopt a regional transportation investment plan providing for the development, construction, and financing of transportation projects. The planning committee may consider the following factors in formulating its plan:

(a) Land use planning criteria;

(b) The input of cities located within a participating county; and

(c) The input of regional transportation planning organizations in which a participating county is located. A regional transportation planning organization in which a participating county is located shall review its adopted regional transportation plan and submit, for the planning committee's consideration, its list of transportation improvement priorities.

(2) The planning committee may coordinate its activities with the department, which shall provide services, data, and personnel to assist in this planning as desired by the planning committee. In addition, the planning committee may coordinate with affected cities, towns, and other local governments that engage in transportation planning.

(3) The planning committee shall:

(a) Conduct public meetings that are needed to assure active public participation in the development of the plan;

(b) Adopt a plan proposing the:

(i) Creation of a regional transportation investment district; and

(ii) Construction of transportation projects to improve mobility within each county. Operations, maintenance, and preservation of facilities or systems may not be part of the plan;

(c) Recommend sources of revenue authorized by RCW 36.120.050 and a financing plan to fund selected transportation projects. The overall plan of the district must leverage the district's financial contributions so that the federal, state, local, and other revenue sources continue to fund major congestion relief and transportation capacity improvement projects in each county and the district. A combination of local, state, and federal revenues may be necessary to pay for transportation projects, and the planning committee shall consider all of these revenue sources in developing a plan.

(4) The plan must use tax revenues and related debt for projects that generally benefit a participating county in proportion to the general level of tax revenues generated within that participating county. This equity principle applies to all modifications to the plan, appropriation of contingency funds not identified within the project estimate, and future phases of the plan. During implementation of the plan, the board shall retain the flexibility to manage distribution of revenues, debt, and project schedules so that the district may effectively

implement the plan. Nothing in this section should be interpreted to prevent the district from pledging district-wide tax revenues for payment of any contract or debt entered into under RCW 36.120.130.

(5) Before adopting the plan, the planning committee, with assistance from the department, shall work with the lead agency to develop accurate cost forecasts for transportation projects. This project costing methodology must be integrated with revenue forecasts in developing the plan and must at a minimum include estimated project costs in constant dollars as well as year of expenditure dollars, the range of project costs reflected by the level of project design, project contingencies, identification of mitigation costs, the range of revenue forecasts, and project and plan cash flow and bond analysis. The plan submitted to the voters must provide cost estimates for each project, including reasonable contingency costs. Plans submitted to the voters must provide that the maximum amount possible of the funds raised will be used to fund projects in the plan, including environmental improvements and mitigation, and that administrative costs be minimized. If actual revenue exceeds actual plan costs, the excess revenues must be used to retire any outstanding debt associated with the plan.

(6) If a county opts not to adopt the plan or participate in the regional transportation investment district, but two or more contiguous counties do choose to continue to participate, then the planning committee may, within ninety days, redefine the regional transportation investment plan and the ballot measure to be submitted to the people to reflect elimination of the county, and submit the redefined plan to the legislative authorities of the remaining counties for their decision as to whether to continue to adopt the redefined plan and participate. This action must be completed within sixty days after receipt of the redefined plan.

(7) Once adopted, the plan must be forwarded to the participating county legislative authorities to initiate the election process under RCW 36.120.070. The planning committee shall at the same time provide notice to each city and town within the district, the governor, the chairs of the transportation committees of the legislature, the secretary of transportation, and each legislator whose legislative district is partially or wholly within the boundaries of the district.

(8) If the ballot measure is not approved, the planning committee may redefine the selected transportation projects, financing plan, and the ballot measure. The county legislative authorities may approve the new plan and ballot measure, and may then submit the revised proposition to the voters at the next election or a special election. If no ballot measure is approved by the voters by the third vote, the planning committee is dissolved. [2003 c 194 § 1; 2002 c 56 § 104.]

36.120.050 Taxes, fees, and tolls. (1) A regional transportation investment district planning committee may, as part of a regional transportation investment plan, recommend the imposition of some or all of the following revenue sources, which a regional transportation investment district may impose upon approval of the voters as provided in this chapter:

(a) A regional sales and use tax, as specified in RCW 82.14.430, of up to 0.5 percent of the selling price, in the case of a sales tax, or value of the article used, in the case of a use

tax, upon the occurrence of any taxable event in the regional transportation investment district;

(b) A local option vehicle license fee, as specified under RCW 82.80.100, of up to one hundred dollars per vehicle registered in the district. As used in this subsection, "vehicle" means motor vehicle as defined in RCW 46.04.320. Certain classes of vehicles, as defined under chapter 46.04 RCW, may be exempted from this fee;

(c) A parking tax under RCW 82.80.030;

(d) A local motor vehicle excise tax under RCW 81.100.060 and chapter 81.104 RCW;

(e) A local option fuel tax under RCW 82.80.120;

(f) An employer excise tax under RCW 81.100.030; and

(g) Vehicle tolls on new or reconstructed facilities.

Unless otherwise specified by law, the department shall administer the collection of vehicle tolls on designated facilities, and the state transportation commission, or its successor, shall be the tolling authority.

(2) Taxes, fees, and tolls may not be imposed without an affirmative vote of the majority of the voters within the boundaries of the district voting on a ballot proposition as set forth in RCW 36.120.070. Revenues from these taxes and fees may be used only to implement the plan as set forth in this chapter. A district may contract with the state department of revenue or other appropriate entities for administration and collection of any of the taxes or fees authorized in this section.

(3) Existing statewide motor vehicle fuel and special fuel taxes, at the distribution rates in effect on January 1, 2001, are not intended to be altered by this chapter. [2003 c 350 § 4; 2002 c 56 § 105.]

36.120.130 Indebtedness—Bonds—Limitation.

(1)(a) Notwithstanding RCW 39.36.020(1), the district may at any time contract indebtedness or borrow money for district purposes and may issue general obligation bonds or other evidences of indebtedness, secured by the pledge of one or more of the taxes, tolls, charges, or fees authorized to be imposed by the district, in an amount not exceeding, together with any existing indebtedness of the district not authorized by the voters, one and one-half percent of the value of the taxable property within the boundaries of the district.

(b) With the assent of three-fifths of the voters voting at an election, a district may contract indebtedness or borrow money for district purposes and may issue general obligation bonds or other evidences of indebtedness as long as the total indebtedness of the district does not exceed five percent of the value of the taxable property within the district, including indebtedness authorized under (a) of this subsection. The bonds shall be issued and sold in accordance with chapter 39.46 RCW.

(2) The district may at any time issue revenue bonds or other evidences of indebtedness, secured by the pledge of one or more of the revenues authorized to be collected by the district, to provide funds to carry out its authorized functions without submitting the matter to the voters of the district. These obligations shall be issued and sold in accordance with chapter 39.46 RCW.

(3) The district may enter into agreements with the lead agencies or the state of Washington, when authorized by the plan, to pledge taxes or other revenues of the district for the

purpose of paying in part or whole principal and interest on bonds issued by the lead agency or the state of Washington. The agreements pledging revenues and taxes shall be binding for their terms, but not to exceed thirty years, and no tax pledged by an agreement may be eliminated or modified if it would impair the pledge made in any agreement.

(4) Once construction of projects in the plan has been completed, revenues collected by the district may only be used for the following purposes: (a) Payment of principal and interest on outstanding indebtedness of the district; (b) to make payments required under a pledging agreement; and (c) to make payments for maintenance and operations of toll facilities as may be required by toll bond covenants. [2003 c 372 § 1; 2002 c 56 § 113.]

36.120.140 Transportation project or plan modification—Accountability. (1) The board may modify the plan to change transportation projects or revenue sources if:

(a) Two or more participating counties adopt a resolution to modify the plan; and

(b) The counties submit to the voters in the district a ballot measure that redefines the scope of the plan, its projects, its schedule, its costs, or the revenue sources. If the voters fail to approve the redefined plan, the district shall continue to work on and complete the plan, and the projects in it, that was originally approved by the voters. If the voters approve the redefined plan, the district shall work on and complete the projects under the redefined plan.

(2) The board may modify the plan to change transportation projects within a participating county if:

(a) A majority of the board approves the change;

(b) The modifications are limited to projects within the county;

(c) The county submits to the voters in the county a ballot measure that redefines:

(i) Projects;

(ii) Scopes of projects; or

(iii) Costs; and

(iv) The financial plan for the county;

(d) The proposed modifications maintain the equity of the plan and does [do] not increase the total level of plan expenditure for the county.

If the voters fail to approve the modified plan, the district shall continue to work on and complete the plan, and the projects in it, that was originally approved by the voters. If the voters approve the redefined plan, the district shall work on and complete the projects under the redefined plan.

(3) If a transportation project cost exceeds its original cost by more than twenty percent as identified in the plan:

(a) The board shall, in coordination with the county legislative authorities, submit to the voters in the district or county a ballot measure that redefines the scope of the transportation project, its schedule, or its costs. If the voters fail to approve the redefined transportation project, the district shall terminate work on that transportation project, except that the district may take reasonable steps to use, preserve, or connect any improvement already constructed. The remainder of any funds that would otherwise have been expended on the terminated transportation project must first be used to retire any outstanding debt attributable to the plan and then may be used to implement the remainder of the plan.

(b) Alternatively, upon adoption of a resolution by two or more participating counties:

(i) The counties shall submit to the voters in the district a ballot measure that redefines the scope of the plan, its transportation projects, its schedule, or its costs. If the voters fail to approve the redefined plan, the district shall terminate work on that plan, except that the district may take reasonable steps to use, preserve, or connect any improvement already constructed. The remainder of any funds must be used to retire any outstanding debt attributable to the plan; or

(ii) The counties may elect to have the district continue the transportation project without submitting an additional ballot proposal to the voters.

(4) To assure accountability to the public for the timely construction of the transportation improvement project or projects within cost projections, the district shall issue a report, at least annually, to the public and copies of the report to newspapers of record in the district. In the report, the district shall indicate the status of transportation project costs, transportation project expenditures, revenues, and construction schedules. The report may also include progress towards meeting the performance criteria provided under this chapter. [2003 c 194 § 2; 2002 c 56 § 114.]

Title 38

MILITIA AND MILITARY AFFAIRS

Chapters

38.32 Offenses—Punishment.

38.52 Emergency management.

38.54 State fire services mobilization.

Chapter 38.32 RCW

OFFENSES—PUNISHMENT

Sections

38.32.090 Penalty for physician making false certificate. (*Effective July 1, 2004.*)

38.32.120 Authority of commanding officer. (*Effective July 1, 2004.*)

38.32.090 Penalty for physician making false certificate. (*Effective July 1, 2004.*) Any physician who shall knowingly make and deliver a false certificate of physical disability concerning any member of the militia who shall have been ordered out or summoned for active service is guilty of perjury under chapter 9A.72 RCW and, upon conviction, as an additional penalty, shall forfeit forever his or her license and right to practice in this state. [2003 c 53 § 209; 1989 c 19 § 43; 1943 c 130 § 11; Rem. Supp. 1943 § 8603-11. Prior: 1909 c 134 § 22.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

38.32.120 Authority of commanding officer. (*Effective July 1, 2004.*) (1) The commanding officer at any drill, parade, encampment or other duty may place in arrest for the time of such drill, parade, encampment or other duty any person or persons who shall trespass on the camp grounds, parade grounds, rifle range or armory, or in any way or manner interrupt or molest the orderly discharge of duty of those

on duty, or who shall disturb or prevent the passage of troops going to or returning from any regularly ordered tour of duty; and may prohibit and prevent the sale or use of all spirituous liquors, wines, ale or beer, or holding of huckster or auction sales, and all gambling therein, and remove disorderly persons beyond the limits of such parade or encampment, or within a distance of two miles therefrom, and the commanding officer shall have full authority to abate as common nuisances all disorderly places, and bar all unauthorized sales within such limits.

(2) Any person violating this section, or any order issued in pursuance thereof, is guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars, or imprisoned not more than thirty days, or both such fine and imprisonment.

(3) No license or renewal thereof shall be issued or granted to any person, firm or corporation for the sale of intoxicating or spirituous liquors within a distance of three hundred feet from any armory used by the state of Washington for military purposes, without the approval of the adjutant general. [2003 c 53 § 210; 1989 c 19 § 44; 1963 c 220 § 137; 1943 c 130 § 52; Rem. Supp. 1943 § 8603-52. Prior: 1937 c 51 § 1; 1909 c 134 § 62; 1895 c 108 § 99.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 38.52 RCW

EMERGENCY MANAGEMENT

Sections

38.52.106 Nisqually earthquake account.
38.52.150 Orders, rules, regulations—Enforcement—Availability—Penalty. (*Effective July 1, 2004.*)

38.52.106 Nisqually earthquake account. The Nisqually earthquake account is created in the state treasury. Moneys may be placed in the account from tax revenues, budget transfers or appropriations, federal appropriations, gifts, or any other lawful source. Moneys in the account may be spent only after appropriation. Moneys in the account shall be used only to support state and local government disaster response and recovery efforts associated with the Nisqually earthquake. During the 2003-2005 fiscal biennium, the legislature may transfer moneys from the Nisqually earthquake account to the disaster response account for fire suppression and mobilization costs. [2003 1st sp.s. c 25 § 913; 2002 c 371 § 904; 2001 c 5 § 2.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Nisqually earthquake emergency declaration—2001 c 5: "The legislature declares an emergency caused by a natural disaster, known as the Nisqually earthquake, which occurred on February 28, 2001, as proclaimed by the governor and the president of the United States." [2001 c 5 § 1.]

Effective date—2001 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2001]." [2001 c 5 § 6.]

38.52.150 Orders, rules, regulations—Enforcement—Availability—Penalty. (*Effective July 1, 2004.*) (1) It shall be the duty of every organization for emergency man-

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agement established pursuant to this chapter and of the officers thereof to execute and enforce such orders, rules, and regulations as may be made by the governor under authority of this chapter. Each such organization shall have available for inspection at its office all orders, rules, and regulations made by the governor, or under his or her authority.

(2)(a) Except as provided in (b) of this subsection, every violation of any rule, regulation, or order issued under the authority of this chapter is a misdemeanor.

(b) A second offense hereunder the same is a gross misdemeanor. [2003 c 53 § 211; 1984 c 38 § 14; 1974 ex.s. c 171 § 17; 1951 c 178 § 18.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 38.54 RCW

STATE FIRE SERVICES MOBILIZATION

Sections

38.54.010 Recodified as RCW 43.43.960.
38.54.020 Recodified as RCW 43.43.961.
38.54.030 Recodified as RCW 43.43.962.
38.54.040 Recodified as RCW 43.43.963.
38.54.050 Recodified as RCW 43.43.964.

38.54.010 Recodified as RCW 43.43.960. See Supplementary Table of Disposition of Former RCW Sections, this volume.

38.54.020 Recodified as RCW 43.43.961. See Supplementary Table of Disposition of Former RCW Sections, this volume.

38.54.030 Recodified as RCW 43.43.962. See Supplementary Table of Disposition of Former RCW Sections, this volume.

38.54.040 Recodified as RCW 43.43.963. See Supplementary Table of Disposition of Former RCW Sections, this volume.

38.54.050 Recodified as RCW 43.43.964. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 39

PUBLIC CONTRACTS AND INDEBTEDNESS

Chapters

39.04 Public works.
39.08 Contractor's bond.
39.10 Alternative public works contracting procedures.
39.12 Prevailing wages on public works.
39.30 Contracts—Indebtedness limitations—Competitive bidding violations.
39.33 Intergovernmental disposition of property.
39.34 Interlocal cooperation act.
39.42 State bonds, notes, and other evidences of indebtedness.
39.44 Bonds—Miscellaneous provisions, bond information reporting.

- 39.46 Bonds—Other miscellaneous provisions—Registration.
- 39.62 Uniform facsimile signature of public officials act.
- 39.94 Financing contracts.
- 39.96 Payment agreements.

**Chapter 39.04 RCW
PUBLIC WORKS**

Sections

- 39.04.105 Competitive bidding—Written protests—Notice of contract execution.
- 39.04.107 Competitive bidding—Bidder claiming error.

39.04.105 Competitive bidding—Written protests—Notice of contract execution. When a municipality receives a written protest from a bidder for a public works project which is the subject of competitive bids, the municipality shall not execute a contract for the project with anyone other than the protesting bidder without first providing at least two full business days' written notice of the municipality's intent to execute a contract for the project; provided that the protesting bidder submits notice in writing of its protest no later than two full business days following bid opening. Intermediate Saturdays, Sundays, and legal holidays are not counted. [2003 c 300 § 1.]

39.04.107 Competitive bidding—Bidder claiming error. A low bidder on a public works project who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. [2003 c 300 § 2.]

**Chapter 39.08 RCW
CONTRACTOR'S BOND**

Sections

- 39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorney's fees.

39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorney's fees. (1) The bond mentioned in RCW 39.08.010 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, except under subsection (2) of this section, and shall be to the state of Washington, except as otherwise provided in RCW 39.08.100, and except in cases of cities and towns, in which cases such municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond shall run: PROVIDED, The same shall not be for a less amount than twenty-five percent of the contract price of any such improvement, and may designate that the same shall be payable to such city, and not to the state of Washington, and all such persons mentioned in RCW 39.08.010 shall have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements: PROVIDED, That such persons shall not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the

contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or materialman, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of dollars (here insert the amount) against the bond taken from (here insert the name of the principal and surety or sureties upon such bond) for the work of (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed)

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the claimant shall be entitled to recover in addition to all other costs, attorney's fees in such sum as the court shall adjudge reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice hereinbefore mentioned: PROVIDED FURTHER, That any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict herewith: AND PROVIDED FURTHER, That any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict herewith.

(2) Under the job order contracting procedure described in RCW 39.10.130, bonds will be in an amount not less than the dollar value of all open work orders. [2003 c 301 § 4; 1989 c 58 § 1; 1977 ex.s. c 166 § 4; 1915 c 28 § 2; 1909 c 207 § 3; RRS § 1161. Prior: 1899 c 105 § 1; 1888 p 16 § 3. Formerly RCW 39.08.030 through 39.08.060.]

Severability—1977 ex.s. c 166: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to the other persons or circumstances is not affected." [1977 ex.s. c 166 § 9.]

**Chapter 39.10 RCW
ALTERNATIVE PUBLIC WORKS
CONTRACTING PROCEDURES**

Sections

- 39.10.020 Definitions. (Effective until July 1, 2007.)

- 39.10.051 Design-build procedure—Which public bodies may use. (Effective until July 1, 2007.)
- 39.10.061 General contractor/construction manager procedure—Limitations. (Effective until July 1, 2007.)
- 39.10.067 School district capital demonstration projects—Conditions. (Effective until July 1, 2007.)
- 39.10.068 Public hospital district capital demonstration projects—Conditions. (Effective until July 1, 2007.)
- 39.10.117 Public hospital district project review board—Established—Procedures. (Effective until July 1, 2007.)
- 39.10.130 Job order contracts. (Effective until July 1, 2007.)
- 39.10.902 Repealer.

39.10.020 Definitions. (Effective until July 1, 2007.)

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

(1) "Alternative public works contracting procedure" means the design-build and the general contractor/construction manager contracting procedures authorized in RCW 39.10.051 and 39.10.061, respectively.

(2) "Public body" means the state department of general administration; the University of Washington; Washington State University; every city with a population greater than seventy thousand and any public authority chartered by such city under RCW 35.21.730 through 35.21.755 and specifically authorized as provided in RCW 39.10.120(4); every county with a population greater than four hundred fifty thousand; every port district with total revenues greater than fifteen million dollars per year; every public hospital district with total revenues greater than fifteen million dollars per year utilizing the design-build procedure authorized by RCW 39.10.051 and every public hospital district, regardless of total revenues, proposing projects that are considered and approved by the public hospital district project review board under RCW 39.10.117; every public utility district with revenues from energy sales greater than twenty-three million dollars per year; those school districts proposing projects that are considered and approved by the school district project review board under RCW 39.10.115; and the state ferry system.

(3) "Public works project" means any work for a public body within the definition of the term public work in RCW 39.04.010.

(4) "Job order contract" means a contract between a public body or any school district and a registered or licensed contractor in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of negotiated, definitive work orders for public works as defined in RCW 39.04.010.

(5) "Job order contractor" means a registered or licensed contractor awarded a job order contract.

(6) "Unit price book" means a book containing specific prices, based on generally accepted industry standards and information, where available, for various items of work to be performed by the job order contractor. The prices may include: All the costs of materials; labor; equipment; overhead, including bonding costs; and profit for performing the items of work. The unit prices for labor must be at the rates in effect at the time the individual work order is issued.

(7) "Work order" means an order issued for a definite scope of work to be performed pursuant to a job order contract. [2003 c 352 § 1; 2003 c 301 § 2; 2003 c 300 § 3; 2001 c 328 § 1; 2000 c 209 § 1; 1997 c 376 § 1; 1994 c 132 § 2.]

Reviser's note: This section was amended by 2003 c 300 § 3, 2003 c 301 § 2, and by 2003 c 352 § 1, each without reference to the other. All

amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2001 c 328: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 328 § 8.]

Effective date—1997 c 376: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 376 § 10.]

39.10.051 Design-build procedure—Which public bodies may use. (Effective until July 1, 2007.)

(1) Notwithstanding any other provision of law, and after complying with RCW 39.10.030, the following public bodies may utilize the design-build procedure of public works contracting for public works projects authorized under this section: The state department of general administration; the state ferry system; the University of Washington; Washington State University; every city with a population greater than seventy thousand and any public authority chartered by such city under RCW 35.21.730 through 35.21.755 and specifically authorized as provided in RCW 39.10.120(4); every county with a population greater than four hundred fifty thousand; every public utility district with revenues from energy sales greater than twenty-three million dollars per year; every public hospital district with total revenues greater than fifteen million dollars per year; and every port district with total revenues greater than fifteen million dollars per year. The authority granted to port districts in this section is in addition to and does not affect existing contracting authority under RCW 53.08.120 and 53.08.130. For the purposes of this section, "design-build procedure" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract.

(2) Public bodies authorized under this section may utilize the design-build procedure for public works projects valued over ten million dollars where:

(a) The construction activities or technologies to be used are highly specialized and a design-build approach is critical in developing the construction methodology or implementing the proposed technology; or

(b) The project design is repetitive in nature and is an incidental part of the installation or construction; or

(c) Regular interaction with and feedback from facilities users and operators during design is not critical to an effective facility design.

(3) Public bodies authorized under this section may also use the design-build procedure for the following projects that meet the criteria in subsection (2)(b) and (c) of this section:

(a) The construction or erection of preengineered metal buildings or prefabricated modular buildings, regardless of cost; or

(b) The construction of new student housing projects valued over five million dollars.

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

request for proposals for design-build services and the availability and location of the request for proposal documents. The request for proposal documents shall include:

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

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

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

(d) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors. Evaluation factors shall include, but not be limited to: Proposal price; ability of professional personnel; past performance on similar projects; ability to meet time and budget requirements; ability to provide a performance and payment bond for the project; recent, current, and projected work loads of the firm; location; and the concept of the proposal;

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

(f) The amount to be paid to finalists submitting best and final proposals who are not awarded a design-build contract; and

(g) Other information relevant to the project.

(5) The public body shall establish a committee to evaluate the proposals based on the factors, weighting, and process identified in the request for proposals. Based on its evaluation, the public body shall select not fewer than three nor more than five finalists to submit best and final proposals. The public body may, in its sole discretion, reject all proposals. Design-build contracts shall be awarded using the procedures in (a) or (b) of this subsection.

(a) Best and final proposals shall be evaluated and scored based on the factors, weighting, and process identified in the initial request for proposals. The public body may score the proposals using a system that measures the quality and technical merits of the proposal on a unit price basis. Final proposals may not be considered if the proposal cost is greater than the maximum allowable construction cost identified in the initial request for proposals. The public body shall initiate negotiations with the firm submitting the highest scored best and final proposal. If the public body is unable to execute a contract with the firm submitting the highest scored best and final proposal, negotiations with that firm may be suspended or terminated and the public body may proceed to negotiate with the next highest scored firm. Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

(b) If the public body determines that all finalists are capable of producing plans and specifications that adequately meet project requirements, the public body may award the contract to the firm that submits the responsive best and final proposal with the lowest price.

(6) The firm awarded the contract shall provide a performance and payment bond for the contracted amount. The public body shall provide appropriate honorarium payments to finalists submitting best and final proposals who are not

awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects.

(7) The authority provided to the state ferry system in this section is limited to projects concerning construction, renovation, preservation, demolition, and reconstruction of ferry terminals and associated land-based facilities. [2003 c 352 § 2; 2003 c 300 § 4; 2002 c 46 § 1; 2001 c 328 § 2.]

Reviser's note: This section was amended by 2003 c 300 § 4 and by 2003 c 352 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2002 c 46: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2002]." [2002 c 46 § 5.]

Effective date—2001 c 328: See note following RCW 39.10.020.

39.10.061 General contractor/construction manager procedure—Limitations. (Effective until July 1, 2007.)

(1) Notwithstanding any other provision of law, and after complying with RCW 39.10.030, a public body may utilize the general contractor/construction manager procedure of public works contracting for public works projects authorized under subsection (2) of this section. For the purposes of this section, "general contractor/construction manager" means a firm with which a public body has selected and negotiated a maximum allowable construction cost to be guaranteed by the firm, after competitive selection through formal advertisement and competitive bids, to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase.

(2) Except those school districts proposing projects that are considered and approved by the school district project review board and those public hospital districts proposing projects that are considered and approved by the public hospital district project review board, public bodies authorized under this section may utilize the general contractor/construction manager procedure for public works projects valued over ten million dollars where:

(a) Implementation of the project involves complex scheduling requirements; or

(b) The project involves construction at an existing facility which must continue to operate during construction; or

(c) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project.

(3) Public bodies should select general contractor/construction managers early in the life of public works projects, and in most situations no later than the completion of schematic design.

(4) Contracts for the services of a general contractor/construction manager under this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. The public solicitation of proposals shall include: A description of the project, including programmatic, performance, and technical requirements and specifications when

available; the reasons for using the general contractor/construction manager procedure; a description of the qualifications to be required of the proposer, including submission of the proposer's accident prevention program; a description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors; the form of the contract to be awarded; the estimated maximum allowable construction cost; and the bid instructions to be used by the general contractor/construction manager finalists. Evaluation factors shall include, but not be limited to: Ability of professional personnel, past performance in negotiated and complex projects, and ability to meet time and budget requirements; the scope of work the general contractor/construction manager proposes to self-perform and its ability to perform it; location; recent, current, and projected work loads of the firm; and the concept of their proposal. A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, these finalists shall submit final proposals, including sealed bids for the percent fee, which is the percentage amount to be earned by the general contractor/construction manager as overhead and profit, on the estimated maximum allowable construction cost and the fixed amount for the detailed specified general conditions work. The public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public solicitation of proposals.

(5) The maximum allowable construction cost may be negotiated between the public body and the selected firm after the scope of the project is adequately determined to establish a guaranteed contract cost for which the general contractor/construction manager will provide a performance and payment bond. The guaranteed contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the percent fee on the negotiated maximum allowable construction cost, and sales tax. If the public body is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the public body determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the public body shall negotiate with the next highest scored firm and continue until an agreement is reached or the process is terminated. If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the public body, the percent fee shall be renegotiated.

(6) All subcontract work shall be competitively bid with public bid openings. When critical to the successful completion of a subcontract bid package and after publication of notice of intent to determine bidder eligibility in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public work will be done at least twenty days before requesting qualifications from interested subcontract bidders, the owner and general contractor/construction manager may determine subcontractor bidding eligibility using the following evaluation criteria:

(a) Adequate financial resources or the ability to secure such resources;

(b) History of successful completion of a contract of similar type and scope;

(c) Project management and project supervision personnel with experience on similar projects and the availability of such personnel for the project;

(d) Current and projected workload and the impact the project will have on the subcontractor's current and projected workload;

(e) Ability to accurately estimate the subcontract bid package scope of work;

(f) Ability to meet subcontract bid package shop drawing and other coordination procedures;

(g) Eligibility to receive an award under applicable laws and regulations; and

(h) Ability to meet subcontract bid package scheduling requirements.

The owner and general contractor/construction manager shall weigh the evaluation criteria and determine a minimum acceptable score to be considered an eligible subcontract bidder.

After publication of notice of intent to determine bidder eligibility, subcontractors requesting eligibility shall be provided the evaluation criteria and weighting to be used by the owner and general contractor/construction manager to determine eligible subcontract bidders. After the owner and general contractor/construction manager determine eligible subcontract bidders, subcontractors requesting eligibility shall be provided the results and scoring of the subcontract bidder eligibility determination.

Subcontract bid packages shall be awarded to the responsible bidder submitting the low responsive bid. The requirements of RCW 39.30.060 apply to each subcontract bid package. All subcontractors who bid work over three hundred thousand dollars shall post a bid bond and all subcontractors who are awarded a contract over three hundred thousand dollars shall provide a performance and payment bond for their contract amount. All other subcontractors shall provide a performance and payment bond if required by the general contractor/construction manager. If a general contractor/construction manager receives a written protest from a subcontractor bidder, the general contractor/construction manager shall not execute a contract for the subcontract bid package with anyone other than the protesting bidder without first providing at least two full business days' written notice of the general contractor/construction manager's intent to execute a contract for the subcontract bid package; provided that the protesting bidder submits notice in writing of its protest no later than two full business days following bid opening. Intermediate Saturdays, Sundays, and legal holidays are not counted. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. Except as provided for under subsection (7) of this section, bidding on subcontract work by the general contractor/construction manager or its subsidiaries is prohibited. The general contractor/construction manager may negotiate with the low-responsive bidder in accordance with RCW 39.10.080 or, if unsuccessful in such negotiations, rebid.

(7) The general contractor/construction manager, or its subsidiaries, may bid on subcontract work if:

(a) The work within the subcontract bid package is customarily performed by the general contractor/construction manager;

(b) The bid opening is managed by the public body; and

(c) Notification of the general contractor/construction manager's intention to bid is included in the public solicitation of bids for the bid package.

In no event may the value of subcontract work performed by the general contractor/construction manager exceed thirty percent of the negotiated maximum allowable construction cost.

(8) A public body may include an incentive clause in any contract awarded under this section for savings of either time or cost or both from that originally negotiated. No incentives granted may exceed five percent of the maximum allowable construction cost. If the project is completed for less than the agreed upon maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the public body. If the project is completed for more than the agreed upon maximum allowable construction cost, excepting increases due to any contract change orders approved by the public body, the additional cost shall be the responsibility of the general contractor/construction manager.

(9) The authority provided to the state ferry system in this section is limited to projects concerning construction, renovation, preservation, demolition, and reconstruction of ferry terminals and associated land-based facilities. [2003 c 352 § 3; 2003 c 300 § 5; 2002 c 46 § 2; 2001 c 328 § 3.]

Reviser's note: This section was amended by 2003 c 300 § 5 and by 2003 c 352 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2002 c 46: See note following RCW 39.10.051.

Effective date—2001 c 328: See note following RCW 39.10.020.

39.10.067 School district capital demonstration projects—Conditions. (*Effective until July 1, 2007.*) In addition to the projects authorized in RCW 39.10.061, public bodies may also use the general contractor/construction manager contracting procedure for the construction of school district capital demonstration projects, subject to the following conditions:

(1) The project must receive approval from the school district project review board established under RCW 39.10.115.

(2) The school district project review board may not authorize more than sixteen demonstration projects valued over ten million dollars.

(3) The school district project review board may not authorize more than two demonstration projects valued between five and ten million dollars and the authorization for the two demonstration projects shall expire upon the completion of the two projects. [2003 c 301 § 3; 2002 c 46 § 3; 2000 c 209 § 3.]

Effective date—2002 c 46: See note following RCW 39.10.051.

39.10.068 Public hospital district capital demonstration projects—Conditions. (*Effective until July 1, 2007.*) (1) In addition to the projects authorized in RCW 39.10.061, public hospital districts may also use the general contrac-

tor/construction manager contracting procedure for the construction of public hospital district capital demonstration projects, subject to the following conditions:

(a) The project must receive approval from the public hospital district project review board established under RCW 39.10.117.

(b) The public hospital district project review board may not authorize more than ten demonstration projects valued between five and ten million dollars.

(2) Public hospital districts may also use the general contractor/construction manager contracting procedure for the construction of any public hospital district capital project that has a value over ten million dollars and that has received approval from the public hospital district project review board established under RCW 39.10.117. [2003 c 300 § 6.]

39.10.117 Public hospital district project review board—Established—Procedures. (*Effective until July 1, 2007.*) (1) The public hospital district project review board is established to review public hospital district proposals submitted by public hospital districts to use alternative public works contracting procedures. The board shall select and approve qualified projects based upon an evaluation of the information submitted by the public hospital district under subsection (2) of this section. Any appointments for full terms or to fill a vacancy shall be made by the governor and shall include the following representatives, each having experience with public works or commercial construction: One representative from the department of health; one representative from the office of financial management; two representatives from the construction industry, one of whom works for a construction company with gross annual revenues of twenty million dollars or less; one representative from the specialty contracting industry; one representative from organized labor; one representative from the design industry; one representative from a public body previously authorized under this chapter to use an alternative public works contracting procedure who has experience using such alternative contracting procedures; one representative from public hospital districts with total revenues greater than fifteen million dollars per year; and one representative from public hospital districts with total revenues equal to or less than fifteen million dollars per year. Each member shall be appointed for a term of three years, with the first three-year term commencing after July 27, 2003. Any member of the public hospital district project review board who is directly affiliated with any applicant before the board must recuse him [himself] or herself from consideration of the application.

(2) A public hospital district seeking to use alternative contracting procedures authorized under this chapter pursuant to RCW 39.10.068 shall file an application with the public hospital district project review board. The application form shall require the district to submit a detailed statement of the proposed project, including the public hospital district's name; the current projected total budget for the project, including the estimated construction costs, costs for professional services, equipment and furnishing costs, off-site costs, contract administration costs, and other related project costs; the anticipated project design and construction schedule; a summary of the public hospital district's construction

activity for the preceding six years; and an explanation of why the public hospital district believes the use of an alternative contracting procedure is in the public interest and why the public hospital district is qualified to use an alternative contracting procedure, including a summary of the relevant experience of the public hospital district's management team. The applicant shall also provide in a timely manner any other information concerning implementation of projects under this chapter requested by the public hospital district project review board to assist in its consideration.

(3) Any public hospital district whose application is approved by the public hospital district project review board shall comply with the public notification and review requirements in RCW 39.10.030.

(4) Any public hospital district whose application is approved by the public hospital district project review board shall not use as an evaluation factor whether a contractor submitting a bid for the approved project has had prior general contractor/construction manager procedure experience. [2003 c 300 § 7.]

39.10.130 Job order contracts. (Effective until July 1, 2007.) (1) Public bodies may use a job order contract for public works projects when:

(a) A public body has made a determination that the use of job order contracts will benefit the public by providing an effective means of reducing the total lead-time and cost for public works projects or repair required at public facilities through the use of unit price books and work orders by eliminating time-consuming, costly aspects of the traditional public works process, which require separate contracting actions for each small project;

(b) The work order to be issued for a particular project does not exceed two hundred thousand dollars;

(c) Less than twenty percent of the dollar value of the work order consists of items of work not contained in the unit price book; and

(d) At least eighty percent of the job order contract must be subcontracted to entities other than the job order contractor.

(2) Public bodies shall award job order contracts through a competitive process utilizing public requests for proposals. Public bodies shall make an effort to solicit proposals from a certified minority or certified woman-owned contractor to the extent permitted by the Washington state civil rights act, RCW 49.60.400. The public body shall publish, at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public works will be done, a request for proposals for job order contracts and the availability and location of the request for proposal documents. The public body shall ensure that the request for proposal documents at a minimum includes:

(a) A detailed description of the scope of the job order contract including performance, technical requirements and specifications, functional and operational elements, minimum and maximum work order amounts, duration of the contract, and options to extend the job order contract;

(b) The reasons for using job order contracts;

(c) A description of the qualifications required of the proposer;

(d) The identity of the specific unit price book to be used;

(e) The minimum contracted amount committed to the selected job order contractor;

(f) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors. The public body shall ensure that evaluation factors include, but are not limited to, proposal price and the ability of the proposer to perform the job order contract. In evaluating the ability of the proposer to perform the job order contract, the public body may consider: The ability of the professional personnel who will work on the job order contract; past performance on similar contracts; ability to meet time and budget requirements; ability to provide a performance and payment bond for the job order contract; recent, current, and projected work loads of the proposer; location; and the concept of the proposal;

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

(h) The method for pricing renewals of or extensions to the job order contract;

(i) A notice that the proposals are subject to the provisions of RCW 39.10.100; and

(j) Other information relevant to the project.

(3) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, the finalists shall submit final proposals, including sealed bids based upon the identified unit price book. Such bids may be in the form of coefficient markups from listed price book costs. The public body shall award the contract to the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public request for proposals.

(4) The public body shall provide a protest period of at least ten business days following the day of the announcement of the apparent successful proposal to allow a protester to file a detailed statement of the grounds of the protest. The public body shall promptly make a determination on the merits of the protest and provide to all proposers a written decision of denial or acceptance of the protest. The public body shall not execute the contract until two business days following the public body's decision on the protest.

(5) The public body shall issue no work orders until it has approved, in consultation with the office of minority and women's business enterprises or the equivalent local agency, a plan prepared by the job order contractor that equitably spreads certified women and minority business enterprise subcontracting opportunities, to the extent permitted by the Washington state civil rights act, RCW 49.60.400, among the various subcontract disciplines.

(6) Job order contracts may be executed for an initial contract term of not to exceed two years, with the option of extending or renewing the job order contract for one year. All extensions or renewals must be priced as provided in the request for proposals. The extension or renewal must be mutually agreed to by the public body and the job order contractor.

(7) The maximum total dollar amount that may be awarded under a job order contract shall not exceed three million dollars in the first year of the job order contract, five million dollars over the first two years of the job order contract, and, if extended or renewed, eight million dollars over the three years of the job order contract.

(8) For each job order contract, public bodies shall not issue more than two work orders equal to or greater than one hundred fifty thousand dollars in a twelve-month contract performance period.

(9) All work orders issued for the same project shall be treated as a single work order for purposes of the one hundred fifty thousand dollar limit on work orders in subsection (8) of this section and the two hundred thousand dollar limit on work orders in subsection (1)(b) of this section.

(10) Any new permanent, enclosed building space constructed under a work order shall not exceed two thousand gross square feet.

(11) Each public body may have no more than two job order contracts in effect at any one time.

(12) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW, each work order issued shall be treated as a separate contract. The alternate filing provisions of RCW 39.12.040(2) shall apply to each work order that otherwise meets the eligibility requirements of RCW 39.12.040(2).

(13) The requirements of RCW 39.30.060 do not apply to requests for proposals for job order contracts.

(14) Job order contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each work order must be the rates in effect at the time the individual work order is issued.

(15) If, in the initial contract term, the public body, at no fault of the job order contractor, fails to issue the minimum amount of work orders stated in the public request for proposals, the public body shall pay the contractor an amount equal to the difference between the minimum work order amount and the actual total of the work orders issued multiplied by an appropriate percentage for overhead and profit contained in the general conditions for Washington state facility construction. This will be the contractor's sole remedy.

(16) All job order contracts awarded under this section must be executed before July 1, 2007, however the job order contract may be extended or renewed as provided for in this section.

(17) For purposes of this section, "public body" includes any school district. [2003 c 301 § 1.]

39.10.902 Repealer. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2007:

- (1) RCW 39.10.010 and 1994 c 132 § 1;
- (2) RCW 39.10.020 and 2003 c 301 § 2, 2003 c 300 § 3, 2001 c 328 § 1, 2000 c 209 § 1, 1997 c 376 § 1, & 1994 c 132 § 2;
- (3) RCW 39.10.030 and 1997 c 376 § 2 & 1994 c 132 § 3;
- (4) RCW 39.10.040 and 1994 c 132 § 4;
- (5) RCW 39.10.051 and 2003 c 300 § 4, 2002 c 46 § 1, & 2001 c 328 § 2;
- (6) RCW 39.10.061 and 2003 c 300 § 5, 2002 c 46 § 2, & 2001 c 328 § 3;
- (7) RCW 39.10.065 and 1997 c 376 § 5;
- (8) RCW 39.10.067 and 2003 c 301 § 3, 2002 c 46 § 3, & 2000 c 209 § 3;
- (9) RCW 39.10.070 and 1994 c 132 § 7;
- (10) RCW 39.10.080 and 1994 c 132 § 8;

- (11) RCW 39.10.090 and 1994 c 132 § 9;
- (12) RCW 39.10.100 and 1994 c 132 § 10;
- (13) RCW 39.10.115 and 2001 c 328 § 4 & 2000 c 209 § 4;
- (14) RCW 39.10.900 and 1994 c 132 § 13;
- (15) RCW 39.10.901 and 1994 c 132 § 14;
- (16) RCW 39.10.068 and 2003 c 300 § 6;
- (17) RCW 39.10.117 and 2003 c 300 § 7; and
- (18) RCW 39.10.130 and 2003 c 301 § 1. [2003 c 301 § 8; 2003 c 300 § 8; 2002 c 46 § 4; 2001 c 328 § 6; 1997 c 376 § 8; 1995 3rd sp.s. c 1 § 306; 1994 c 132 § 15.]

Reviser's note: This section was amended by 2003 c 300 § 8 and by 2003 c 301 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2002 c 46: See note following RCW 39.10.051.

Effective date—2001 c 328: See note following RCW 39.10.020.

Effective date—1997 c 376: See note following RCW 39.10.020.

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

Chapter 39.12 RCW

PREVAILING WAGES ON PUBLIC WORKS

Sections

- 39.12.026 Surveys—Applicability by county.
- 39.12.090 Job order contracts. (*Effective until July 1, 2007.*)

39.12.026 Surveys—Applicability by county. (1) In establishing the prevailing rate of wage under RCW 39.12.010, 39.12.015, and 39.12.020, all data collected by the department may be used only in the county for which the work was performed.

(2) This section applies only to prevailing wage surveys initiated on or after August 1, 2003. [2003 c 363 § 206.]

Findings—Intent—2003 c 363 §§ 201-206: See note following RCW 49.04.041.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

39.12.090 Job order contracts. (*Effective until July 1, 2007.*) Job order contracts under RCW 39.10.130 must pay prevailing wages for all work that would otherwise be subject to the requirements of this chapter. Prevailing wages for all work performed pursuant to each work order must be the rates in effect at the time the individual work order is issued. [2003 c 301 § 6.]

Repealer—2003 c 301 § 6: "The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2007: RCW 39.12.090 and 2003 c 301 § 6." [2003 c 301 § 9.]

Chapter 39.30 RCW

CONTRACTS—INDEBTEDNESS LIMITATIONS—COMPETITIVE BIDDING VIOLATIONS

Sections

- 39.30.060 Bids on public works—Identification, substitution of subcontractors.

39.30.060 Bids on public works—Identification, substitution of subcontractors. (1) Every invitation to bid on a prime contract that is expected to cost one million dollars or more for the construction, alteration, or repair of any public

building or public work of the state or a state agency or municipality as defined under RCW 39.04.010 or an institution of higher education as defined under RCW 28B.10.016 shall require each prime contract bidder to submit as part of the bid, or within one hour after the published bid submittal time, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of: HVAC (heating, ventilation, and air conditioning); plumbing as described in chapter 18.106 RCW; and electrical as described in chapter 19.28 RCW, or to name itself for the work. The prime contract bidder shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the prime contract bidder must indicate which subcontractor will be used for which alternate. Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder's bid nonresponsive and, therefore, void.

(2) Substitution of a listed subcontractor in furtherance of bid shopping or bid peddling before or after the award of the prime contract is prohibited and the originally listed subcontractor is entitled to recover monetary damages from the prime contract bidder who executed a contract with the public entity and the substituted subcontractor but not from the public entity inviting the bid. It is the original subcontractor's burden to prove by a preponderance of the evidence that bid shopping or bid peddling occurred. Substitution of a listed subcontractor may be made by the prime contractor for the following reasons:

- (a) Refusal of the listed subcontractor to sign a contract with the prime contractor;
- (b) Bankruptcy or insolvency of the listed subcontractor;
- (c) Inability of the listed subcontractor to perform the requirements of the proposed contract or the project;
- (d) Inability of the listed subcontractor to obtain the necessary license, bonding, insurance, or other statutory requirements to perform the work detailed in the contract; or
- (e) The listed subcontractor is barred from participating in the project as a result of a court order or summary judgment.

(3) The requirement of this section to name the prime contract bidder's proposed HVAC, plumbing, and electrical subcontractors applies only to proposed HVAC, plumbing, and electrical subcontractors who will contract directly with the prime contract bidder submitting the bid to the public entity.

(4) This section does not apply to job order contract requests for proposals under RCW 39.10.130. [2003 c 301 § 5; 2002 c 163 § 2; 1999 c 109 § 1; 1995 c 94 § 1; 1994 c 91 § 1; 1993 c 378 § 1.]

Intent—2002 c 163: "This act is intended to discourage bid shopping and bid peddling on Washington state public building and works projects." [2002 c 163 § 1.]

Application—1994 c 91: "This act applies prospectively only and not retroactively. It applies only to invitations to bid issued on or after June 9, 1994." [1994 c 91 § 2.]

Application—1993 c 378: "This act applies prospectively only and not retroactively. It applies only to invitations to bid issued on or after July 25, 1993." [1993 c 378 § 2.]

[2003 RCW Supp—page 462]

Chapter 39.33 RCW

INTERGOVERNMENTAL DISPOSITION OF PROPERTY

Sections

39.33.010 Sale, exchange, transfer, lease of public property authorized—Section deemed alternative.

39.33.010 Sale, exchange, transfer, lease of public property authorized—Section deemed alternative. (1) The state or any municipality or any political subdivision thereof, may sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, or property rights, including but not limited to the title to real property, to the state or any municipality or any political subdivision thereof, or the federal government, on such terms and conditions as may be mutually agreed upon by the proper authorities of the state and/or the subdivisions concerned. In addition, the state, or any municipality or any political subdivision thereof, may sell, transfer, exchange, lease, or otherwise dispose of personal property, except weapons, to a foreign entity.

(2) This section shall be deemed to provide an alternative method for the doing of the things authorized herein, and shall not be construed as imposing any additional condition upon the exercise of any other powers vested in the state, municipalities or political subdivisions.

(3) No intergovernmental transfer, lease, or other disposition of property made pursuant to any other provision of law prior to May 23, 1972, shall be construed to be invalid solely because the parties thereto did not comply with the procedures of this section. [2003 c 303 § 1; 1981 c 96 § 1; 1973 c 109 § 1; 1972 ex.s. c 95 § 1; 1953 c 133 § 1.]

Effective date—2003 c 303: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2003]." [2003 c 303 § 2.]

Exchange of county tax title lands with other governmental agencies: Chapter 36.35 RCW.

Chapter 39.34 RCW

INTERLOCAL COOPERATION ACT

Sections

39.34.020 Definitions.
 39.34.190 Watershed management plan projects—Use of water-related revenues.
 39.34.200 Watershed management partnerships—Formation.
 39.34.210 Watershed management partnerships—Indebtedness—Bonds.
 39.34.220 Watershed management plans—Additional authority for implementation—Existing agreements not affected.

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

(1) "Public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

(2) "State" means a state of the United States.

(3) "Watershed management partnership" means an interlocal cooperation agreement formed under the authority of RCW 39.34.200.

(4) "WRIA" has the definition in RCW 90.82.020. [2003 c 327 § 3; 1985 c 33 § 1; 1979 c 36 § 1; 1977 ex.s. c 283 § 13; 1975 1st ex.s. c 115 § 1; 1973 c 34 § 1; 1971 c 33 § 1; 1969 c 88 § 1; 1969 c 40 § 1; 1967 c 239 § 3.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

39.34.190 Watershed management plan projects—

Use of water-related revenues. (1) The legislative authority of a city or county and the governing body of any special purpose district enumerated in subsection (2) of this section may authorize up to ten percent of its water-related revenues to be expended in the implementation of watershed management plan projects or activities that are in addition to the county's, city's, or district's existing water-related services or activities. Such limitation on expenditures shall not apply to additional revenues for watershed plan implementation that are authorized by voter approval under *section 5 of this act or to water-related revenues of a public utility district organized according to Title 54 RCW. Water-related revenues include rates, charges, and fees for the provision of services relating to water supply, treatment, distribution, and management generally, and those general revenues of the local government that are expended for water management purposes. A local government may not expend for this purpose any revenues that were authorized by voter approval for other specified purposes or that are specifically dedicated to the repayment of municipal bonds or other debt instruments.

(2) The following special purpose districts may exercise the authority provided by this section:

(a) Water districts, sewer districts, and water-sewer districts organized under Title 57 RCW;

(b) Public utility districts organized under Title 54 RCW;

(c) Irrigation, reclamation, conservation, and similar districts organized under Titles 87 and 89 RCW;

(d) Port districts organized under Title 53 RCW;

(e) Diking, drainage, and similar districts organized under Title 85 RCW;

(f) Flood control and similar districts organized under Title 86 RCW;

(g) Lake management districts organized under chapter 36.61 RCW;

(h) Aquifer protection areas organized under chapter 36.36 RCW; and

(i) Shellfish protection districts organized under chapter 90.72 RCW.

(3) The authority for expenditure of local government revenues provided by this section shall be applicable broadly to the implementation of watershed management plans addressing water supply, water transmission, water quality treatment or protection, or any other water-related purposes. Such plans include but are not limited to plans developed under the following authorities:

(a) Watershed plans developed under chapter 90.82 RCW;

(b) Salmon recovery plans developed under chapter 77.85 RCW;

(c) Watershed management elements of comprehensive land use plans developed under the growth management act, chapter 36.70A RCW;

(d) Watershed management elements of shoreline master programs developed under the shoreline management act, chapter 90.58 RCW;

(e) Nonpoint pollution action plans developed under the Puget Sound water quality management planning authorities of chapter 90.71 RCW and chapter 400-12 WAC;

(f) Other comprehensive management plans addressing watershed health at a WRIA level or sub-WRIA basin drainage level;

(g) Coordinated water system plans under chapter 70.116 RCW and similar regional plans for water supply; and

(h) Any combination of the foregoing plans in an integrated watershed management plan.

(4) The authority provided by this section to expend revenues for watershed management plan implementation shall be construed broadly to include, but not be limited to:

(a) The coordination and oversight of plan implementation, including funding a watershed management partnership for this purpose;

(b) Technical support, monitoring, and data collection and analysis;

(c) The design, development, construction, and operation of projects included in the plan; and

(d) Conducting activities and programs included as elements in the plan. [2003 c 327 § 2.]

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

Finding—Intent—2003 c 327: "The legislature finds that throughout Washington state there are many active efforts to protect, manage, and restore watersheds. The state's river systems provide a variety of benefits for society's many needs, so efforts to protect these watersheds should reflect the diversity of social, environmental, and economic factors that make the state unique.

Yet, there is a conflict between the natural flow of river systems and the way watersheds are governed. From a hydrological standpoint, a watershed is a single, integrated system. But these systems usually flow through a number of cities, counties, and other municipalities as they move from their source to the sea. As a result, many are subject to the full range of management interests, including multiple government entities with jurisdiction over water. In many cases, the political boundaries of government do not align with the hydrological boundaries of watersheds and may actually hinder the implementation of coordinated, cooperative plans. Cooperative watershed management actions by local governments, special districts, and utilities can help maintain healthy watershed function and support the beneficial use of water by these entities and protect the quality of the resource that they use or affect. By participating in cooperative watershed management actions, local governments, special districts, and utilities are acting in the public interest and in a manner that is intended to sustain maximum beneficial use and high quality of water over time and to maintain the services that these entities provide.

Therefore, it is the intent of this act to remove statutory barriers that may prevent local governments from working together in the creation and implementation of cooperative, coordinated watershed plans. In addition, it is the further intent of this act to provide additional authorities to assist in such implementation." [2003 c 327 § 1.]

39.34.200 Watershed management partnerships—Formation. Any two or more public agencies may enter into agreements with one another to form a watershed management partnership for the purpose of implementing any portion or all elements of a watershed management plan, including the coordination and oversight of plan implementation. The plan may be any plan or plan element described in RCW 39.34.190(3). The watershed partnership agreement shall

include the provisions required of all interlocal agreements under RCW 39.34.030(3). The agreement shall be filed pursuant to RCW 39.34.040 with the county auditor of each county lying within the geographical watershed area to be addressed by the partnership. The public agencies forming the partnership shall designate a treasurer for the deposit, accounting, and handling of the funds of the partnership. The treasurer shall be either a county treasurer or a city treasurer of a county or city participating in the agreement to form the partnership. [2003 c 327 § 4.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

39.34.210 Watershed management partnerships—Indebtedness—Bonds. Where a watershed management partnership formed under the authority of RCW 39.34.200 establishes a separate legal entity to conduct the cooperating undertaking of the partnership, such legal entity is authorized for the purpose of carrying out such undertaking to contract indebtedness and to issue and sell general obligation bonds pursuant to and in the manner provided for general county bonds in chapters 36.67 and 39.46 RCW and other applicable statutes, and to issue revenue bonds pursuant to and in the manner provided for revenue bonds in chapter 36.67 RCW and other applicable statutes. The joint board established by the partnership agreement shall perform the functions referenced in chapter 36.67 RCW to be performed by the county legislative authority in the case of county bonds. [2003 c 327 § 6.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

39.34.220 Watershed management plans—Additional authority for implementation—Existing agreements not affected. The amendments by chapter 327, Laws of 2003 to the interlocal cooperation act authorities are intended to provide additional authority to public agencies for the purposes of implementing watershed management plans, and do not affect any agreements among public agencies existing on July 27, 2003. [2003 c 327 § 7.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

Chapter 39.42 RCW

STATE BONDS, NOTES, AND OTHER EVIDENCES OF INDEBTEDNESS

Sections

39.42.060	Limitation on issuance of evidences of indebtedness—Annual computation of amount required to pay on outstanding debt.
39.42.070	Computation of general state revenues—Filing of certificate—Estimate of debt capacity.

39.42.060 Limitation on issuance of evidences of indebtedness—Annual computation of amount required to pay on outstanding debt. No bonds, notes, or other evidences of indebtedness for borrowed money shall be issued by the state which will cause the aggregate debt contracted by the state to exceed that amount for which payments of principal and interest in any fiscal year would require the state to expend more than seven percent of the arithmetic mean of its general state revenues, as defined in RCW 39.42.070, for the three immediately preceding fiscal years as certified by the treasurer in accordance with RCW 39.42.070. It shall be the

duty of the state finance committee to compute annually the amount required to pay principal of and interest on outstanding debt. In making such computation, the state finance committee shall include all borrowed money represented by bonds, notes, or other evidences of indebtedness which are secured by the full faith and credit of the state or are required to be paid, directly or indirectly, from general state revenues and which are incurred by the state, any department, authority, public corporation or quasi public corporation of the state, any state university or college, or any other public agency created by the state but not by counties, cities, towns, school districts, or other municipal corporations, and shall include debt incurred pursuant to section 3 of Article VIII of the Washington state Constitution, but shall exclude the following:

- (1) Obligations for the payment of current expenses of state government;
- (2) Indebtedness incurred pursuant to RCW 39.42.080 or 39.42.090;
- (3) Principal of and interest on bond anticipation notes;
- (4) Any indebtedness which has been refunded;
- (5) Financing contracts entered into under chapter 39.94 RCW;
- (6) Indebtedness authorized or incurred before July 1, 1993, pursuant to statute which requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from money other than general state revenues or from the special excise tax imposed pursuant to chapter 67.40 RCW;
- (7) Indebtedness authorized and incurred after July 1, 1993, pursuant to statute that requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from (a) moneys outside the state treasury, except higher education operating fees, (b) higher education building fees, (c) indirect costs recovered from federal grants and contracts, and (d) fees and charges associated with hospitals operated or managed by institutions of higher education;
- (8) Any agreement, promissory note, or other instrument entered into by the state finance committee under RCW 39.42.030 in connection with its acquisition of bond insurance, letters of credit, or other credit support instruments for the purpose of guaranteeing the payment or enhancing the marketability, or both, of any state bonds, notes, or other evidence of indebtedness;
- (9) Indebtedness incurred for the purposes identified in RCW 43.99N.020;
- (10) Indebtedness incurred for the purposes of the school district bond guaranty established by chapter 39.98 RCW;
- (11) Indebtedness incurred for the purposes of replacing the waterproof membrane over the east plaza garage and revising related landscaping construction pursuant to RCW 43.99Q.070;
- (12) Indebtedness incurred for the purposes of the state legislative building rehabilitation, to the extent that principal and interest payments of such indebtedness are paid from the capitol building construction account pursuant to RCW 43.99Q.140(2)(b); and
- (13) Indebtedness incurred for the purposes of financing projects under RCW 47.10.867.

To the extent necessary because of the constitutional or statutory debt limitation, priorities with respect to the issuance or guaranteeing of bonds, notes, or other evidences of indebtedness by the state shall be determined by the state finance committee. [2003 c 147 § 13; 2002 c 240 § 7; 2001 2nd sp.s. c 9 § 18; 1999 c 273 § 9; 1997 c 220 § 220 (Referendum Bill No. 48, approved June 17, 1997); 1993 c 52 § 1. Prior: 1989 1st ex.s. c 14 § 17; 1989 c 356 § 7; 1983 1st ex.s. c 36 § 1; 1979 ex.s. c 204 § 1; 1971 ex.s. c 184 § 6.]

Effective date—2003 c 147: See note following RCW 47.10.861.

Severability—Effective date—2002 c 240: See RCW 43.99G.902 and 43.99G.903.

Severability—Effective date—2001 2nd sp.s. c 9: See RCW 43.99Q.900 and 43.99Q.901.

Contingent effective date—1999 c 273: See RCW 39.98.900.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Effective date—1993 c 52: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 52 § 2.]

Severability—Effective dates—1989 1st ex.s. c 14: See RCW 43.99H.900 and 43.99H.901.

39.42.070 Computation of general state revenues—Filing of certificate—Estimate of debt capacity. (1) On or after *the effective date of this act, the treasurer shall compute general state revenues for the three fiscal years immediately preceding such date and shall determine the arithmetic mean thereof. As soon as is practicable after the close of each fiscal year thereafter, he or she shall do likewise. In determining the amount of general state revenues, the treasurer shall include all state money received in the treasury from each and every source whatsoever except: (a) Fees and revenues derived from the ownership or operation of any undertaking, facility or project; (b) moneys received as gifts, grants, donations, aid or assistance or otherwise from the United States or any department, bureau or corporation thereof, or any person, firm or corporation, public or private, when the terms and conditions of such gift, grant, donation, aid or assistance require the application and disbursement of such moneys otherwise than for the general purposes of the state of Washington; (c) moneys to be paid into and received from retirement system funds, and performance bonds and deposits; (d) moneys to be paid into and received from trust funds including but not limited to moneys received from taxes levied for specific purposes and the several permanent and irreducible funds of the state and the moneys derived therefrom but excluding bond redemption funds; (e) proceeds received from the sale of bonds or other evidences of indebtedness. Upon computing general state revenues, the treasurer shall make and file in the office of the secretary of state, a certificate containing the results of such computations. Copies of said certificate shall be sent to each elected official of the state and each member of the legislature. The treasurer shall, at the same time, advise each elected official and each member of the legislature of the current available debt capacity of

the state, and may make estimated projections for one or more years concerning debt capacity.

(2) For purposes of this chapter, general state revenues shall also include revenues that are deposited in the general fund under RCW 82.45.180(2), lottery revenues as provided in RCW 67.70.240(3), revenues paid into the general fund under RCW 84.52.067, and revenues deposited into the student achievement fund and distributed to school districts as provided in RCW 84.52.068. [2003 1st sp.s. c 9 § 1; 2002 c 240 § 8; 1971 ex.s. c 184 § 7.]

***Reviser's note:** For "the effective date of this act," see RCW 39.42.900.

Severability—Effective date—2002 c 240: See RCW 43.99G.902 and 43.99G.903.

Chapter 39.44 RCW

BONDS—MISCELLANEOUS PROVISIONS, BOND INFORMATION REPORTING

Sections

39.44.101 Facsimile signatures on bonds and coupons—Fraud—Destruction of plates—Penalty. (*Effective July 1, 2004.*)

39.44.101 Facsimile signatures on bonds and coupons—Fraud—Destruction of plates—Penalty. (*Effective July 1, 2004.*) Every printer, engraver, or lithographer, who with the intent to defraud, prints, engraves, or lithographs a facsimile signature upon any bond or coupon without written order of the issuing authority, or fails to destroy such plate or plates containing the facsimile signature upon direction of such issuing authority, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 212; 1955 c 375 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Fraud, forgery: Chapter 9A.60 RCW.

Chapter 39.46 RCW

BONDS—OTHER MISCELLANEOUS PROVISIONS—REGISTRATION

Sections

39.46.050 Bonds—Issuer authorized to establish lines of credit.

39.46.050 Bonds—Issuer authorized to establish lines of credit. Each local government authorized to issue bonds is authorized to establish lines of credit with any qualified public depository to be drawn upon in exchange for its bonds or other obligations, to delegate to its treasurer authority to determine the amount of credit extended, and to pay interest and other finance or service charges. The interest rates on such bonds or other obligations may be a fixed rate or rates set periodically or a variable rate or rates determined by agreement of the parties. [2003 c 23 § 1; 1983 c 167 § 5.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Chapter 39.62 RCW

UNIFORM FACSIMILE SIGNATURE OF PUBLIC OFFICIALS ACT

Sections

39.62.040 Unauthorized use—Penalty. (*Effective July 1, 2004.*)

39.62.040 Unauthorized use—Penalty. (*Effective July 1, 2004.*) Any person who with intent to defraud uses on a public security or an instrument of payment:

(1) A facsimile signature, or any reproduction of it, of any authorized officer, or

(2) Any facsimile seal, or any reproduction of it, of this state or any of its departments, agencies, counties, cities, towns, municipal corporations, junior taxing districts, school districts, or other instrumentalities or of any of its political subdivisions is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 213; 1969 c 86 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 39.94 RCW FINANCING CONTRACTS

Sections

39.94.040 State finance committee—Duties—Legislative approval required, when.

39.94.040 State finance committee—Duties—Legislative approval required, when. (1) Except as provided in RCW 28B.10.022, the state may not enter into any financing contract for itself if the aggregate principal amount payable thereunder is greater than an amount to be established from time to time by the state finance committee or participate in a program providing for the issuance of certificates of participation, including any contract for credit enhancement, without the prior approval of the state finance committee. Except as provided in RCW 28B.10.022, the state finance committee shall approve the form of all financing contracts or a standard format for all financing contracts. The state finance committee also may:

(a) Consolidate existing or potential financing contracts into master financing contracts with respect to property acquired by one or more agencies, departments, instrumentalities of the state, the state board for community and technical colleges, or a state institution of higher learning; or to be acquired by an other agency;

(b) Approve programs providing for the issuance of certificates of participation in master financing contracts for the state or for other agencies;

(c) Enter into agreements with trustees relating to master financing contracts; and

(d) Make appropriate rules for the performance of its duties under this chapter.

(2) In the performance of its duties under this chapter, the state finance committee may consult with representatives from the department of general administration, the office of financial management, and the department of information services.

(3) With the approval of the state finance committee, the state also may enter into agreements with trustees relating to financing contracts and the issuance of certificates of participation.

(4) Except for financing contracts for real property used for the purposes described under chapter 28B.140 RCW, the

state may not enter into any financing contract for real property of the state without prior approval of the legislature.

(5) The state may not enter into any financing contract on behalf of an other agency without the approval of such a financing contract by the governing body of the other agency. [2003 c 6 § 2; 2002 c 151 § 6; 1998 c 291 § 5; 1989 c 356 § 4.]

Application—1998 c 291: See note following RCW 39.94.050.

Chapter 39.96 RCW PAYMENT AGREEMENTS

Sections

39.96.020 Definitions.

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

(1) "Financial advisor" means a financial services or financial advisory firm:

(a) With recognized knowledge and experience in connection with the negotiation and execution of payment agreements;

(b) That is acting solely as financial advisor to the governmental entity in connection with the execution of the payment agreement and the issuance or incurring of any related obligations, and not as a principal, placement agent, purchaser, underwriter, or other similar party, and that does not control, nor is it controlled by or under common control with, any such party;

(c) That is compensated for its services in connection with the execution of payment agreements, either directly or indirectly, solely by the governmental entity; and

(d) Whose compensation is not based on a percentage of the notional amount of the payment agreement or of the principal amount of any related obligations.

(2) "Governmental entity" means state government or local government.

(3) "Local government" means any city, county, port district, public hospital district, or public utility district, or any joint operating agency formed under RCW 43.52.360, that has or will have outstanding obligations in an aggregate principal amount of at least one hundred million dollars as of the date a payment agreement is executed or is scheduled by its terms to commence or had at least one hundred million dollars in gross revenues during the preceding calendar year.

(4) "Obligations" means bonds, notes, bond anticipation notes, commercial paper, or other obligations for borrowed money, or lease, installment purchase, or other similar financing agreements or certificates of participation in such agreements.

(5) "Payment agreement" means a written agreement which provides for an exchange of payments based on interest rates, or for ceilings or floors on these payments, or an option on these payments, or any combination, entered into on either a current or forward basis.

(6) "State government" means (a) the state of Washington, acting by and through its state finance committee, (b) the Washington health care facilities authority, (c) the Washington higher education facilities authority, (d) the Washington state housing finance commission, or (e) the state finance committee upon adoption of a resolution approving a pay-

ment agreement on behalf of any state institution of higher education as defined under RCW 28B.10.016: PROVIDED, That such approval shall not constitute the pledge of the full faith and credit of the state, but a pledge of only those funds specified in the approved agreement. [2003 c 47 § 1; 1993 c 273 § 2.]

Title 40

PUBLIC DOCUMENTS, RECORDS, AND PUBLICATIONS

Chapters

40.14 Preservation and destruction of public records.

40.16 Penal provisions.

Chapter 40.14 RCW

PRESERVATION AND DESTRUCTION OF PUBLIC RECORDS

Sections

- 40.14.022 Division of archives and records management—Imaging account.
- 40.14.024 Division of archives and records management—Local government archives account.
- 40.14.025 Division of archives and records management—Allocation of costs of services—Archives and records management account.
- 40.14.027 Public archives and records management services—Judgment debtor surcharge.
- 40.14.030 Transfer to state archives—Certified copies, cost—Public disclosure.
- 40.14.070 Destruction, disposition, donation of local government records—Preservation for historical interest—Local records committee, duties—Record retention schedules.

40.14.022 Division of archives and records management—Imaging account. The imaging account is created in the custody of the state treasurer. All receipts collected under RCW 40.14.020(8) for contract imaging, micrographics, reproduction, and duplication services provided by the division of archives and records management must be deposited into the account, and expenditures from the account may be used only for these purposes. Only the secretary of state or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2003 c 163 § 2.]

40.14.024 Division of archives and records management—Local government archives account. The local government archives account is created in the state treasury. All receipts collected by the county auditors under RCW 40.14.027 and 36.22.175 for local government services, such as providing records scheduling, security microfilm inspection and storage, archival preservation, cataloging, and indexing for local government records and digital data and access to those records and data through the regional branch archives of the division of archives and records management, must be deposited into the account, and expenditures from the account may be used only for these purposes. [2003 c 163 § 3.]

40.14.025 Division of archives and records management—Allocation of costs of services—Archives and records management account. (1) The secretary of state and the director of financial management shall jointly establish a procedure and formula for allocating the costs of services provided by the division of archives and records management to state agencies. The total amount allotted for services to state agencies shall not exceed the appropriation to the archives and records management account during any allotment period.

(2) There is created the archives and records management account in the state treasury which shall consist of all fees and charges collected under this section. The account shall be appropriated exclusively for the payment of costs and expenses incurred in the operation of the division of archives and records management as specified by law. [2003 c 163 § 1; 1996 c 245 § 3; 1991 sp.s. c 13 § 5; 1985 c 57 § 22; 1981 c 115 § 4.]

Effective date—1996 c 245: "This act takes effect on July 1, 1996." [1996 c 245 § 5.]

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

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

Effective date—1981 c 115: See note following RCW 40.14.020.

40.14.027 Public archives and records management services—Judgment debtor surcharge. State agencies shall collect a surcharge of twenty dollars from the judgment debtor upon the satisfaction of a warrant filed in superior court for unpaid taxes or liabilities. The surcharge is imposed on the judgment debtor in the form of a penalty in addition to the filing fee provided in RCW 36.18.012(10). The surcharge revenue shall be transmitted to the state treasurer for deposit in the archives and records management account.

Surcharge revenue deposited in the local government archives account under RCW 40.14.024 shall be expended by the secretary of state exclusively for disaster recovery, essential records protection services, and records management training for local government agencies by the division of archives and records management. The secretary of state shall, with local government representatives, establish a committee to advise the state archivist on the local government archives and records management program. [2003 c 163 § 4; 2001 c 146 § 4; 1996 c 245 § 4; 1995 c 292 § 17; 1994 c 193 § 2.]

Effective date—1996 c 245: See note following RCW 40.14.025.

Findings—1994 c 193: "The legislature finds that: (1) Accountability for and the efficient management of local government records are in the public interest and that compliance with public records management requirements significantly affects the cost of local government administration; (2) the secretary of state is responsible for insuring the preservation of local government archives and may assist local government compliance with public records statutes; (3) as provided in RCW 40.14.025, all archives and records management services provided by the secretary of state are funded exclusively by a schedule of fees and charges established jointly by the secretary of state and the director of financial management; (4) the secretary of state's costs for preserving and providing public access to local government archives and providing records management assistance to local government agencies have been funded by fees paid by state government agencies; (5) local government agencies are responsible for costs associated with managing, protecting, and providing public access to the records in their custody; (6) local government should help fund the secretary of state's local government archives and records management services; (7) the five-dollar fee collected by county clerks for processing warrants for unpaid taxes or liabilities

filed by the state of Washington is not sufficient to cover processing costs and is far below filing fees commonly charged for similar types of minor civil actions; (8) a surcharge of twenty dollars would bring the filing fee for warrants for the collection of unpaid taxes and liabilities up to a level comparable to other minor civil filings and should be applied to the support of the secretary of state's local government archives and records services without placing an undue burden on local government; and (9) the process of collecting and transmitting surcharge revenue should not have an undue impact on the operations of the state agencies that file warrants for the collection of unpaid taxes and liabilities or the clerks of superior court who process them." [1994 c 193 § 1.]

Effective date—1994 c 193: "This act shall take effect July 1, 1994." [1994 c 193 § 3.]

40.14.030 Transfer to state archives—Certified copies, cost—Public disclosure. (1) All public records, not required in the current operation of the office where they are made or kept, and all records of every agency, commission, committee, or any other activity of state government which may be abolished or discontinued, shall be transferred to the state archives so that the valuable historical records of the state may be centralized, made more widely available, and insured permanent preservation: PROVIDED, That this section shall have no application to public records approved for destruction under the subsequent provisions of this chapter.

When so transferred, copies of the public records concerned shall be made and certified by the archivist, which certification shall have the same force and effect as though made by the officer originally in charge of them. Fees may be charged to cover the cost of reproduction. In turning over the archives of his office, the officer in charge thereof, or his successor, thereby loses none of his rights of access to them, without charge, whenever necessary.

(2) Records that are confidential, privileged, or exempt from public disclosure under state or federal law while in the possession of the originating agency, commission, board, committee, or other entity of state or local government retain their confidential, privileged, or exempt status after transfer to the state archives unless the archivist, with the concurrence of the originating jurisdiction, determines that the records must be made accessible to the public according to proper and reasonable rules adopted by the secretary of state, in which case the records may be open to inspection and available for copying after the expiration of seventy-five years from creation of the record. If the originating jurisdiction is no longer in existence, the archivist shall make the determination of availability according to such rules. If, while in the possession of the originating agency, commission, board, committee, or other entity, any record is determined to be confidential, privileged, or exempt from public disclosure under state or federal law for a period of less than seventy-five years, then the record, with the concurrence of the originating jurisdiction, must be made accessible to the public upon the expiration of the shorter period of time according to proper and reasonable rules adopted by the secretary of state. [2003 c 305 § 1; 1957 c 246 § 3.]

Columbia River boundary compact, transfer of records to division of archives: RCW 43.58.070.

40.14.070 Destruction, disposition, donation of local government records—Preservation for historical interest—Local records committee, duties—Record retention schedules. (1)(a) County, municipal, and other local govern-

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ment agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The archivist, a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.

(b) A local government agency, as an alternative to submitting lists, may elect to establish a records control program based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.

(2)(a) Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:

(i) The records are six or more years old;

(ii) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or

(iii) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the local records committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency.

(b) Records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenders contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020 that are not required in the current operation of the law

enforcement agency or for pending judicial proceedings shall, following the expiration of the applicable schedule of the law enforcement agency's retention of the records, be transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval. Upon electronic retention of any document, the association shall be permitted to destroy the paper copy of the document.

(c) Any record transferred to the Washington association of sheriffs and police chiefs pursuant to (b) of this subsection shall be deemed to no longer constitute a public record pursuant to RCW 42.17.020 and shall be exempt from public disclosure. Such records shall be disseminated only to criminal justice agencies as defined in RCW 10.97.030 for the purpose of determining if a sex offender met the criteria of a sexually violent predator as defined in chapter 71.09 RCW.

(3) Except as otherwise provided by law, county, municipal, and other local government agencies may, as an alternative to destroying noncurrent public records having no further administrative or legal value, donate the public records to the state library, local library, historical society, genealogical society, or similar society or organization.

Public records may not be donated under this subsection unless:

- (a) The records are seventy years old or more;
- (b) The local records committee has approved the destruction of the public records; and
- (c) The state archivist has determined that the public records have no historic interest. [2003 c 240 § 1; 1999 c 326 § 2; 1995 c 301 § 71; 1982 c 36 § 6; 1973 c 54 § 5; 1971 ex.s. c 10 § 1; 1957 c 246 § 7.]

Copying, preserving, and indexing of documents recorded by county auditor: RCW 36.22.160 through 36.22.190.

Destruction and reproduction of court records: RCW 36.23.065 through 36.23.070.

**Chapter 40.16 RCW
PENAL PROVISIONS**

Sections

- 40.16.010 Injury to public record. (*Effective July 1, 2004.*)
- 40.16.020 Injury to and misappropriation of record. (*Effective July 1, 2004.*)
- 40.16.030 Offering false instrument for filing or record. (*Effective July 1, 2004.*)

40.16.010 Injury to public record. (*Effective July 1, 2004.*) Every person who shall willfully and unlawfully remove, alter, mutilate, destroy, conceal, or obliterate a record, map, book, paper, document, or other thing filed or deposited in a public office, or with any public officer, by authority of law, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both. [2003 c 53 § 214; 1992 c 7 § 34; 1909 c 249 § 95; RRS § 2347.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

40.16.020 Injury to and misappropriation of record. (*Effective July 1, 2004.*) Every officer who shall mutilate, destroy, conceal, erase, obliterate, or falsify any record or paper appertaining to the officer's office, or who shall fraud-

ulently appropriate to the officer's own use or to the use of another person, or secrete with intent to appropriate to such use, any money, evidence of debt or other property intrusted to the officer by virtue of the officer's office, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [2003 c 53 § 215; 1992 c 7 § 35; 1909 c 249 § 96; RRS § 2348.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

40.16.030 Offering false instrument for filing or record. (*Effective July 1, 2004.*) Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both. [2003 c 53 § 216; 1992 c 7 § 36; 1909 c 249 § 97; RRS § 2349.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Title 41

**PUBLIC EMPLOYMENT, CIVIL SERVICE,
AND PENSIONS**

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**Chapter 41.04 RCW
GENERAL PROVISIONS**

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41.04.010 Veterans' scoring criteria status in examinations. In all competitive examinations, unless otherwise provided in this section, to determine the qualifications of applicants for public offices, positions or employment, the state, and all of its political subdivisions and all municipal corporations, shall give a scoring criteria status to all veterans as defined in RCW 41.04.007, by adding to the passing mark, grade or rating only, based upon a possible rating of one hundred points as perfect a percentage in accordance with the following:

(1) Ten percent to a veteran who served during a period of war or in an armed conflict as defined in RCW 41.04.005 and does not receive military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations;

(2) Five percent to a veteran who did not serve during a period of war or in an armed conflict as defined in RCW 41.04.005 or is receiving military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations;

(3) Five percent to a veteran who was called to active military service for one or more years from employment with the state or any of its political subdivisions or municipal corporations. The percentage shall be added to the first promotional examination only;

(4) All veterans' scoring criteria may be claimed upon release from active military service. [2003 c 45 § 1; 2002 c 292 § 4; 2000 c 140 § 1; 1974 ex.s. c 170 § 1; 1969 ex.s. c 269 § 2; 1953 ex.s. c 9 § 1; 1949 c 134 § 1; 1947 c 119 § 1; 1945 c 189 § 1; Rem. Supp. 1949 § 9963-5.]

Veterans and veterans' affairs: Title 73 RCW.

41.04.017 Death benefit—Course of employment. A one hundred fifty thousand dollar death benefit shall be paid as a sundry claim to the estate of an employee of any state agency, the common school system of the state, or institution of higher education who dies as a result of injuries sustained in the course of employment and is not otherwise provided a death benefit through coverage under their enrolled retirement system under chapter 402, Laws of 2003. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the director of the department of general administration by order under RCW 51.52.050. [2003 c 402 § 4.]

41.04.033 Operation of the Washington state combined fund drive—Committee—Rules. The director of the

department of personnel is authorized to adopt rules, after consultation with state agencies, institutions of higher education, and employee organizations, to create a Washington state combined fund drive committee, and for the operation of the Washington state combined fund drive. [2003 c 205 § 1; 2002 c 61 § 4.]

41.04.0331 State combined fund drive—Powers and duties. The Washington state combined fund drive's powers and duties include but are not limited to the following:

(1) Raising money for charity, and reducing the disruption to government caused by multiple fund drives;

(2) Establishing criteria by which a public or private nonprofit organization may participate in the combined fund drive;

(3) Engaging in or encouraging fund-raising activities including the solicitation and acceptance of charitable gifts, grants, and donations from state employees, retired public employees, corporations, foundations, and other individuals for the benefit of the beneficiaries of the Washington state combined fund drive;

(4) Requesting the appointment of employees from state agencies and institutions of higher education to lead and manage workplace charitable giving campaigns within state government;

(5) Engaging in educational activities, including classes, exhibits, seminars, workshops, and conferences, related to the basic purpose of the combined fund drive;

(6) Engaging in appropriate fund-raising and advertising activities for the support of the administrative duties of the Washington state combined fund drive; and

(7) Charging an administrative fee to the beneficiaries of the Washington state combined fund drive to fund the administrative duties of the Washington state combined fund drive.

Activities of the Washington state combined fund drive shall not result in direct commercial solicitation of state employees, or a benefit or advantage that would violate one or more provisions of chapter 42.52 RCW. This section does not authorize individual state agencies to enter into contracts or partnerships unless otherwise authorized by law. [2003 c 205 § 2.]

41.04.0332 State combined fund drive committee—Contracts and partnerships. The Washington state combined fund drive committee may enter into contracts and partnerships with private institutions, persons, firms, or corporations for the benefit of the beneficiaries of the Washington state combined fund drive. Activities of the Washington state combined fund drive shall not result in direct commercial solicitation of state employees, or a benefit or advantage that would violate one or more provisions of chapter 42.52 RCW. This section does not authorize individual state agencies to enter into contracts or partnerships unless otherwise authorized by law. [2003 c 205 § 3.]

41.04.276 Select committee on pension policy—Creation—Membership—Terms of office—Staff support.

(1) The select committee on pension policy is created. The select committee consists of:

(a) Four members of the senate appointed by the president of the senate, two of whom are members of the majority party and two of whom are members of the minority party. At least three of the appointees shall be members of the senate ways and means committee;

(b) Four members of the house of representatives appointed by the speaker, two of whom are members of the majority party and two of whom are members of the minority party. At least three of the appointees shall be members of the house of representatives appropriations committee;

(c) Four active members or representatives from organizations of active members of the state retirement systems appointed by the governor for staggered three-year terms, with no more than two appointees representing any one employee retirement system;

(d) Two retired members or representatives of retired members' organizations of the state retirement systems appointed by the governor for staggered three-year terms, with no two members from the same system;

(e) Four employer representatives of members of the state retirement systems appointed by the governor for staggered three-year terms; and

(f) The directors of the department of retirement systems and office of financial management.

(2)(a) The term of office of each member of the house of representatives or senate serving on the committee runs from the close of the session in which he or she is appointed until the close of the next regular session held in an odd-numbered year. If a successor is not appointed during a session, the member's term continues until the member is reappointed or a successor is appointed. The term of office for a committee member who is a member of the house of representatives or the senate who does not continue as a member of the senate or house of representatives ceases upon the convening of the next session of the legislature during the odd-numbered year following the member's appointment, or upon the member's resignation, whichever is earlier. All vacancies of positions held by members of the legislature must be filled from the same political party and from the same house as the member whose seat was vacated.

(b) Following the terms of members and representatives appointed under subsection (1)(d) of this section, the retiree positions shall be rotated to ensure that each system has an opportunity to have a retiree representative on the committee.

(3) The committee shall elect a chairperson and a vice-chairperson. The chairperson shall be a member of the senate in even-numbered years and a member of the house of representatives in odd-numbered years and the vice-chairperson shall be a member of the house of representatives in even-numbered years and a member of the senate in odd-numbered years.

(4) The committee shall establish an executive committee of five members, including the chairperson, the vice-chairperson, one member from subsection (1)(c) of this section, one member from subsection (1)(e) of this section, and one member from subsection (1)(f) of this section, with the directors of the department of retirement systems and the office of financial management serving in alternate years.

(5) Nonlegislative members of the select committee serve without compensation, but shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(6) The office of state actuary under chapter 44.44 RCW shall provide staff and technical support to the committee. [2003 c 295 § 1.]

41.04.278 Select committee on pension policy—Subcommittees. (1) The select committee on pension policy may form three function-specific subcommittees, as set forth under subsection (2) of this section, from the members under RCW 41.04.276(1) (a) through (e), as follows:

(a) A public safety subcommittee with one member from each group under RCW 41.04.276(1) (a) through (e);

(b) An education subcommittee with one member from each group under RCW 41.04.276(1) (a) through (e); and

(c) A state and local government subcommittee, with one retiree member under RCW 41.04.276(1)(d) and two members from each group under RCW 41.04.276(1) (a) through (c) and (e).

The retiree members may serve on more than one subcommittee to ensure representation on each subcommittee.

(2)(a) The public safety subcommittee shall focus on pension issues affecting public safety employees who are members of the law enforcement officers' and fire fighters' and Washington state patrol retirement systems.

(b) The education subcommittee shall focus on pension issues affecting educational employees who are members of the public employees', teachers', and school employees' retirement systems.

(c) The state and local government subcommittee shall focus on pension issues affecting state and local government employees who are members of the public employees' retirement system. [2003 c 295 § 2.]

41.04.281 Select committee on pension policy—Powers and duties. The select committee on pension policy has the following powers and duties:

(1) Study pension issues, develop pension policies for public employees in state retirement systems, and make recommendations to the legislature;

(2) Study the financial condition of the state pension systems, develop funding policies, and make recommendations to the legislature;

(3) Consult with the chair and vice-chair on appointing members to the state actuary appointment committee upon the convening of the state actuary appointment committee established under RCW 44.44.013; and

(4) Receive the results of the actuarial audits of the actuarial valuations and experience studies administered by the pension funding council pursuant to RCW 41.45.110. The select committee on pension policy shall study and make recommendations on changes to assumptions or contribution rates to the pension funding council prior to adoption of changes under RCW 41.45.030, 41.45.035, or 41.45.060. [2003 c 295 § 5.]

41.04.393 Public safety officers—Retirement benefits—Death in the line of duty. Retirement benefits paid under chapter 41.26, 41.40, or 43.43 RCW to beneficiaries of public safety officers who die in the line of duty shall be paid in accordance with Title 26 U.S.C. Sec. 101(h) as amended

by the Fallen Hero Survivor Benefit Fairness Act of 2001. [2003 c 32 § 1.]

41.04.450 Members' retirement contributions—Pick up by employer—Optional implementation and withdrawal. (1) Employers of those members under chapters 41.26, 41.34, 41.35, and 41.40 RCW who are not specified in RCW 41.04.445 may choose to implement the employer pick up of all member contributions without exception under RCW 41.26.080(1)(a), 41.26.450, 41.40.330(1), 41.45.060, 41.45.061, and 41.45.067 and chapter 41.34 RCW. If the employer does so choose, the employer and members shall be subject to the conditions and limitations of RCW 41.04.445 (3), (4), and (5) and RCW 41.04.455.

(2) An employer exercising the option under this section may later choose to withdraw from and/or reestablish the employer pick up of member contributions only once in a calendar year following forty-five days prior notice to the director of the department of retirement systems. [2003 c 294 § 1; 2000 c 247 § 1103; 1995 c 239 § 324; 1985 c 13 § 3; 1984 c 227 § 3.]

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Effective date—Conflict with federal requirements—Severability—1984 c 227: See notes following RCW 41.04.440.

Benefits not contractual right until date specified: RCW 41.34.100.

41.04.655 Leave sharing program—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 41.04.650 through 41.04.670, 28A.400.380, and section 7, chapter 93, Laws of 1989.

(1) "Employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or annual leave and for whom accurate leave records are maintained.

(2) "Program" means the leave sharing program established in RCW 41.04.660.

(3) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(4) "State agency" or "agency" means departments, offices, agencies, or institutions of state government, the legislature, institutions of higher education, school districts, and educational service districts.

(5) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the com-

missioned corps of the public health service, the coast guard, and any other category of persons designated by the president of the United States in time of war or national emergency. [2003 1st sp.s. c 12 § 1; 1990 c 33 § 569; 1989 c 93 § 2.]

Effective date—2003 1st sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 20, 2003]." [2003 1st sp.s. c 12 § 4.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability—1989 c 93: See note following RCW 41.04.650.

41.04.660 Leave sharing program—Created. The Washington state leave sharing program is hereby created. The purpose of the program is to permit state employees, at no significantly increased cost to the state of providing annual leave, sick leave, or personal holidays, to come to the aid of a fellow state employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition, or who has been called to service in the uniformed services, which has caused or is likely to cause the employee to take leave without pay or terminate his or her employment. [2003 1st sp.s. c 12 § 2; 1996 c 176 § 2; 1990 c 23 § 1; 1989 c 93 § 3.]

Effective date—2003 1st sp.s. c 12: See note following RCW 41.04.655.

Severability—1989 c 93: See note following RCW 41.04.650.

41.04.665 Leave sharing program—When employee may receive leave—When employee may transfer accrued leave—Transfer of leave between employees of different agencies. (1) An agency head may permit an employee to receive leave under this section if:

(a)(i) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature; or

(ii) The employee has been called to service in the uniformed services;

(b) The illness, injury, impairment, condition, or call to service has caused, or is likely to cause, the employee to:

(i) Go on leave without pay status; or

(ii) Terminate state employment;

(c) The employee's absence and the use of shared leave are justified;

(d) The employee has depleted or will shortly deplete his or her:

(i) Annual leave and sick leave reserves if he or she qualifies under (a)(i) of this subsection; or

(ii) Annual leave and paid military leave allowed under RCW 38.40.060 if he or she qualifies under (a)(ii) of this subsection;

(e) The employee has abided by agency rules regarding:

(i) Sick leave use if he or she qualifies under (a)(i) of this subsection; or

(ii) Military leave if he or she qualifies under (a)(ii) of this subsection; and

(f) The employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if he or she qualifies under (a)(i) of this subsection.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than two hundred sixty-one days of leave.

(3) An employee may transfer annual leave, sick leave, and his or her personal holiday, as follows:

(a) An employee who has an accrued annual leave balance of more than ten days may request that the head of the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days. For purposes of this subsection (3)(a), annual leave does not accrue if the employee receives compensation in lieu of accumulating a balance of annual leave.

(b) An employee may transfer a specified amount of sick leave to an employee requesting shared leave only when the donating employee retains a minimum of one hundred seventy-six hours of sick leave after the transfer.

(c) An employee may transfer, under the provisions of this section relating to the transfer of leave, all or part of his or her personal holiday, as that term is defined under RCW 1.16.050, or as such holidays are provided to employees by agreement with a school district's board of directors if the leave transferred under this subsection does not exceed the amount of time provided for personal holidays under RCW 1.16.050.

(4) An employee of an institution of higher education under RCW 28B.10.016, school district, or educational service district who does not accrue annual leave but does accrue sick leave and who has an accrued sick leave balance of more than twenty-two days may request that the head of the agency for which the employee works transfer a specified amount of sick leave to another employee authorized to receive leave under subsection (1) of this section. In no event may such an employee request a transfer that would result in his or her sick leave account going below twenty-two days. Transfers of sick leave under this subsection are limited to transfers from employees who do not accrue annual leave. Under this subsection, "sick leave" also includes leave accrued pursuant to RCW 28A.400.300(2) or 28A.310.240(1) with compensation for illness, injury, and emergencies.

(5) Transfers of leave made by an agency head under subsections (3) and (4) of this section shall not exceed the requested amount.

(6) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency. However, leave transferred to or from employees of school districts or educational service districts is limited to transfers to or from employees within the same employing district.

(7) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by

the agency employing the person receiving the leave. The value of leave transferred shall be based upon the leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

(8) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

(9) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred. To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

(10) An employee who uses leave that is transferred to him or her under this section may not be required to repay the value of the leave that he or she used. [2003 1st sp.s. c 12 § 3; 1999 c 25 § 1; 1996 c 176 § 1; 1990 c 23 § 2; 1989 c 93 § 4.]

Effective date—2003 1st sp.s. c 12: See note following RCW 41.04.655.

Severability—1989 c 93: See note following RCW 41.04.650.

Chapter 41.05 RCW

STATE HEALTH CARE AUTHORITY

(Formerly: State employees' insurance and health care)

Sections

41.05.013	State purchased health care programs—Uniform policies.
41.05.026	Contracts—Proprietary data, trade secrets, actuarial formulas, statistics, cost and utilization data—Exemption from public inspection—Executive sessions.
41.05.050	Contributions for employees and dependents.
41.05.065	Public employees' benefits board—Duties.
41.05.150	Repealed.
41.05.500	Prescription drug price discounts—Eligibility—Penalty—Enrollment fee.
41.05.510	Prescription drug purchasing account.
41.05.520	Pharmacy connection program—Notice.
41.05.530	Prescription drug assistance, education—Rules.

41.05.013 State purchased health care programs—Uniform policies. (1) The authority shall coordinate state agency efforts to develop and implement uniform policies across state purchased health care programs that will ensure prudent, cost-effective health services purchasing, maximize

efficiencies in administration of state purchased health care programs, improve the quality of care provided through state purchased health care programs, and reduce administrative burdens on health care providers participating in state purchased health care programs. The policies adopted should be based, to the extent possible, upon the best available scientific and medical evidence and shall endeavor to address:

(a) Methods of formal assessment, such as health technology assessment. Consideration of the best available scientific evidence does not preclude consideration of experimental or investigational treatment or services under a clinical investigation approved by an institutional review board;

(b) Monitoring of health outcomes, adverse events, quality, and cost-effectiveness of health services;

(c) Development of a common definition of medical necessity; and

(d) Exploration of common strategies for disease management and demand management programs.

(2) The administrator may invite health care provider organizations, carriers, other health care purchasers, and consumers to participate in efforts undertaken under this section.

(3) For the purposes of this section "best available scientific and medical evidence" means the best available external clinical evidence derived from systematic research. [2003 c 276 § 1.]

41.05.026 Contracts—Proprietary data, trade secrets, actuarial formulas, statistics, cost and utilization data—Exemption from public inspection—Executive sessions. (1) When soliciting proposals for the purpose of awarding contracts for goods or services, the administrator shall, upon written request by the bidder, exempt from public inspection and copying such proprietary data, trade secrets, or other information contained in the bidder's proposal that relate to the bidder's unique methods of conducting business or of determining prices or premium rates to be charged for services under terms of the proposal.

(2) When soliciting information for the development, acquisition, or implementation of state purchased health care services, the administrator shall, upon written request by the respondent, exempt from public inspection and copying such proprietary data, trade secrets, or other information submitted by the respondent that relate to the respondent's unique methods of conducting business, data unique to the product or services of the respondent, or to determining prices or rates to be charged for services.

(3) Actuarial formulas, statistics, cost and utilization data, or other proprietary information submitted upon request of the administrator, board, or a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under this chapter by a contracting insurer, health care service contractor, health maintenance organization, vendor, or other health services organization may be withheld at any time from public inspection when necessary to preserve trade secrets or prevent unfair competition.

(4) The board, or a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under this chapter, may hold an executive session in accordance with chapter 42.30 RCW during any regular or special meeting to discuss information

submitted in accordance with subsections (1) through (3) of this section.

(5) A person who challenges a request for or designation of information as exempt under this section is entitled to seek judicial review pursuant to chapter 42.17 RCW. [2003 c 277 § 2; 1991 c 79 § 1; 1990 c 222 § 6.]

41.05.050 Contributions for employees and dependents. (1) Every department, division, or separate agency of state government, and such county, municipal, school district, educational service district, or other political subdivisions as are covered by this chapter, shall provide contributions to insurance and health care plans for its employees and their dependents, the content of such plans to be determined by the authority. Contributions, paid by the county, the municipality, or other political subdivision for their employees, shall include an amount determined by the authority to pay such administrative expenses of the authority as are necessary to administer the plans for employees of those groups, except as provided in subsection (4) of this section.

(2) If the authority at any time determines that the participation of a county, municipal, or other political subdivision covered under this chapter adversely impacts insurance rates for state employees, the authority shall implement limitations on the participation of additional county, municipal, or other political subdivisions.

(3) The contributions of any department, division, or separate agency of the state government, and such county, municipal, or other political subdivisions as are covered by this chapter, shall be set by the authority, subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(4)(a) Beginning September 1, 2003, the authority shall collect from each participating school district and educational service district an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premiums by plan and family size as would be charged to state employees, for groups of district employees enrolled in authority plans as of January 1, 2003.

(b) For all groups of district employees enrolling in authority plans for the first time after September 1, 2003, the authority shall collect from each participating school district an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premiums by plan and by family size as would be charged to state employees, only if the authority determines that this method of billing the districts will not result in a material difference between revenues from districts and expenditures made by the authority on behalf of districts and their employees.

(c) If the authority determines at any time that the conditions in (b) of this subsection cannot be met, the authority shall offer enrollment to additional groups of district employees on a tiered rate structure until such time as the authority determines there would be no material difference between revenues and expenditures under a composite rate structure for all district employees enrolled in authority plans.

(d) The authority may charge districts a one-time set-up fee for employee groups enrolling in authority plans for the first time.

(e) For the purposes of this subsection:

(i) "District" means school district and educational service district; and

(ii) "Tiered rates" means the amounts the authority must pay to insuring entities by plan and by family size.

(f) Notwithstanding this subsection and RCW 41.05.065(3), the authority may allow districts enrolled on a tiered rate structure prior to September 1, 2002, to continue participation based on the same rate structure and under the same conditions and eligibility criteria.

(5) The authority shall transmit a recommendation for the amount of the employer contribution to the governor and the director of financial management for inclusion in the proposed budgets submitted to the legislature. [2003 c 158 § 1. Prior: 2002 c 319 § 4; 2002 c 142 § 2; prior: 1995 1st sp.s. c 6 § 22; 1994 c 309 § 2; 1994 c 153 § 4; prior: 1993 c 492 § 216; 1993 c 386 § 7; 1988 c 107 § 18; 1987 c 122 § 4; 1984 c 107 § 1; 1983 c 15 § 20; 1983 c 2 § 9; prior: 1982 1st ex.s. c 34 § 2; 1981 c 344 § 6; 1979 c 151 § 55; 1977 ex.s. c 136 § 4; 1975-'76 2nd ex.s. c 106 § 4; 1975 1st ex.s. c 38 § 2; 1973 1st ex.s. c 147 § 3; 1970 ex.s. c 39 § 5.]

Intent—Effective date—Implementation—2002 c 319: See notes following RCW 41.04.208.

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective date—1993 c 386 §§ 3, 7, and 11: See note following RCW 41.04.205.

Intent—1993 c 386: See note following RCW 28A.400.391.

Severability—1983 c 15: See RCW 47.64.910.

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

Severability—1981 c 344: See note following RCW 47.60.326.

Effective date—Conditions prerequisite to implementing sections—1977 ex.s. c 136: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977: PROVIDED, That if the state operating budget appropriations act does not contain the funds necessary for the implementation of this 1977 amendatory act in an appropriated amount sufficient to fully fund the employer's contribution to the state employee insurance benefits program which is established by the board in accordance with RCW 41.05.050 (2) and (3) as now or hereafter amended, sections 1, 5, and 6 of this 1977 amendatory act shall be null and void." [1977 ex.s. c 136 § 8.]

Effective date—Effect of veto—1973 1st ex.s. c 147: "This bill shall not take effect until the funds necessary for its implementation have been specifically appropriated by the legislature and such appropriation itself has become law. It is the intention of the legislature that if the governor shall veto this section or any item thereof, none of the provisions of this bill shall take effect." [1973 1st ex.s. c 147 § 10.]

Savings—1973 1st ex.s. c 147: "Nothing contained in this 1973 amendatory act shall be deemed to amend, alter or affect the provisions of Chapter 23, Laws of 1972, Extraordinary Session, and RCW 28B.10.840 through 28B.10.844 as now or hereafter amended." [1973 1st ex.s. c 147 § 13.]

Severability—1973 1st ex.s. c 147: "If any provision of this 1973 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 147 § 9.]

Severability—1970 ex.s. c 39: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 39 § 14.]

41.05.065 Public employees' benefits board—Duties.

(1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents on the best basis possible with relation both to the welfare of the employees and to the state. However, liability insurance shall not be made available to dependents.

(2) The board shall develop employee benefit plans that include comprehensive health care benefits for all employees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education;

(d) Utilization review procedures including, but not limited to a cost-efficient method for prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers;

(e) Effective coordination of benefits;

(f) Minimum standards for insuring entities; and

(g) Minimum scope and content of public employee benefit plans to be offered to enrollees participating in the employee health benefit plans. To maintain the comprehensive nature of employee health care benefits, employee eligibility criteria related to the number of hours worked and the benefits provided to employees shall be substantially equivalent to the state employees' health benefits plan and eligibility criteria in effect on January 1, 1993. Nothing in this subsection (2)(g) shall prohibit changes or increases in employee point-of-service payments or employee premium payments for benefits.

(3) The board shall design benefits and determine the terms and conditions of employee participation and coverage, including establishment of eligibility criteria. The same terms and conditions of participation and coverage, including eligibility criteria, shall apply to state employees and to school district employees and educational service district employees.

(4) The board may authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient managed health care systems. The board shall require participating school district and educational service district employees to pay at least the same employee premiums by plan and family size as state employees pay.

(5) Employees shall choose participation in one of the health care benefit plans developed by the board and may be permitted to waive coverage under terms and conditions established by the board.

(6) The board shall review plans proposed by insuring entities that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll deduction by insuring entities holding a valid certificate of authority in the state of Washington and which the board determines to be in the best interests of employees and the state. The board shall promulgate rules setting forth criteria by which it shall evaluate the plans.

(7) Before January 1, 1998, the public employees' benefits board shall make available one or more fully insured long-term care insurance plans that comply with the requirements of chapter 48.84 RCW. Such programs shall be made available to eligible employees, retired employees, and retired school employees as well as eligible dependents which, for the purpose of this section, includes the parents of the employee or retiree and the parents of the spouse of the employee or retiree. Employees of local governments and employees of political subdivisions not otherwise enrolled in the public employees' benefits board sponsored medical programs may enroll under terms and conditions established by the administrator, if it does not jeopardize the financial viability of the public employees' benefits board's long-term care offering.

(a) Participation of eligible employees or retired employees and retired school employees in any long-term care insurance plan made available by the public employees' benefits board is voluntary and shall not be subject to binding arbitration under chapter 41.56 RCW. Participation is subject to reasonable underwriting guidelines and eligibility rules established by the public employees' benefits board and the health care authority.

(b) The employee, retired employee, and retired school employee are solely responsible for the payment of the premium rates developed by the health care authority. The health care authority is authorized to charge a reasonable administrative fee in addition to the premium charged by the long-term care insurer, which shall include the health care authority's cost of administration, marketing, and consumer education materials prepared by the health care authority and the office of the insurance commissioner.

(c) To the extent administratively possible, the state shall establish an automatic payroll or pension deduction system for the payment of the long-term care insurance premiums.

(d) The public employees' benefits board and the health care authority shall establish a technical advisory committee to provide advice in the development of the benefit design and establishment of underwriting guidelines and eligibility rules. The committee shall also advise the board and authority on effective and cost-effective ways to market and distribute the long-term care product. The technical advisory committee shall be comprised, at a minimum, of representatives of the office of the insurance commissioner, providers of long-term care services, licensed insurance agents with expertise in long-term care insurance, employees, retired employees, retired school employees, and other interested parties determined to be appropriate by the board.

(e) The health care authority shall offer employees, retired employees, and retired school employees the option of purchasing long-term care insurance through licensed agents or brokers appointed by the long-term care insurer. The

authority, in consultation with the public employees' benefits board, shall establish marketing procedures and may consider all premium components as a part of the contract negotiations with the long-term care insurer.

(f) In developing the long-term care insurance benefit designs, the public employees' benefits board shall include an alternative plan of care benefit, including adult day services, as approved by the office of the insurance commissioner.

(g) The health care authority, with the cooperation of the office of the insurance commissioner, shall develop a consumer education program for the eligible employees, retired employees, and retired school employees designed to provide education on the potential need for long-term care, methods of financing long-term care, and the availability of long-term care insurance products including the products offered by the board.

(h) By December 1998, the health care authority, in consultation with the public employees' benefits board, shall submit a report to the appropriate committees of the legislature, including an analysis of the marketing and distribution of the long-term care insurance provided under this section. [2003 c 158 § 2; 2002 c 142 § 3; 1996 c 140 § 1; 1995 1st sp.s. c 6 § 5; 1994 c 153 § 5. Prior: 1993 c 492 § 218; 1993 c 386 § 9; 1988 c 107 § 8.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16: See note following RCW 28A.400.391.

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

41.05.500 Prescription drug price discounts—Eligibility—Penalty—Enrollment fee. (1) In negotiating price discounts with prescription drug manufacturers for state purchased health care programs, the health care authority shall also negotiate such discounts for any Washington resident:

(a) Whose family income does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services;

(b) Whose existing prescription drug need is not covered by insurance; and

(c) Who is: (i) At least fifty years old; or (ii) between the ages of nineteen and forty-nine and is otherwise eligible for benefits under Title II of the social security act, federal old age, survivors, and disability insurance benefits.

(2)(a) An attestation, which shall be submitted to the administrator, from an individual that the individual's family income does not exceed three hundred percent of the federal poverty level is sufficient to satisfy the eligibility requirement of subsection (1)(a) of this section.

(b) Any person willfully making a false statement in order to qualify for discounts under this section is guilty of a

misdeemeanor. Notice of such shall be included on the program enrollment form.

(3) The administrator shall charge participants in this program an annual enrollment fee sufficient to offset the cost of program administration.

(4) Any rebate or discount provided by a pharmaceutical manufacturer and made available to individuals under this section shall not be at the expense of retail pharmacies. This does not prohibit participating state agencies from using discounted pharmacy reimbursements for services or ingredients provided by the pharmacies. [2003 1st sp.s. c 29 § 3.]

Reviser's note—Sunset Act application: The prescription drug discount program is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.403. RCW 41.05.500 is scheduled for future repeal under RCW 43.131.404.

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

41.05.510 Prescription drug purchasing account.

The consolidated prescription drug purchasing account is created in the custody of the state treasurer. All fees collected under RCW 41.05.500(3) shall be deposited into the account. Expenditures from the account may be used only for the purposes of RCW 41.05.500. Only the administrator or the administrator's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2003 1st sp.s. c 29 § 4.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

41.05.520 Pharmacy connection program—Notice.

(1) The administrator shall establish and advertise a pharmacy connection program through which health care providers and members of the public can obtain information about manufacturer-sponsored prescription drug assistance programs. The administrator shall ensure that the program has staff available who can assist persons in procuring free or discounted medications from manufacturer-sponsored prescription drug assistance programs by:

- (a) Determining whether an assistance program is offered for the needed drug or drugs;
- (b) Evaluating the likelihood of a person obtaining drugs from an assistance program under the guidelines formulated;
- (c) Assisting persons with the application and enrollment in an assistance program;
- (d) Coordinating and assisting physicians and others authorized to prescribe medications with communications, including applications, made on behalf of a person to a participating manufacturer to obtain approval of the person in an assistance program; and
- (e) Working with participating manufacturers to simplify the system whereby eligible persons access drug assistance programs, including development of a single application form and uniform enrollment process.

(2) Notice regarding the pharmacy connection program shall initially target senior citizens, but the program shall be available to anyone, and shall include a toll-free telephone number, available during regular business hours, that may be used to obtain information.

(3) The administrator may apply for and accept grants or gifts and may enter into interagency agreements or contracts with other state agencies or private organizations to assist with the implementation of this program including, but not limited to, contracts, gifts, or grants from pharmaceutical manufacturers to assist with the direct costs of the program.

(4) The administrator shall notify pharmaceutical companies doing business in Washington of the pharmacy connection program. Any pharmaceutical company that does business in this state and that offers a pharmaceutical assistance program shall notify the administrator of the existence of the program, the drugs covered by the program, and all information necessary to apply for assistance under the program.

(5) For purposes of this section, "manufacturer-sponsored prescription drug assistance program" means a program offered by a pharmaceutical company through which the company provides a drug or drugs to eligible persons at no charge or at a reduced cost. The term does not include the provision of a drug as part of a clinical trial. [2003 1st sp.s. c 29 § 7.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

41.05.530 Prescription drug assistance, education—Rules. The authority may adopt rules to implement chapter 29, Laws of 2003 1st sp. sess. [2003 1st sp.s. c 29 § 10.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

Chapter 41.06 RCW

STATE CIVIL SERVICE LAW

Sections

41.06.380 Purchasing services by contract not prohibited—Limitations. (*Effective until July 1, 2005.*)

41.06.380 Purchasing services by contract not prohibited—Limitations. (*Effective until July 1, 2005.*) (1) Nothing contained in this chapter shall prohibit any department, as defined in RCW 41.06.020, from purchasing services by contract with individuals or business entities if such services were regularly purchased by valid contract by such department prior to April 23, 1979: PROVIDED, That no such contract may be executed or renewed if it would have the effect of terminating classified employees or classified employee positions existing at the time of the execution or renewal of the contract.

(2) Nothing contained in this chapter prohibits the department of transportation from purchasing construction services or construction engineering services, as those terms are defined in RCW 47.28.241, by contract from qualified private businesses as specified in RCW 47.28.251(2). [2003 c 363 § 104; 1979 ex.s. c 46 § 2.]

Finding—Intent—2003 c 363 §§ 103 and 104: See note following RCW 47.28.251.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

Chapter 41.16 RCW

FIREMEN'S RELIEF AND PENSIONS—1947 ACT

Sections

41.16.010	Terms defined.
41.16.020	Pension board created—Members—Terms—Vacancies—Officers—Quorum.

41.16.010 Terms defined. For the purpose of this chapter, unless clearly indicated by the context, words and phrases shall have the following meaning:

(1) "Beneficiary" shall mean any person or persons designated by a fireman in a writing filed with the board, and who shall be entitled to receive any benefits of a deceased fireman under this chapter.

(2) "Board" shall mean the municipal firemen's pension board.

(3) "Child or children" shall mean a child or children unmarried and under eighteen years of age.

(4) "Contributions" shall mean and include all sums deducted from the salary of firemen and paid into the fund as hereinafter provided.

(5) "Disability" shall mean and include injuries or sickness sustained as a result of the performance of duty.

(6) "Fireman" or "fire fighter" shall mean any person regularly or temporarily, or as a substitute, employed and paid as a member of a fire department, who has passed a civil service examination for fireman and who is actively employed as a fireman; and shall include any "prior fireman."

(7) "Fire department" shall mean the regularly organized, full time, paid, and employed force of firemen of the municipality.

(8) "Fund" shall mean the firemen's pension fund created herein.

(9) "Municipality" shall mean every city and town having a regularly organized full time, paid, fire department employing firemen.

(10) "Performance of duty" shall mean the performance of work and labor regularly required of firemen and shall include services of an emergency nature rendered while off regular duty, but shall not include time spent in traveling to work before answering roll call or traveling from work after dismissal at roll call.

(11) "Prior fireman" shall mean a fireman who was actively employed as a fireman of a fire department prior to the first day of January, 1947, and who continues such employment thereafter.

(12) "Retired fireman" shall mean and include a person employed as a fireman and retired under the provisions of chapter 50, Laws of 1909, as amended.

(13) "Widow or widower" means the surviving wife or husband of a retired fireman who was retired on account of length of service and who was lawfully married to such fireman; and whenever that term is used with reference to the wife or former wife or husband or former husband of a retired fireman who was retired because of disability, it shall mean his or her lawfully married wife or husband on the date he or she sustained the injury or contracted the illness that resulted in his or her disability. Said term shall not mean or include a surviving wife or husband who by process of law within one year prior to the retired fireman's death, collected or attempted to collect from him or her funds for the support of

herself or himself or for his or her children. [2003 c 30 § 1; 1973 1st ex.s. c 154 § 61; 1947 c 91 § 1; Rem. Supp. 1947 § 9578-40.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

41.16.020 Pension board created—Members—Terms—Vacancies—Officers—Quorum. There is hereby created in each city and town a municipal firemen's pension board to consist of the following five members, ex officio, the mayor, or in a city of the first class, the mayor or a designated representative who shall be an elected official of the city, who shall be chairman of the board, the city comptroller or clerk, the chairman of finance of the city council, or if there is no chairman of finance, the city treasurer, and in addition, two regularly employed or retired fire fighters elected by secret ballot of those employed and retired fire fighters who are subject to the jurisdiction of the board. The members to be elected by the fire fighters shall be elected annually for a two year term. The two fire fighters elected as members shall, in turn, select a third eligible member who shall serve as an alternate in the event of an absence of one of the regularly elected members. In case a vacancy occurs in the membership of the fire fighters or retired members, the members shall in the same manner elect a successor to serve the unexpired term. The board may select and appoint a secretary who may, but need not be a member of the board. In case of absence or inability of the chairman to act, the board may select a chairman pro tempore who shall during such absence or inability perform the duties and exercise the powers of the chairman. A majority of the members of the board shall constitute a quorum and have power to transact business. [2003 c 30 § 2; 1988 c 164 § 2; 1973 1st ex.s. c 19 § 1; 1961 c 255 § 10; 1947 c 91 § 2; Rem. Supp. 1947 § 9578-41. Prior: 1935 c 39 § 1; 1919 c 196 § 3; 1909 c 50 §§ 1, 2.]

Chapter 41.24 RCW

VOLUNTEER FIRE FIGHTERS' AND RESERVE OFFICERS' RELIEF AND PENSIONS

(Formerly: Volunteer fire fighters' relief and pensions)

Sections

41.24.170	Retirement pensions.
41.24.185	Lump sum payments—Monthly pension under fifty dollars.

41.24.170 Retirement pensions. Except as provided in RCW 41.24.410, whenever any participant has been a member and served honorably for a period of ten years or more as an active member in any capacity, of any regularly organized fire department or law enforcement agency of any municipality in this state, and which municipality has adopted appropriate legislation allowing its fire fighters or reserve officers to enroll in the retirement pension provisions of this chapter, and the participant has enrolled under the retirement pension provisions and has reached the age of sixty-five years, the board of trustees shall order and direct that he or she be retired and be paid a monthly pension from the principal fund as provided in this section.

Whenever a participant has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized

volunteer fire department or law enforcement agency of any municipality in this state, and he or she has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of twenty-five years, the board of trustees shall order and direct that he or she be retired and such participant be paid a monthly pension of three hundred dollars from the fund for the balance of that participant's life.

Whenever any participant has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and the participant has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of less than twenty-five years, the board of trustees shall order and direct that he or she be retired and that such participant shall receive a minimum monthly pension of fifty dollars increased by the sum of ten dollars each month for each year the annual fee has been paid, but not to exceed the maximum monthly pension provided in this section, for the balance of the participant's life.

No pension provided in this section may become payable before the sixty-fifth birthday of the participant, nor for any service less than twenty-five years: PROVIDED, HOWEVER, That:

(1) Any participant, who is older than fifty-nine years of age, less than sixty-five years of age, and has completed twenty-five years or more of service may irrevocably elect a reduced monthly pension in lieu of the pension that participant would be entitled to under this section at age sixty-five. The participant who elects this option shall receive the reduced pension for the balance of his or her life. The reduced monthly pension is calculated as a percentage of the pension the participant would be entitled to at age sixty-five. The percentage used in the calculation is based upon the age of the participant at the time of retirement as follows:

Age 60	Sixty percent
Age 61	Sixty-eight percent
Age 62	Seventy-six percent
Age 63	Eighty-four percent
Age 64	Ninety-two percent

(2) If a participant is age sixty-five or older but has less than twenty-five years of service, the participant is entitled to a reduced benefit. The reduced benefit shall be computed as follows:

(a) Upon completion of ten years, but less than fifteen years of service, a monthly pension equal to twenty percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service;

(b) Upon completion of fifteen years, but less than twenty years of service, a monthly pension equal to thirty-five percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service; and

(c) Upon completion of twenty years, but less than twenty-five years of service, a monthly pension equal to seventy-five percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service.

(3) If a participant with less than twenty-five years of service elects to retire after turning age sixty but before turn-

ing age sixty-five, the participant's retirement allowance is subject:

(a) First to the reduction under subsection (2) of this section based upon the participant's years of service; and

(b) Second to the reduction under subsection (1) of this section based upon the participant's age. [2003 c 62 § 1. Prior: 1999 c 148 § 15; 1999 c 117 § 4; 1995 c 11 § 7; 1992 c 97 § 2; 1989 c 91 § 4; 1981 c 21 § 4; 1979 ex.s. c 157 § 1; 1973 1st ex.s. c 170 § 2; 1969 c 118 § 5; 1961 c 57 § 2; 1953 c 253 § 3; 1951 c 103 § 1; 1945 c 261 § 17; Rem. Supp. 1945 § 9578-31.]

Effective date—2003 c 62: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 62 § 3.]

Effective date—1992 c 97: See note following RCW 41.24.030.

Effective date—1989 c 91: See note following RCW 41.24.010.

Effective date—Severability—1981 c 21: See notes following RCW 41.24.150.

Effective date—1973 1st ex.s. c 170: See note following RCW 41.24.030.

41.24.185 Lump sum payments—Monthly pension under fifty dollars. Any monthly pension, payable under this chapter, which will not amount to fifty dollars may be converted into a lump sum payment equal to the actuarial equivalent of the monthly pension. The conversion may be made either upon written application to the state board and shall rest at the discretion of the state board; or the state board may make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due. Any person receiving a monthly payment of less than twenty-five dollars at the time of September 1, 1979, may elect, within two years, to convert such payments into a lump sum payment as provided in this section. [2003 c 62 § 2; 1989 c 91 § 7.]

Effective date—2003 c 62: See note following RCW 41.24.170.

Effective date—1989 c 91: See note following RCW 41.24.010.

Chapter 41.26 RCW

LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' RETIREMENT SYSTEM

Sections

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41.26.030 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the "Washington law enforcement officers' and fire fighters' retirement system" provided herein.

(2)(a) "Employer" for plan 1 members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the fire fighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or fire fighters as defined in this chapter.

(b) "Employer" for plan 2 members, means the following entities to the extent that the entity employs any law enforcement officer and/or fire fighter:

(i) The legislative authority of any city, town, county, or district;

(ii) The elected officials of any municipal corporation;

(iii) The governing body of any other general authority law enforcement agency; or

(iv) A four-year institution of higher education having a fully operational fire department as of January 1, 1996.

(3) "Law enforcement officer" beginning January 1, 1994, means any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2)) if that individual has five years previous membership in the retire-

ment system established in chapter 41.20 RCW. The provisions of this subsection (3)(d) shall not apply to plan 2 members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties, or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (3)(e) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of May 12, 1993.

(4) "Fire fighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for fire fighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination;

(c) Supervisory fire fighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection (4)(d) shall not apply to plan 2 members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection (4)(e) shall not apply to plan 2 members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for fire fighter; and

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW.

(5) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(6) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include the divorced spouse of a member except as provided in RCW 41.26.162.

(7)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically handicapped as determined by the department, except a handicapped person in the full time care of a state institution, who is:

(i) A natural born child;

(ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;

(iii) A posthumous child;

(iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(8) "Member" means any fire fighter, law enforcement officer, or other person as would apply under subsections (3) or (4) of this section whose membership is transferred to the Washington law enforcement officers' and fire fighters' retirement system on or after March 1, 1970, and every law enforcement officer and fire fighter who is employed in that capacity on or after such date.

(9) "Retirement fund" means the "Washington law enforcement officers' and fire fighters' retirement system fund" as provided for herein.

(10) "Employee" means any law enforcement officer or fire fighter as defined in subsections (3) and (4) of this section.

(11)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan 2 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(12)(a) "Final average salary" for plan 1 members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan 2 members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(13)(a) "Basic salary" for plan 1 members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan 2 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay. In any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for non-legislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(14)(a) "Service" for plan 1 members, means all periods of employment for an employer as a fire fighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a fire fighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160 or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(b) "Service" for plan 2 members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a member for one or more employers for which basic sal-

ary is earned for less than seventy hours shall constitute a one-quarter service credit month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one service credit month's service credit during any calendar month in which multiple service for ninety or more hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(15) "Accumulated contributions" means the employee's contributions made by a member, including any amount paid under RCW 41.50.165(2), plus accrued interest credited thereon.

(16) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member's future benefits during the period of retirement.

(17) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(18) "Disability board" for plan 1 members means either the county disability board or the city disability board established in RCW 41.26.110.

(19) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan 1 members.

(20) "Disability retirement" for plan 1 members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

(21) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(22) "Medical services" for plan 1 members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An osteopathic physician and surgeon licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic x-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(23) "Regular interest" means such rate as the director may determine.

(24) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(25) "Director" means the director of the department.

(26) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(27) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(28) "Plan 1" means the law enforcement officers' and fire fighters' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(29) "Plan 2" means the law enforcement officers' and fire fighters' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(31) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(32) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections. [2003 c 388 § 2; 2002 c 128 § 3. Prior: 1996 c 178 § 11; 1996 c 38 § 2; prior: 1994 c 264 § 14; 1994 c 197 § 5; prior: 1993 c 502 § 1; 1993 c 322 § 1; 1991 sp.s. c 12 § 1; prior: (1991 sp.s. c 11 § 3 repealed by 1991 sp.s. c 12 § 3); 1991 c 365 § 35; 1991 c 343 § 14; 1991 c 35 § 13; 1987 c 418 § 1; 1985 c 13 § 5; 1984 c 230 § 83; 1981 c 256 § 4; 1979 ex.s. c 249 § 2; 1977 ex.s. c 294 § 17; 1974 ex.s. c 120 § 1; 1972 ex.s. c 131 § 1; 1971 ex.s. c 257 § 6; 1970 ex.s. c 6 § 1; 1969 ex.s. c 209 § 3.]

Effective date—1996 c 178: See note following RCW 18.35.110.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Effective date—1993 c 502: "This act shall take effect January 1, 1994." [1993 c 502 § 6.]

Application—1993 c 322 § 1: "Section 1 of this act shall apply retroactively to January 1, 1993." [1993 c 322 § 2.]

Effective date—1993 c 322: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 322 § 3.]

Severability—1991 c 365: See note following RCW 41.50.500.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Purpose—1981 c 256: "It is the primary purpose of this act to assure that the provisions of RCW 41.04.250 and 41.04.260 and of any deferred compensation plan established thereunder, are in conformity with the requirements of 26 U.S.C. Sec. 457 and any other requirements of federal law relating to such a deferred compensation plan. This act shall be construed in such a manner as to accomplish this purpose." [1981 c 256 § 1.]

Severability—1981 c 256: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 256 § 7.]

Severability—1974 ex.s. c 120: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 120 § 15.]

Severability—1972 ex.s. c 131: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 131 § 12.]

Purpose—1971 ex.s. c 257: "It is the purpose of this act to provide minimum medical and health standards for membership coverage into the Washington law enforcement officers' and fire fighters' retirement system act, for the improvement of the public service, and to safeguard the integrity and actuarial soundness of their pension systems, and to improve their retirement and pension systems and related provisions." [1971 ex.s. c 257 § 1.]

Severability—1971 ex.s. c 257: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 257 § 22.]

41.26.062 Falsification—Penalty. (Effective July 1, 2004.) Any employer, member or beneficiary who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement system in an attempt to defraud the retirement system, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 217; 1972 ex.s. c 131 § 10. Formerly RCW 41.26.300.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1972 ex.s. c 131: See note following RCW 41.26.030.

41.26.110 City and county disability boards authorized—Composition—Terms—Reimbursement for travel expenses—Duties. (1) All claims for disability shall be acted upon and either approved or disapproved by either type of disability board authorized to be created in this section.

(a) Each city having a population of twenty thousand or more shall establish a disability board having jurisdiction over all members employed by those cities and composed of the following five members: Two members of the city legislative body to be appointed by the mayor; one active or retired fire fighter employed by or retired from the city to be elected by the fire fighters employed by or retired from the city who are subject to the jurisdiction of the board; one active or retired law enforcement officer employed by or retired from the city to be elected by the law enforcement officers employed by or retired from the city who are subject to the jurisdiction of the board; and one member from the public at large who resides within the city to be appointed by the other four members designated in this subsection. Only those active or retired fire fighters and law enforcement officers who are subject to the jurisdiction of the board have the right to elect under this section. All fire fighters and law enforcement officers employed by or retired from the city are eligible for election. Each of the elected members shall serve a two year term. The members appointed pursuant to this subsection shall serve for two year terms: PROVIDED, That cities of the first class only, shall retain existing firemen's pension boards established pursuant to RCW 41.16.020 and existing boards of trustees of the relief and pension fund of the police department as established pursuant to RCW 41.20.010 which such boards shall have authority to act upon

and approve or disapprove claims for disability by fire fighters or law enforcement officers as provided under the Washington law enforcement officers' and fire fighters' retirement system act.

(b) Each county shall establish a disability board having jurisdiction over all members residing in the county and not employed by a city in which a disability board is established. The county disability board so created shall be composed of five members to be chosen as follows: One member of the legislative body of the county to be appointed by the county legislative body; one member of a city or town legislative body located within the county which does not contain a city disability board established pursuant to subsection (1)(a) of this section to be chosen by a majority of the mayors of such cities and towns within the county which does not contain a city disability board; one active fire fighter or retired fire fighter employed by or retired from the county to be elected by the fire fighters employed or retired in the county who are not employed by or retired from a city in which a disability board is established and who are subject to the jurisdiction of the board; one law enforcement officer or retired law enforcement officer employed by or retired from the county to be elected by the law enforcement officers employed in or retired from the county who are not employed by or retired from a city in which a disability board is established and who are subject to the jurisdiction of the board; and one member from the public at large who resides within the county but does not reside within a city in which a city disability board is established, to be appointed by the other four members designated in this subsection. However, in counties with a population less than sixty thousand, the member of the disability board appointed by a majority of the mayors of the cities and towns within the county that do not contain a city disability board must be a resident of one of the cities and towns but need not be a member of a city or town legislative body. Only those active or retired fire fighters and law enforcement officers who are subject to the jurisdiction of the board have the right to elect under this section. All fire fighters and law enforcement officers employed by or retired from the county are eligible for election. All members appointed or elected pursuant to this subsection shall serve for two year terms.

(2) The members of both the county and city disability boards shall not receive compensation for their service upon the boards but the members shall be reimbursed by their respective county or city for all expenses incidental to such service as to the amount authorized by law.

(3) The disability boards authorized for establishment by this section shall perform all functions, exercise all powers, and make all such determinations as specified in this chapter. [2003 c 30 § 3; 2000 c 234 § 1; 1988 c 164 § 1; 1982 c 12 § 1; 1974 ex.s. c 120 § 9; 1970 ex.s. c 6 § 6; 1969 ex.s. c 219 § 3; 1969 ex.s. c 209 § 11.]

Severability—1974 ex.s. c 120: See note following RCW 41.26.030.

41.26.195 Transfer of service credit from other retirement system—Irrevocable election allowed. Any member of the teachers' retirement system plans 1, 2, or 3, the public employees' retirement system plans 1, 2, or 3, the school employees' retirement system plans 2 or 3, or the Washington state patrol retirement system plans 1 or 2 who has previously established service credit in the law enforce-

ment officers' and fire fighters' retirement system plan 1 may make an irrevocable election to have such service transferred to their current retirement system and plan subject to the following conditions:

(1) If the individual is employed by an employer in an eligible position, as of July 1, 1997, the election to transfer service must be filed in writing with the department no later than July 1, 1998. If the individual is not employed by an employer in an eligible position, as of July 1, 1997, the election to transfer service must be filed in writing with the department no later than one year from the date they are employed by an employer in an eligible position.

(2) An individual transferring service under this section forfeits the rights to all benefits as a member of the law enforcement officers' and fire fighters' retirement system plan 1 and will be permanently excluded from membership.

(3) Any individual choosing to transfer service under this section will have transferred to their current retirement system and plan: (a) All the individual's accumulated contributions; (b) an amount sufficient to ensure that the employer contribution rate in the individual's current system and plan will not increase due to the transfer; and (c) all applicable months of service, as defined in RCW 41.26.030(14)(a).

(4) If an individual has withdrawn contributions from the law enforcement officers' and fire fighters' retirement system plan 1, the individual may restore the contributions, together with interest as determined by the director, and recover the service represented by the contributions for the sole purpose of transferring service under this section. The contributions must be restored before the transfer can occur and the restoration must be completed within the time limitations specified in subsection (1) of this section.

(5) Any service transferred under this section does not apply to the eligibility requirements for military service credit as defined in RCW 41.40.170(3) or 43.43.260(3).

(6) If an individual does not meet the time limitations of subsection (1) of this section, the individual may elect to restore any withdrawn contributions and transfer service under this section by paying the amount required under subsection (3)(b) of this section less any employee contributions transferred. [2003 c 294 § 2; 1997 c 122 § 1.]

41.26.460 Options for payment of retirement allowances—Retirement allowance adjustment—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.26.430 or disability retirement under RCW 41.26.470, a member shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the

time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.26.530(1) and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the ages provided in RCW 41.26.430(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2003 c 294 § 3; 2002 c 158 § 7; 2000 c 186 § 1; 1998 c 340 § 5; 1996 c 175 § 3; 1995 c 144 § 17; 1990 c 249 § 3; 1977 ex.s. c 294 § 7.]

Effective date—1998 c 340: See note following RCW 41.31.010.

Findings—1990 c 249: See note following RCW 2.10.146.

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410.

41.26.547 Emergency medical technicians—Job relocation—Retirement options. (Expires July 1, 2013.) (1) A member of plan 2 who was a member of the public employees' retirement system while employed providing emergency medical services for a city, town, county, or district and whose job was relocated from another department of a city, town, county, or district to a fire department has the following options:

(a) Remain a member of the public employees' retirement system; or

(b) Leave any service credit earned as a member of the public employees' retirement system in the public employees' retirement system, and have all future service earned in the law enforcement officers' and fire fighters' retirement system plan 2, becoming a dual member under the provisions of chapter 41.54 RCW; or

(c) Make an election no later than June 30, 2008, filed in writing with the department of retirement systems, to transfer service credit previously earned as an emergency medical technician for a city, town, county, or district in the public employees' retirement system plan 1 or plan 2 to the law enforcement officers' and fire fighters' retirement system plan 2 as defined in RCW 41.26.030. Service credit that a member elects to transfer from the public employees' retirement system to the law enforcement officers' and fire fighters' retirement system under this section shall be transferred no earlier than five years after the effective date the member elects to transfer, and only after the member earns five years of service credit as a fire fighter following the effective date the member elects to transfer.

(2) A member of plan 1 who was a member of the public employees' retirement system while employed providing emergency medical services for a city, town, county, or district and whose job was relocated from another department of a city, town, county, or district to a fire department has the following options:

(a) Remain a member of the public employees' retirement system; or

(b) Leave any service credit earned as a member of the public employees' retirement system in the public employees' retirement system, and have all future service earned in the law enforcement officers' and fire fighters' retirement system plan 1.

(3)(a) A member who elects to transfer service credit under subsection (1)(c) of this section shall make the payments required by this subsection prior to having service credit earned as an emergency medical technician for a city, town, county, or district under the public employees' retirement system plan 1 or plan 2 transferred to the law enforcement officers' and fire fighters' retirement system plan 2. However, in no event shall service credit be transferred earlier than five years after the effective date the member elects to transfer, or prior to the member earning five years of service credit as a fire fighter following the effective date the member elects to transfer.

(b) A member who elects to transfer service credit under this subsection shall pay, for the applicable period of service, the difference between the contributions the employee paid to the public employees' retirement system plan 1 or plan 2 and the contributions that would have been paid by the employee had the employee been a member of the law enforcement officers' and fire fighters' retirement system plan 2, plus interest on this difference as determined by the director. This payment must be made no later than five years from the effective date of the election made under subsection (1)(c) of this section and must be made prior to retirement.

(c) No earlier than five years after the effective date the member elects to transfer service credit under this section and upon completion of the payment required in (b) of this subsection, the department shall transfer from the public employees' retirement system plan 1 or plan 2 to the law enforcement officers' and fire fighters' retirement system plan 2: (i) All of the employee's applicable accumulated contributions plus interest and an equal amount of employer contributions; and (ii) all applicable months of service, as defined in RCW 41.26.030(14)(b), credited to the employee under this chapter for service as an emergency services provider for a city, town, county, or district as though that service was rendered as a member of the law enforcement officers' and fire fighters' retirement system plan 2.

(d) Upon transfer of service credit, contributions, and interest under this subsection, the employee is permanently excluded from membership in the public employees' retirement system for all service transfers related to their time served as an emergency medical technician for a city, town, county, or district under the public employees' retirement system plan 1 or plan 2. [2003 c 293 § 1.]

Expiration date—2003 c 293: "This act expires July 1, 2013." [2003 c 293 § 2.]

"PLAN 2 GOVERNANCE"

41.26.700 Overview—Intent. The law enforcement officers' and fire fighters' retirement system plan 2 is currently subject to policymaking by the legislature's joint committee on pension policy with ratification by the members of the legislature and is administered by the department of retirement systems.

Members of the plan have no direct input into the management of their retirement program. Forty-six other states currently have member representation in their pension management. Chapter 2, Laws of 2003 is intended to give management of the retirement program to the people whose lives are directly affected by it and who provide loyal and valiant service to ensure the health, safety, and welfare of the citizens of the state of Washington. [2003 c 2 § 1 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.705 Intent—2003 c 2. It is the intent of chapter 2, Laws of 2003 to:

(1) Establish a board of trustees responsible for the adoption of actuarial standards to be applied to the plan;

(2) Provide for additional benefits for fire fighters and law enforcement officers subject to the cost limitations provided for in chapter 2, Laws of 2003;

(3) Exercise fiduciary responsibility in the oversight of those pension management functions assigned to the board;

(4) Provide effective monitoring of the plan by providing an annual report to the legislature, to the members and beneficiaries of the plan, and to the public;

(5) Establish contribution rates for employees, employers, and the state of Washington that will guaranty viability of the plan, subject to the limitations provided for in chapter 2, Laws of 2003;

(6) Provide for an annual budget and to pay costs from the trust, as part of the normal cost of the plan; and

(7) Enable the board of trustees to retain professional and technical advisors as necessary for the fulfillment of their statutory responsibilities. [2003 c 2 § 2 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.710 Definitions. The definitions in this section apply throughout this subchapter unless the context clearly requires otherwise.

(1) "Member" or "beneficiary" means:

(a) Current and future law enforcement officers and fire fighters who are contributing to the plan;

(b) Retired employees or their named beneficiaries who receive benefits from the plan; and

(c) Separated vested members of the plan who are not currently receiving benefits.

(2) "Plan" means the law enforcement officers' and fire fighters' retirement system plan 2.

(3) "Actuary" means the actuary employed by the board of trustees.

(4) "State actuary" means the actuary employed by the department.

(5) "Board" means the board of trustees.

(6) "Board member" means a member of the board of trustees.

(7) "Department" means the department of retirement systems.

(8) "Minimum benefits" means those benefits provided for in chapter 41.26 RCW as of July 1, 2003.

(9) "Employer" means the same as under RCW 41.26.030(2)(b).

(10) "Enrolled actuary" means an actuary who is enrolled under the employee retirement income security act of 1974 (Subtitle C of Title III) and who is a member of the society of actuaries or the American academy of actuaries.

(11) "Increased benefit" means a benefit in addition to the minimum benefits.

(12) "Trust" means the assets of the plan.

(13) "Benefits" means the age or service or combination thereof required for retirement, the level of service and disability retirement benefits, survivorship benefits, payment options including a deferred retirement option plan, average final compensation, postretirement cost-of-living adjustments, including health care and the elements of compensation. Benefits shall not include the classifications of employment eligible to participate in the plan.

(14) "Actuarially sound" means the plan is sufficiently funded to meet its projected liabilities and to defray the reasonable expenses of its operation based upon commonly accepted, sound actuarial principles. [2003 c 2 § 3 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.715 Board of trustees—Created—Selection of trustees—Terms of office—Vacancies. (1) An eleven member board of trustees is hereby created.

(a) Three of the board members shall be active law enforcement officers who are participants in the plan. Beginning with the first vacancy on or after January 1, 2007, one board member shall be a retired law enforcement officer who is a member of the plan. The law enforcement officer board members shall be appointed by the governor from a list provided by a recognized statewide council whose membership consists exclusively of guilds, associations, and unions representing state and local government police officers, deputies, and sheriffs and excludes federal law enforcement officers.

(b) Three of the board members shall be active fire fighters who are participants in the plan. Beginning with the first vacancy on or after January 1, 2007, one board member shall be a retired fire fighter who is a member of the plan. The fire fighter board member shall be appointed by the governor from a list provided by a recognized statewide council, affiliated with an international association representing the interests of fire fighters.

(c) Three of the board members shall be representatives of employers and shall be appointed by the governor.

(d) One board member shall be a member of the house of representatives who is appointed by the governor based on the recommendation of the speaker of the house of representatives.

(e) One board member shall be a member of the senate who is appointed by the governor based on the recommendation of the majority leader of the senate.

(2) The initial law enforcement officer and fire fighter board members shall serve terms of six, four, and two years, respectively. Thereafter, law enforcement officer and fire fighter board members serve terms of six years. The remaining board members serve terms of four years. Board members may be reappointed to succeeding terms without limitation. Board members shall serve until their successors are appointed and seated.

(3) In the event of a vacancy on the board, the vacancy shall be filled in the same manner as prescribed for an initial appointment. [2003 c 2 § 4 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.717 Additional duties and powers of board.

The law enforcement officers' and fire fighters' plan 2 retirement board established in section 4, chapter 2, Laws of 2003 has the following duties and powers in addition to any other duties or powers authorized or required by law. The board:

(1) Shall employ staff as necessary to implement the purposes of chapter 2, Laws of 2003. Staff must be state employees under Title 41 RCW;

(2) Shall adopt an annual budget as provided in section 5, chapter 2, Laws of 2003. Expenses of the board are paid from the expense fund created in RCW 41.26.732;

(3) May make, execute, and deliver contracts, conveyances, and other instruments necessary to exercise and discharge its powers and duties;

(4) May contract for all or part of the services necessary for the management and operation of the board with other state or nonstate entities authorized to do business in the state; and

(5) May contract with actuaries, auditors, and other consultants as necessary to carry out its responsibilities. [2003 c 92 § 1.]

41.26.720 Board of trustees—Powers—Meeting procedures—Quorum—Judicial review—Budget. (1) The board of trustees have the following powers and duties and shall:

(a) Adopt actuarial tables, assumptions, and cost methodologies in consultation with an enrolled actuary retained by the board. The state actuary shall provide assistance when the board requests. The actuary retained by the board shall utilize the aggregate actuarial cost method, or other recognized actuarial cost method based on a level percentage of payroll, as that term is employed by the American academy of actuaries. In determining the reasonableness of actuarial valuations, assumptions, and cost methodologies, the actuary retained by the board shall provide a copy of all such calculations to the state actuary. If the two actuaries concur on the calculations, contributions shall be made as set forth in the report of the board's actuary. If the two actuaries cannot agree, they shall appoint a third, independent, enrolled actuary who shall review the calculations of the actuary retained by the board and the state actuary. Thereafter, contributions shall be based on the methodology most closely following that of the third actuary;

(b)(i) Provide for the design and implementation of increased benefits for members and beneficiaries of the plan, subject to the contribution limitations under RCW 41.26.725. An increased benefit may not be approved by the board until an actuarial cost of the benefit has been determined by the actuary and contribution rates adjusted as may be required to maintain the plan on a sound actuarial basis. Increased benefits as approved by the board shall be presented to the legislature on January 1st of each year. The increased benefits as approved by the board shall become effective within ninety days unless a bill is enacted in the next ensuing session of the legislature, by majority vote of each house of the legislature, repealing the action of the board;

(ii) As an alternative to the procedure in (b)(i) of this subsection, recommend to the legislature changes in the benefits for members and beneficiaries, without regard to the cost limitations in RCW 41.26.725(3). Benefits adopted in this manner shall have the same contractual protections as the minimum benefits in the plan. The recommendations of the board shall be presented to the legislature on January 1st of each year. These measures shall take precedence over all other measures in the legislature, except appropriations bills, and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session;

(c) Retain professional and technical advisors necessary for the accomplishment of its duties. The cost of these services may be withdrawn from the trust;

(d) Consult with the department for the purpose of improving benefit administration and member services;

(e) Provide an annual report to the governor and the legislature setting forth the actuarial funding status of the plan and making recommendations for improvements in those aspects of retirement administration directed by the legislature or administered by the department;

(f) Establish uniform administrative rules and operating policies in the manner prescribed by law;

(g) Engage administrative staff and acquire office space independent of, or in conjunction with, the department. The department shall provide funding from its budget for these purposes;

(h) The board shall publish [Publish] on an annual basis a schedule of increased benefits together with a summary of the minimum benefits as established by the legislature which shall constitute the official plan document; and

(i) Be the fiduciary of the plan and discharge the board's duties solely in the interest of the members and beneficiaries of the plan.

(2) Meetings of the board of trustees shall be conducted as follows:

(a) All board meetings are open to the public, preceded by timely public notice;

(b) All actions of the board shall be taken in open public session, except for those matters which may be considered in executive session as provided by law;

(c) The board shall retain minutes of each meeting setting forth the names of those board members present and absent, and their voting record on any voted issue; and

(d) The board may establish, with the assistance of the appropriate office of state government, an internet web site providing for interactive communication with state government, members and beneficiaries of the plan, and the public.

(3) A quorum of the board is six board members. All board actions require six concurring votes.

(4) The decisions of the board shall be made in good faith and are final, binding, and conclusive on all parties. The decisions of the board shall be subject to judicial review as provided by law.

(5) A law enforcement officers' and fire fighters' retirement system plan 2 expense fund is established for the purpose of defraying the expenses of the board. The board shall cause an annual budget to be prepared consistent with the requirements of chapter 43.88 RCW and shall draw the funding for the budget from the investment income of the trust. Board members shall be reimbursed for travel and education expenses as provided in RCW 43.03.050 and 43.03.060. The board shall make an annual report to the governor, legislature, and state auditor setting forth a summary of the costs and expenditures of the plan for the preceding year. The board shall also retain the services of an independent, certified public accountant who shall annually audit the expenses of the fund and whose report shall be included in the board's annual report. [2003 c 2 § 5 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.725 Board of trustees—Contributions—Minimum and increased benefits. (1) The board of trustees shall establish contributions as set forth in this section. The cost of the minimum benefits as defined in this plan shall be funded on the following ratio:

Employee contributions	50%
Employer contributions	30%
State contributions	20%

(2) The minimum benefits shall constitute a contractual obligation of the state and the contributing employers and

may not be reduced below the levels in effect on July 1, 2003. The state and the contributing employers shall maintain the minimum benefits on a sound actuarial basis in accordance with the actuarial standards adopted by the board.

(3) Increased benefits created as provided for in RCW 41.26.720 are granted on a basis not to exceed the contributions provided for in this section. In addition to the contributions necessary to maintain the minimum benefits, for any increased benefits provided for by the board, the employee contribution shall not exceed fifty percent of the actuarial cost of the benefit. In no instance shall the employee cost exceed ten percent of covered payroll without the consent of a majority of the affected employees. Employer contributions shall not exceed thirty percent of the cost, but in no instance shall the employer contribution exceed six percent of covered payroll. State contributions shall not exceed twenty percent of the cost, but in no instance shall the state contribution exceed four percent of covered payroll. Employer contributions may not be increased above the maximum under this section without the consent of the governing body of the employer. State contributions may not be increased above the maximum provided for in this section without the consent of the legislature. In the event that the cost of maintaining the increased benefits on a sound actuarial basis exceeds the aggregate contributions provided for in this section, the board shall submit to the affected members of the plan the option of paying the increased costs or of having the increased benefits reduced to a level sufficient to be maintained by the aggregate contributions. The reduction of benefits in accordance with this section shall not be deemed a violation of the contractual rights of the members, provided that no reduction may result in benefits being lower than the level of the minimum benefits.

(4) The board shall manage the trust in a manner that maintains reasonable contributions and administrative costs. Providing additional benefits to members and beneficiaries is the board's priority. [2003 c 93 § 1; 2003 c 2 § 6 (Initiative Measure No. 790, approved November 5, 2002).]

Effective date—2003 c 93: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 23, 2003]." [2003 c 93 § 2.]

41.26.730 Joint committee on pension policy—Pension funding council. The joint committee on pension policy established in RCW 44.44.050, and the pension funding council created in RCW 41.45.100, shall have no applicability or authority over matters relating to this plan. [2003 c 2 § 7 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.732 Plan 2 expense fund—Board oversight and administration—State investment board. (1) A law enforcement officers' and fire fighters' retirement system plan 2 expense fund is created within the law enforcement officers' and fire fighters' retirement system plan 2 fund.

(2) The state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the expense fund. The state investment board is authorized to adopt investment policies for the money in the expense fund. All investment and operating costs associated with the investment of money shall be paid pursuant to

RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investment of the money shall be retained by the law enforcement officers' and fire fighters' retirement system plan 2 fund.

(3) All investments made by the investment board shall be made with the exercise of that degree of judgment and care pursuant to RCW 43.33A.140 and the investment policy established by the state investment board.

(4) When appropriate for investment purposes, the state investment board may commingle money in the expense fund with other funds.

(5) The authority to establish all policies relating to the expense fund, other than the investment policies as set forth in subsections (2) through (4) of this section, resides with the law enforcement officers' and fire fighters' plan 2 retirement board. With the exception of investments by, and expenses of, the state investment board set forth in subsection (2) of this section, disbursements from this expense fund may be made only on the authorization of the law enforcement officers' and fire fighters' plan 2 retirement board, and money in the expense fund may be spent only for the purposes of defraying the expenses of the law enforcement officers' and fire fighters' plan 2 retirement board as provided in section 5, chapter 2, Laws of 2003.

(6) The state investment board shall routinely consult and communicate with the law enforcement officers' and fire fighters' plan 2 retirement board on the investment policy, earnings of the trust, and related needs of the expense fund.

(7) The law enforcement officers' and fire fighters' plan 2 retirement board shall administer the expense fund in a manner reasonably designed to be actuarially sound. The assets of the expense fund must be sufficient to defray the obligations of the account including the costs of administration. Money used for administrative expenses is subject to the allotment of all expenditures pursuant to chapter 43.88 RCW. However, an appropriation is not required for expenditures. Administrative expenses include, but are not limited to, the salaries and expenses of law enforcement officers' and fire fighters' plan 2 retirement board personnel including lease payments, travel, and goods and services necessary for operation of the board, audits, and other general costs of conducting the business of the board.

(8) The state investment board shall allocate from the law enforcement officers' and fire fighters' retirement system plan 2 fund to the expense fund the amount necessary to cover the expenses of the law enforcement officers' and fire fighters' plan 2 retirement board. [2003 c 92 § 6.]

41.26.735 Asset management. Assets of the plan shall be managed by the state investment board as provided by law. [2003 c 2 § 8 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.740 Reimbursement for expenses. All expenses of the department and the office of the state actuary related to the implementation of chapter 2, Laws of 2003 shall be reimbursed from the law enforcement officers' and fire fighters' retirement system expense fund under RCW 39.34.130. [2003 c 92 § 7.]

41.26.902 Severability—2003 c 2 (Initiative Measure No. 790). If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2003 c 2 § 9 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.903 Captions not law—2003 c 2 (Initiative Measure No. 790). Captions used in this act are not any part of the law. [2003 c 2 § 10 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.904 Effective date—2003 c 2 (Initiative Measure No. 790). Except for section 11 of this act, the remainder of this act takes effect July 1, 2003. [2003 c 2 § 13 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.905 Severability—2003 c 92. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2003 c 92 § 11.]

41.26.906 Effective date—2003 c 92. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 23, 2003]. [2003 c 92 § 12.]

Chapter 41.31A RCW

EXTRAORDINARY INVESTMENT GAINS—PLAN 3

Sections

41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted. (*Effective January 1, 2004.*)

41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted. (*Effective January 1, 2004.*) (1) On January 1, 2004, and on January 1st of even-numbered years thereafter, the member account of a person meeting the requirements of this section shall be credited by the extraordinary investment gain amount.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) Any member of the teachers' retirement system plan 3, the Washington school employees' retirement system plan 3, or the public employees' retirement system plan 3 who earned service credit during the twelve-month period from September 1st to August 31st immediately preceding the distribution and had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution; or

(b) Any person in receipt of a benefit pursuant to RCW 41.32.875, 41.35.680, or 41.40.820; or

(c) Any person who is a retiree pursuant to RCW 41.34.020(8) and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age fifty-four; or

(d) Any teacher who is a retiree pursuant to RCW 41.34.020(8) and who has completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817; or

(e) Any classified employee who is a retiree pursuant to RCW 41.34.020(8) and who has completed five service credit years by September 1, 2000, and who transferred to plan 3 under RCW 41.35.510; or

(f) Any public employee who is a retiree pursuant to RCW 41.34.020(8) and who has completed five service credit years by March 1, 2002, and who transferred to plan 3 under RCW 41.40.795; or

(g) Any person who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age fifty-four; or

(h) Any teacher who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817; or

(i) Any classified employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by September 1, 2000, and who transferred to plan 3 under RCW 41.35.510; or

(j) Any public employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by March 1, 2002, and who transferred to plan 3 under RCW 41.40.795.

(3) The extraordinary investment gain amount shall be calculated as follows:

(a) One-half of the sum of the value of the net assets held in trust for pension benefits in the teachers' retirement system combined plan 2 and 3 fund, the Washington school employees' retirement system combined plan 2 and 3 fund, and the public employees' retirement system combined plan 2 and 3 fund at the close of the previous state fiscal year not including the amount attributable to member accounts;

(b) Multiplied by the amount which the compound average of investment returns on those assets over the previous four state fiscal years exceeds ten percent;

(c) Multiplied by the proportion of:

(i) The sum of the service credit on August 31st of the previous year of all persons eligible for the benefit provided in subsection (1) of this section; to

(ii) The sum of the service credit on August 31st of the previous year of:

(A) All persons eligible for the benefit provided in subsection (1) of this section;

(B) Any person who earned service credit in the teachers' retirement system plan 2, the Washington school employees' retirement system plan 2, or the public employees' retirement system plan 2 during the twelve-month period from September 1st to August 31st immediately preceding the distribution;

(C) Any person in receipt of a benefit pursuant to RCW 41.32.765, 41.35.420, or 41.40.630; and

(D) Any person with five or more years of service in the teachers' retirement system plan 2, the Washington school employees' retirement system plan 2, or the public employees' retirement system plan 2;

(d) Divided proportionally among persons eligible for the benefit provided in subsection (1) of this section on the basis of their service credit total on August 31st of the previous year.

(4) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this distribution not granted prior to that time. [2003 c 294 § 4; 2000 c 247 § 408; 1998 c 341 § 312.]

Effective date—2003 c 294 § 4: "Section 4 of this act takes effect January 1, 2004." [2003 c 294 § 17.]

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Effective date—1998 c 341: See RCW 41.35.901.

**Chapter 41.32 RCW
TEACHERS' RETIREMENT**

Sections

41.32.010	Definitions.
41.32.053	Death benefit—Course of employment.
41.32.055	Falsification—Penalty. (<i>Effective July 1, 2004.</i>)
41.32.520	Payment on death before retirement or within sixty days following application for disability retirement.
41.32.570	Postretirement employment—Reduction or suspension of pension payments.
41.32.805	Death benefits.
41.32.837	Right to waive benefit—Irrevocable choice.
41.32.895	Death benefits.

41.32.010 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1)(a) "Accumulated contributions" for plan 1 members, means the sum of all regular annuity contributions and, except for the purpose of withdrawal at the time of retirement, any amount paid under RCW 41.50.165(2) with regular interest thereon.

(b) "Accumulated contributions" for plan 2 members, means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables and regulations as shall be adopted by the director and regular interest.

(3) "Annuity" means the moneys payable per year during life by reason of accumulated contributions of a member.

(4) "Member reserve" means the fund in which all of the accumulated contributions of members are held.

(5)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6) "Contract" means any agreement for service and compensation between a member and an employer.

(7) "Creditable service" means membership service plus prior service for which credit is allowable. This subsection shall apply only to plan 1 members.

(8) "Dependent" means receiving one-half or more of support from a member.

(9) "Disability allowance" means monthly payments during disability. This subsection shall apply only to plan 1 members.

(10)(a) "Earnable compensation" for plan 1 members, means:

(i) All salaries and wages paid by an employer to an employee member of the retirement system for personal services rendered during a fiscal year. In all cases where compensation includes maintenance the employer shall fix the value of that part of the compensation not paid in money.

(ii) For an employee member of the retirement system teaching in an extended school year program, two consecutive extended school years, as defined by the employer school district, may be used as the annual period for determining earnable compensation in lieu of the two fiscal years.

(iii) "Earnable compensation" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation and the individual shall receive the equivalent service credit.

(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature, and such member has served in the legislature five or more years, the salary which would have been received for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of service shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative service was rendered during those two years.

(iv) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives service credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.345. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of retirement benefits and only as necessary to insure

that members who receive fractional service credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time service credit.

(v) "Earnable compensation" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Earnable compensation" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Earnable compensation" for plan 2 and plan 3 members also includes the following actual or imputed payments which, except in the case of (b)(ii)(B) of this subsection, are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation, to the extent provided above, and the individual shall receive the equivalent service credit.

(ii) In any year in which a member serves in the legislature the member shall have the option of having such member's earnable compensation be the greater of:

(A) The earnable compensation the member would have received had such member not served in the legislature; or

(B) Such member's actual earnable compensation received for teaching and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions.

(11) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid.

(12) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.

(13) "Former state fund" means the state retirement fund in operation for teachers under chapter 187, Laws of 1923, as amended.

(14) "Local fund" means any of the local retirement funds for teachers operated in any school district in accordance with the provisions of chapter 163, Laws of 1917 as amended.

(15) "Member" means any teacher included in the membership of the retirement system. Also, any other employee of the public schools who, on July 1, 1947, had not elected to be exempt from membership and who, prior to that date, had by an authorized payroll deduction, contributed to the member reserve.

(16) "Membership service" means service rendered subsequent to the first day of eligibility of a person to membership in the retirement system: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered. The provisions of this subsection shall apply only to plan 1 members.

(17) "Pension" means the moneys payable per year during life from the pension reserve.

(18) "Pension reserve" is a fund in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system and from which all pension obligations are to be paid.

(19) "Prior service" means service rendered prior to the first date of eligibility to membership in the retirement system for which credit is allowable. The provisions of this subsection shall apply only to plan 1 members.

(20) "Prior service contributions" means contributions made by a member to secure credit for prior service. The provisions of this subsection shall apply only to plan 1 members.

(21) "Public school" means any institution or activity operated by the state of Washington or any instrumentality or political subdivision thereof employing teachers, except the University of Washington and Washington State University.

(22) "Regular contributions" means the amounts required to be deducted from the compensation of a member and credited to the member's individual account in the member reserve. This subsection shall apply only to plan 1 members.

(23) "Regular interest" means such rate as the director may determine.

(24)(a) "Retirement allowance" for plan 1 members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for plan 2 and plan 3 members, means monthly payments to a retiree or beneficiary as provided in this chapter.

(25) "Retirement system" means the Washington state teachers' retirement system.

(26)(a) "Service" for plan 1 members means the time during which a member has been employed by an employer for compensation.

(i) If a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered.

(ii) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(iii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member for one or more employers for which earnable compensation is earned subject to the following conditions:

(i) A member employed in an eligible position or as a substitute shall receive one service credit month for each

month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position except as provided in RCW 41.32.812 and 41.50.132;

(ii) If a member is employed either in an eligible position or as a substitute teacher for nine months of the twelve month period between September through August of the following year but earns earnable compensation for less than eight hundred ten hours but for at least six hundred thirty hours, he or she will receive one-half of a service credit month for each month of the twelve month period;

(iii) All other members in an eligible position or as a substitute teacher shall receive service credit as follows:

(A) A service credit month is earned in those calendar months where earnable compensation is earned for ninety or more hours;

(B) A half-service credit month is earned in those calendar months where earnable compensation is earned for at least seventy hours but less than ninety hours; and

(C) A quarter-service credit month is earned in those calendar months where earnable compensation is earned for less than seventy hours.

(iv) Any person who is a member of the teachers' retirement system and who is elected or appointed to a state elective position may continue to be a member of the retirement system and continue to receive a service credit month for each of the months in a state elective position by making the required member contributions.

(v) When an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

(vi) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(vii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(viii) The department shall adopt rules implementing this subsection.

(27) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(28) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(29) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in addition thereto any full time school doctor who is employed by a public school and renders service of an instructional or educational nature.

(30) "Average final compensation" for plan 2 and plan 3 members, means the member's average earnable compensation of the highest consecutive sixty service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.32.810(2).

(31) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(32) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(33) "Director" means the director of the department.

(34) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(35) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(36) "Substitute teacher" means:

(a) A teacher who is hired by an employer to work as a temporary teacher, except for teachers who are annual contract employees of an employer and are guaranteed a minimum number of hours; or

(b) Teachers who either (i) work in ineligible positions for more than one employer or (ii) work in an ineligible position or positions together with an eligible position.

(37)(a) "Eligible position" for plan 2 members from June 7, 1990, through September 1, 1991, means a position which normally requires two or more uninterrupted months of creditable service during September through August of the following year.

(b) "Eligible position" for plan 2 and plan 3 on and after September 1, 1991, means a position that, as defined by the employer, normally requires five or more months of at least seventy hours of earnable compensation during September through August of the following year.

(c) For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(d) The elected position of the superintendent of public instruction is an eligible position.

(38) "Plan 1" means the teachers' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(39) "Plan 2" means the teachers' retirement system, plan 2 providing the benefits and funding provisions covering per-

sons who first became members of the system on and after October 1, 1977, and prior to July 1, 1996.

(40) "Plan 3" means the teachers' retirement system, plan 3 providing the benefits and funding provisions covering persons who first become members of the system on and after July 1, 1996, or who transfer under RCW 41.32.817.

(41) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items compiled by the bureau of labor statistics, United States department of labor.

(42) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(43) "Index B" means the index for the year prior to index A.

(44) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(45) "Adjustment ratio" means the value of index A divided by index B.

(46) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(47) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(48) "Separation from service or employment" occurs when a person has terminated all employment with an employer.

(49) "Employed" or "employee" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law. [2003 c 31 § 1; 1997 c 254 § 3; 1996 c 39 § 1. Prior: 1995 c 345 § 9; 1995 c 239 § 102; prior: 1994 c 298 § 3; 1994 c 247 § 2; 1994 c 197 § 12; 1993 c 95 § 7; prior: 1992 c 212 § 1; 1992 c 3 § 3; prior: 1991 c 343 § 3; 1991 c 35 § 31; 1990 c 274 § 2; 1987 c 265 § 1; 1985 c 13 § 6; prior: 1984 c 256 § 1; 1984 c 5 § 1; 1983 c 5 § 1; 1982 1st ex.s. c 52 § 6; 1981 c 256 § 5; 1979 ex.s. c 249 § 5; 1977 ex.s. c 293 § 18; 1975 1st ex.s. c 275 § 149; 1974 ex.s. c 199 § 1; 1969 ex.s. c 176 § 95; 1967 c 50 § 11; 1965 ex.s. c 81 § 1; 1963 ex.s. c 14 § 1; 1955 c 274 § 1; 1947 c 80 § 1; Rem. Supp. 1947 § 4995-20; prior: 1941 c 97 § 1; 1939 c 86 § 1; 1937 c 221 § 1; 1931 c 115 § 1; 1923 c 187 § 1; 1917 c 163 § 1; Rem. Supp. 1941 § 4995-1.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Effective dates—1996 c 39: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1996, with the exception of section 23 of this act, which shall take effect immediately [March 13, 1996]." [1996 c 39 § 25.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Intent—1994 c 298: See note following RCW 41.40.010.

Effective date—1994 c 247: See note following RCW 41.32.4991.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Retroactive application—Effective date—1993 c 95: See notes following RCW 41.40.175.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 274: "(1) The current system for calculating service credit for school district employees is difficult and costly to administer. By changing from the current hours per month calculation to an hours per year calculation, the accumulation of service credit by school district employees will be easier to understand and to administer.

(2) The current system for granting service credit for substitute teachers is difficult and costly to administer. By notifying substitute teachers of their eligibility for service credit and allowing the substitute teacher to apply for service credit, the accumulation of service credit by substitute teachers will be easier to understand and to administer.

(3) Currently, temporary employees in eligible positions in the public employees' retirement system are exempted from membership in the system for up to six months. If the position lasts for longer than six months the employee is made a member retroactively. This conditional exemption causes tracking problems for the department of retirement systems and places a heavy financial burden for back contributions on a temporary employee who crosses the six-month barrier. Under the provisions of this act all persons, other than retirees, who are hired in an eligible position will become members immediately, thereby alleviating the problems described in this section.

(4) The legislature finds that retirees from the plan 2 systems of the law enforcement officers' and fire fighters' retirement system, the teachers' retirement system, and the public employees' retirement system, may not work for a nonfederal public employer without suffering a suspension of their retirement benefits. This fails to recognize the current and projected demographics indicating the decreasing work force and that the expertise possessed by retired workers can provide a substantial benefit to the state. At the same time, the legislature recognizes that a person who is working full time should have his or her pension delayed until he or she enters full or partial retirement. By allowing plan 2 retirees to work in ineligible positions, the competing concerns listed above are both properly addressed." [1990 c 274 § 1.]

Intent—Reservation—1990 c 274 §§ 2, 4: "(1) The 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 are intended by the legislature to effect administrative, rather than substantive, changes to the affected retirement plan. The legislature therefore reserves the right to revoke or amend the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450. No member is entitled to have his or her service credit calculated under the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 as a matter of contractual right.

(2) The department's retroactive application of the changes made in RCW 41.32.010(27)(b) to all service rendered between October 1, 1977, and August 31, 1990, is consistent with the legislative intent of the 1990 changes to RCW 41.32.010(27)(b)." [1994 c 177 § 10; 1990 c 274 § 18.]

Effective date—1990 c 274: "Sections 1 through 8 of this act shall take effect September 1, 1990." [1990 c 274 § 21.]

Construction—1990 c 274: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1990 c 274 § 17.]

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Purpose—Severability—1981 c 256: See notes following RCW 41.26.030.

Effective date—Severability—1977 ex.s. c 293: See notes following RCW 41.32.755.

Emergency—1974 ex.s. c 199: "This 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1974 ex.s. c 199 § 7.]

Severability—1974 ex.s. c 199: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the

remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 199 § 8.]

Construction—1974 ex.s. c 199: "(1) Subsection (3) of section 4 of this 1974 amendatory act relating to elected and appointed officials shall be retroactive to January 1, 1973.

(2) Amendatory language contained in subsection (11) of section 1 relating to members as members of the legislature and in provisos (2) and (3) of section 2 of this 1974 amendatory act shall only apply to those members who are serving as a state senator, state representative or state superintendent of public instruction on or after the effective date of this 1974 amendatory act.

(3) Notwithstanding any other provision of this 1974 amendatory act, RCW 41.32.497 as last amended by section 2, chapter 189, Laws of 1973 1st ex. sess. shall be applicable to any member serving as a state senator, state representative or superintendent of public instruction on the effective date of this 1974 amendatory act." [1974 ex.s. c 199 § 5.]

Reviser's note: (1) "Subsection (3) of section 4 of this 1974 amendatory act" is codified as RCW 41.32.498(3).

(2) Sections 1 and 2 of 1974 ex.s. c 199 consist of amendments to RCW 41.32.010 and 41.32.260. For amendatory language, a portion of which was vetoed, see the 1973-1974 session laws.

(3) "this 1974 amendatory act" [1974 ex.s. c 199] is codified in RCW 41.32.010, 41.32.260, 41.32.497, 41.32.498, and 41.32.4945. The effective date of 1974 ex.s. c 199 is May 6, 1974.

Effective date—1969 ex.s. c 176: The effective date of the amendments to this section and RCW 41.32.420 is April 25, 1969.

Effective date—1967 c 50: "This 1967 amendatory act shall take effect on July 1, 1967." [1967 c 50 § 12.]

Severability—1967 c 50: "If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1967 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1967 c 50 § 13.]

Severability—1965 ex.s. c 81: "If any provision of this act is held to be invalid the remainder of this act shall not be affected." [1965 ex.s. c 81 § 9.]

Effective date—1965 ex.s. c 81: "The effective date of this act is July 1, 1965." [1965 ex.s. c 81 § 10.]

Savings—1963 ex.s. c 14: "The amendment of any section by this 1963 act shall not be construed as impairing any existing right acquired or any liability incurred by any member under the provisions of the section amended; nor shall it affect any vested right of any former member who reenters public school employment or becomes reinstated as a member subsequent to the effective date of such act." [1963 ex.s. c 14 § 23.]

Severability—1963 ex.s. c 14: "If any provision of this act is held to be invalid the remainder of the act shall not be affected." [1963 ex.s. c 14 § 24.]

Effective date—1963 ex.s. c 14: "The effective date of this act is July 1, 1964." [1963 ex.s. c 14 § 26.]

41.32.053 Death benefit—Course of employment. (1)

A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member has nominated by written designation duly executed and filed with the department. If no such designated person or persons are still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of injuries sustained in the course of employment. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2003 c 402 § 2.]

41.32.055 Falsification—Penalty. (Effective July 1, 2004.) Any person who shall knowingly make false state-

ments or shall falsify or permit to be falsified any record or records of the retirement system in any attempt to defraud such system as a result of such act, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 218; 1947 c 80 § 67; Rem. Supp. 1947 § 4995-86. Prior: 1937 c 221 § 10. Formerly RCW 41.32.670.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

41.32.520 Payment on death before retirement or within sixty days following application for disability retirement. (1)

Except as specified in subsection (3) of this section, upon receipt of proper proofs of death of any member before retirement or before the first installment of his or her retirement allowance shall become due his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, and/or other benefits payable upon his or her death shall be paid to his or her estate or to such persons, trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department. If a member fails to file a new beneficiary designation subsequent to marriage, divorce, or reestablishment of membership following termination by withdrawal, lapsation, or retirement, payment of his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, and/or other benefits upon death before retirement shall be made to the surviving spouse, if any; otherwise, to his or her estate. If a member had established ten or more years of Washington membership service credit or was eligible for retirement, the beneficiary or the surviving spouse if otherwise eligible may elect, in lieu of a cash refund of the member's accumulated contributions, the following survivor benefit plan actuarially reduced, except under subsection (4) of this section, by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670:

(a) A widow or widower, without a child or children under eighteen years of age, may elect a monthly payment of fifty dollars to become effective at age fifty, provided the member had fifteen or more years of Washington membership service credit. A benefit paid under this subsection (1)(a) shall terminate at the marriage of the beneficiary.

(b) The beneficiary, if a surviving spouse or a dependent (as that term is used in computing the dependent exemption for federal internal revenue purposes) may elect to receive a joint and one hundred percent retirement allowance under RCW 41.32.530.

(i) In the case of a dependent child the allowance shall continue until attainment of majority or so long as the department judges that the circumstances which created his or her dependent status continue to exist. In any case, if at the time dependent status ceases, an amount equal to the amount of accumulated contributions of the deceased member has not been paid to the beneficiary, the remainder shall then be paid in a lump sum to the beneficiary.

(ii) If at the time of death, the member was not then qualified for a service retirement allowance, the benefit shall be

based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance.

(2) If no qualified beneficiary survives a member, at his or her death his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to his or her estate, or his or her dependents may qualify for survivor benefits under benefit plan (1)(b) in lieu of a cash refund of the members accumulated contributions in the following order: Widow or widower, guardian of a dependent child or children under age eighteen, or dependent parent or parents.

(3) If a member dies within sixty days following application for disability retirement under RCW 41.32.550, the beneficiary named in the application may elect to receive the benefit provided by:

(a) This section; or

(b) RCW 41.32.550, according to the option chosen under RCW 41.32.530 in the disability application.

(4) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction. The member's retirement allowance is computed under RCW 41.32.480. [2003 c 155 § 1; 1997 c 73 § 1; 1995 c 144 § 9; 1993 c 16 § 1; 1992 c 212 § 7. Prior: 1991 c 365 § 29; 1991 c 35 § 58; 1990 c 249 § 15; 1974 ex.s. c 193 § 5; 1973 2nd ex.s. c 32 § 4; 1973 1st ex.s. c 154 § 76; 1967 c 50 § 7; 1965 ex.s. c 81 § 6; 1957 c 183 § 3; 1955 c 274 § 25; 1947 c 80 § 52; Rem. Supp. 1947 § 4995-71; prior: 1941 c 97 § 6; 1939 c 86 § 6; 1937 c 221 § 7; 1923 c 187 § 22; 1917 c 163 § 21; Rem. Supp. 1941 § 4995-7.]

Application—2003 c 155: "This act applies to any member killed in the course of employment, as determined by the director of the department of labor and industries, on or after July 1, 2001." [2003 c 155 § 9.]

Effective date—1997 c 73: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 1997]." [1997 c 73 § 4.]

Application—1993 c 16 § 1: "The provisions of section 1(3) of this act shall apply to all determinations of disability made after June 30, 1992." [1993 c 16 § 2.]

Effective date—1993 c 16: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 12, 1993]." [1993 c 16 § 3.]

Severability—1991 c 365: See note following RCW 41.50.500.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Emergency—Severability—1974 ex.s. c 193: See notes following RCW 41.32.310.

Emergency—Severability—1973 2nd ex.s. c 32: See notes following RCW 41.32.310.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Effective date—Severability—1967 c 50: See notes following RCW 41.32.010.

Effective date—Severability—1965 ex.s. c 81: See notes following RCW 41.32.010.

Severability—1957 c 183: See RCW 41.33.900.

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41.32.570 Postretirement employment—Reduction or suspension of pension payments. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any monthly benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) Any retired teacher or retired administrator who enters service in any public educational institution in Washington state and who has satisfied the break in employment requirement of subsection (1) of this section shall cease to receive pension payments while engaged in such service, after the retiree has rendered service for more than one thousand five hundred hours in a school year. When a retired teacher or administrator renders service beyond eight hundred sixty-seven hours, the department shall collect from the employer the applicable employer retirement contributions for the entire duration of the member's employment during that fiscal year.

(3) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy.

(4) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than five hundred twenty-five hours per year without a reduction of his or her pension. [2003 c 295 § 6. Prior: 2001 2nd sp.s. c 10 § 3; (2001 c 317 § 1 repealed by 2003 c 412 § 3); 1999 c 387 § 1; 1997 c 254 § 5; 1995 c 264 § 1; 1994 c 69 § 2; 1989 c 273 § 29; 1986 c 237 § 1; 1967 c 151 § 5; 1959 c 37 § 3; 1955 c 274 § 30; 1947 c 80 § 57; Rem. Supp. 1947 § 4995-76.]

Effective dates—2001 2nd sp.s. c 10: See note following RCW 41.40.037.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Effective date—1995 c 264: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]." [1995 c 264 § 2.]

Findings—1994 c 69: "The legislature finds that there is a shortage of certificated substitute teachers in many regions of the state, and that this shortage will likely increase in the coming years. The legislature further finds that one method of reducing this shortage of substitute teachers is to encourage retired teachers to serve as substitutes by increasing the number of days they can work without affecting their retirement payments." [1994 c 69 § 1.]

Severability—1989 c 273: See RCW 41.45.900.

Effective date—Severability—1967 c 151: See notes following RCW 41.32.480.

41.32.805 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contri-

butions pursuant to a court order filed under RCW 41.50.670, at the time of such member's death shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.32.765, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.32.785 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.32.765; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To an estate, a person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction under RCW 41.32.765. The member's retirement allowance is computed

under RCW 41.32.760. [2003 c 155 § 2; 2000 c 247 § 1002; 1995 c 144 § 16; 1993 c 236 § 4; 1991 c 365 § 30; 1990 c 249 § 16; 1977 ex.s. c 293 § 12.]

Applicability—2003 c 155: See note following RCW 41.32.520.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Severability—1991 c 365: See note following RCW 41.50.500.

Findings—1990 c 249: See note following RCW 2.10.146.

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.32.837 Right to waive benefit—Irrevocable choice. Any member receiving or having received a distribution under chapter 41.34 RCW may make an irrevocable choice to waive all rights to a benefit under RCW 41.32.840 by notifying the department in writing of their intention. [2003 c 349 § 1.]

Effective date—2003 c 349: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2003]." [2003 c 349 § 4.]

41.32.895 Death benefits. (1) If a member dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in RCW 41.32.851 actuarially reduced to reflect a joint and one hundred percent survivor option and, except under subsection (2) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.32.875.

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death.

(2) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction under RCW 41.32.875. The member's retirement allowance is computed under RCW 41.32.840. [2003 c 155 § 3; 2000 c 247 § 1003; 1996 c 39 § 7; 1995 c 239 § 117.]

Applicability—2003 c 155: See note following RCW 41.32.520.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

Chapter 41.34 RCW

PLAN 3 RETIREMENT SYSTEM CONTRIBUTIONS

(Formerly: Contributions under teachers' retirement system plan 3)

Sections

41.34.040 Contributions—Rate structures—Annual option.

41.34.040 Contributions—Rate structures—Annual option. (1) A member shall contribute from his or her compensation according to one of the following rate structures in addition to the mandatory minimum five percent:

<u>Option A</u>	<u>Contribution Rate</u>
All Ages	0.0% fixed
<u>Option B</u>	
Up to Age 35	0.0%
Age 35 to 44	1.0%
Age 45 and above	2.5%
<u>Option C</u>	
Up to Age 35	1.0%
Age 35 to 44	2.5%
Age 45 and above	3.5%
<u>Option D</u>	
All Ages	2.0%
<u>Option E</u>	
All Ages	5.0%
<u>Option F</u>	
All Ages	10.0%

(2) The board shall have the right to offer contribution rate options in addition to those listed in subsection (1) of this section, provided that no significant additional administrative costs are created. All options offered by the board shall conform to the requirements stated in subsections (3) and (5) of this section.

(3)(a) For members of the teachers' retirement system entering plan 3 under RCW 41.32.835 or members of the school employees' retirement system entering plan 3 under RCW 41.35.610, within ninety days of becoming a member he or she has an option to choose one of the above contribution rate structures. If the member does not select an option within the ninety-day period, he or she shall be assigned option A.

(b) For members of the public employees' retirement system entering plan 3 under RCW 41.40.785, within the ninety days described in RCW 41.40.785 an employee who irrevocably chooses plan 3 shall select one of the above contribution rate structures. If the member does not select an option within the ninety-day period, he or she shall be assigned option A.

(c) For members of the teachers' retirement system transferring to plan 3 under RCW 41.32.817, members of the school employees' retirement system transferring to plan 3 under RCW 41.35.510, or members of the public employees' retirement system transferring to plan 3 under RCW 41.40.795, upon election to plan 3 he or she must choose one of the above contribution rate structures.

(d) Within ninety days of the date that an employee changes employers, he or she has an option to choose one of the above contribution rate structures. If the member does

not select an option within this ninety-day period, he or she shall be assigned option A.

(4) Each year, members may change their contribution rate option by notifying their employer in writing during the month of January.

(5) Contributions shall begin the first day of the pay cycle in which the rate option is made, or the first day of the pay cycle in which the end of the ninety-day period occurs. [2003 c 156 § 1; 2000 c 247 § 403; 1996 c 39 § 14; 1995 c 239 § 204.]

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Chapter 41.35 RCW

WASHINGTON SCHOOL EMPLOYEES' RETIREMENT SYSTEM

Sections

41.35.010	Definitions.
41.35.030	Membership.
41.35.033	Membership—Service credit—Substitute employees—Rules.
41.35.115	Death benefit—Course of employment.
41.35.460	Death benefits.
41.35.612	Right to waive benefit—Irrevocable choice.
41.35.640	Application for and effective date of retirement allowances.
41.35.710	Death benefits.

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

(1) "Retirement system" means the Washington school employees' retirement system provided for in this chapter.

(2) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4) "Employer," for plan 2 and plan 3 members, means a school district or an educational service district.

(5) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.35.030.

(6)(a) "Compensation earnable" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States internal revenue code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

(b) "Compensation earnable" for plan 2 and plan 3 members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement, which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a

payroll period shall be considered compensation earnable to the extent provided in this subsection, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under this (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(7) "Service" for plan 2 and plan 3 members means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.35.180. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(a) Service in any state elective position shall be deemed to be full-time service.

(b) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(c) For purposes of plan 2 and 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(i) Less than eleven days equals one-quarter service credit month;

(ii) Eleven or more days but less than twenty-two days equals one-half service credit month;

(iii) Twenty-two days equals one service credit month;

(iv) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month; and

(v) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(8) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(9) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(10) "Membership service" means all service rendered as a member.

(11) "Beneficiary" for plan 2 and plan 3 members means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(12) "Regular interest" means such rate as the director may determine.

(13) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(14) "Average final compensation" for plan 2 and plan 3 members means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2).

(15) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(16) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(17) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(18) "Retirement allowance" for plan 2 and plan 3 members means monthly payments to a retiree or beneficiary as provided in this chapter.

(19) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(20) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(21) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(22) "Eligible position" means any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "posi-

tion" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(23) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (22) of this section.

(24) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(25) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(26) "Director" means the director of the department.

(27) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(28) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(29) "Plan 2" means the Washington school employees' retirement system plan 2 providing the benefits and funding provisions covering persons who first became members of the public employees' retirement system on and after October 1, 1977, and transferred to the Washington school employees' retirement system under RCW 41.40.750.

(30) "Plan 3" means the Washington school employees' retirement system plan 3 providing the benefits and funding provisions covering persons who first became members of the system on and after September 1, 2000, or who transfer from plan 2 under RCW 41.35.510.

(31) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(32) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(33) "Index B" means the index for the year prior to index A.

(34) "Adjustment ratio" means the value of index A divided by index B.

(35) "Separation from service" occurs when a person has terminated all employment with an employer.

(36) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(37) "Classified employee" means an employee of a school district or an educational service district who is not eligible for membership in the teachers' retirement system established under chapter 41.32 RCW.

(38) "Substitute employee" means a classified employee who is employed by an employer exclusively as a substitute for an absent employee. [2003 c 157 § 1; 2001 c 180 § 3; 1998 c 341 § 2.]

41.35.030 Membership. Membership in the retirement system shall consist of all regularly compensated classified employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

(1) Persons in ineligible positions;

(2)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file on a form supplied by the department a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (2)(b);

(3) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(4) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by employers to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(5) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;

(6) Substitute employees, except for the purposes of the purchase of service credit under rcw 41.35.033. Upon the return or termination of the absent employee a substitute employee is replacing, that substitute employee shall no longer be ineligible under this subsection;

(7) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(8) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

(9) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the non-credited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application. [2003 c 157 § 2; 1998 c 341 § 4.]

41.35.033 Membership—Service credit—Substitute employees—Rules. (1) A substitute employee who works five or more months of seventy or more hours for which earnable compensation is paid in a school year may apply to the department to establish membership after the end of the school year during which the work was performed. The application must:

(a) Include a list of the employers the substitute employee has worked for;

(b) Include proof of hours worked and compensation earned; and

(c) Be made prior to retirement.

(2) Substitute employees who are members may apply to the department to receive service after the end of the last day of instruction of the school year during which the service was performed. The application must:

(a) Include a list of the employers the substitute employee has worked for;

(b) Include proof of hours worked and compensation earned; and

(c) Be made prior to retirement.

(3) If the department accepts the substitute employee's application for service credit, the substitute employee may obtain service credit by paying the required contribution to the retirement system. The employer must pay the required employer contribution upon notice from the department that the substitute employee has made contributions under this section.

(4) The department shall charge interest prospectively on employee contributions that are submitted under this section more than six months after the end of the school year, as defined in RCW 28A.150.040, for which the substitute employee is seeking service credit. The interest rate charged to the employee shall take into account interest lost on employer contributions delayed for more than six months after the end of the school year.

(5) Each employer shall quarterly notify each substitute employee it has employed during the school year of the num-

ber of hours worked by, and the compensation paid to, the substitute employee.

(6) If a substitute employee, as defined in RCW 41.35.010(38), applies to the department under this section for credit for earnable compensation earned from an employer, the substitute employee must make contributions for all periods of service for that employer.

(7) The department shall adopt rules implementing this section. [2003 c 157 § 3.]

41.35.115 Death benefit—Course of employment. (1)

A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member has nominated by written designation duly executed and filed with the department. If no such designated person or persons are still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of injuries sustained in the course of employment. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2003 c 402 § 3.]

41.35.460 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.35.420, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.35.220 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW

41.35.420; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike, calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, estate, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction under RCW 41.35.420. The member's retirement allowance is computed under RCW 41.35.400. [2003 c 155 § 4; 1998 c 341 § 107.]

Applicability—2003 c 155: See note following RCW 41.32.520.

41.35.612 Right to waive benefit—Irrevocable choice. Any member receiving or having received a distribution under chapter 41.34 RCW may make an irrevocable choice to waive all rights to a benefit under RCW 41.35.620 by notifying the department in writing of their intention. [2003 c 349 § 2.]

Effective date—2003 c 349: See note following RCW 41.32.837.

41.35.640 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.35.680, 41.35.690, or 41.35.710 is eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances payable to eligible members no longer in service, but qualifying for such an allowance pursuant to RCW 41.35.680 shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members shall accrue from the first day of the calendar month immediately

following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits shall accrue from the first day of the calendar month immediately following the member's death. [2003 c 294 § 5; 1998 c 341 § 205.]

41.35.710 Death benefits. (1) If a member dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in RCW 41.35.620 actuarially reduced to reflect a joint and one hundred percent survivor option and, except under subsection (2) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.35.680.

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death.

(2) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction under RCW 41.35.680. The member's retirement allowance is computed under RCW 41.35.620. [2003 c 155 § 5; 1998 c 341 § 212.]

Applicability—2003 c 155: See note following RCW 41.32.520.

Chapter 41.40 RCW

WASHINGTON PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Sections

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41.40.010 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the public employees' retirement system provided for in this chapter.

(2) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4)(a) "Employer" for plan 1 members, means every branch, department, agency, commission, board, and office of the state, any political subdivision or association of political subdivisions of the state admitted into the retirement system, and legal entities authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the term shall also include any labor guild, association, or organization the membership of a local lodge or division of which is comprised of at least forty percent employees of an employer (other than such labor guild, association, or organization) within this chapter. The term may also include any city of the first class that has its own retirement system.

(b) "Employer" for plan 2 and plan 3 members, means every branch, department, agency, commission, board, and office of the state, and any political subdivision and municipal corporation of the state admitted into the retirement system, including public agencies created pursuant to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August 31, 2000, school districts and educational service districts will no longer be employers for the public employees' retirement system plan 2.

(5) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.40.023. RCW 41.26.045 does not prohibit a person otherwise eligible for membership in the retirement system from establishing such membership effective when he or she first entered an eligible position.

(6) "Original member" of this retirement system means:

(a) Any person who became a member of the system prior to April 1, 1949;

(b) Any person who becomes a member through the admission of an employer into the retirement system on and after April 1, 1949, and prior to April 1, 1951;

(c) Any person who first becomes a member by securing employment with an employer prior to April 1, 1951, provided the member has rendered at least one or more years of service to any employer prior to October 1, 1947;

(d) Any person who first becomes a member through the admission of an employer into the retirement system on or after April 1, 1951, provided, such person has been in the regular employ of the employer for at least six months of the twelve-month period preceding the said admission date;

(e) Any member who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement becomes entitled to be credited with ten years or more of membership service except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member;

(f) Any member who has been a contributor under the system for two or more years and who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement has rendered five or more years of service for the state or any political subdivision prior to the time of the admission of the employer into the system; except that the provisions relating to the minimum amount of retirement

allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member.

(7) "New member" means a person who becomes a member on or after April 1, 1949, except as otherwise provided in this section.

(8)(a) "Compensation earnable" for plan 1 members, means salaries or wages earned during a payroll period for personal services and where the compensation is not all paid in money, maintenance compensation shall be included upon the basis of the schedules established by the member's employer.

(i) "Compensation earnable" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable and the individual shall receive the equivalent service credit;

(B) If a leave of absence is taken by an individual for the purpose of serving in the state legislature, the salary which would have been received for the position from which the leave of absence was taken, shall be considered as compensation earnable if the employee's contribution is paid by the employee and the employer's contribution is paid by the employer or employee;

(C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(D) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(E) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(F) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(ii) "Compensation earnable" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Compensation earnable" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Compensation earnable" for plan 2 and plan 3 members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided above, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(9)(a) "Service" for plan 1 members, except as provided in RCW 41.40.088, means periods of employment in an eligible position or positions for one or more employers rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Compensation earnable earned in full time work for seventy hours or more in any given calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service except as provided in RCW 41.40.088. Only service credit months and one-quarter service credit months shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits. Time spent in standby status, whether compensated or not, is not service.

(i) Service by a state employee officially assigned by the state on a temporary basis to assist another public agency, shall be considered as service as a state employee: PROVIDED, That service to any other public agency shall not be considered service as a state employee if such service has been used to establish benefits in any other public retirement system.

(ii) An individual shall receive no more than a total of twelve service credit months of service during any calendar

year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for seventy or more hours is rendered.

(iii) A school district employee may count up to forty-five days of sick leave as creditable service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than twenty-two days equals one-quarter service credit month;

(B) Twenty-two days equals one service credit month;

(C) More than twenty-two days but less than forty-five days equals one and one-quarter service credit month.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(i) Service in any state elective position shall be deemed to be full time service, except that persons serving in state elective positions who are members of the Washington school employees' retirement system, teachers' retirement system, or law enforcement officers' and fire fighters' retirement system at the time of election or appointment to such position may elect to continue membership in the Washington school employees' retirement system, teachers' retirement system, or law enforcement officers' and fire fighters' retirement system.

(ii) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(iii) Up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(10) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(11) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(12) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(13) "Membership service" means:

(a) All service rendered, as a member, after October 1, 1947;

(b) All service after October 1, 1947, to any employer prior to the time of its admission into the retirement system for which member and employer contributions, plus interest as required by RCW 41.50.125, have been paid under RCW 41.40.056 or 41.40.057;

(c) Service not to exceed six consecutive months of probationary service rendered after April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of the total amount of the employer's contribution to the retirement fund which would have been required under the law in effect when such probationary service was rendered if the member had been a member during such period, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member;

(d) Service not to exceed six consecutive months of probationary service, rendered after October 1, 1947, and before April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of five percent of such member's salary during said period of probationary service, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member.

(14)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(15) "Regular interest" means such rate as the director may determine.

(16) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(17)(a) "Average final compensation" for plan 1 members, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service credit months for which service credit is allowed; or if the member has less than two years of service credit months then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for plan 2 and plan 3 members, means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2).

(18) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(19) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(20) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(21) "Retirement allowance" means the sum of the annuity and the pension.

(22) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(23) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(24) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(25) "Eligible position" means:

(a) Any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position;

(b) Any position occupied by an elected official or person appointed directly by the governor, or appointed by the chief justice of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which compensation is paid.

(26) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (25) of this section.

(27) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(28) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience.

(29) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(30) "Director" means the director of the department.

(31) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(32) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(33) "Plan 1" means the public employees' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(34) "Plan 2" means the public employees' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and are not included in plan 3.

(35) "Plan 3" means the public employees' retirement system, plan 3 providing the benefits and funding provisions covering persons who:

(a) First become a member on or after:

(i) March 1, 2002, and are employed by a state agency or institute of higher education and who did not choose to enter plan 2; or

(ii) September 1, 2002, and are employed by other than a state agency or institute of higher education and who did not choose to enter plan 2; or

(b) Transferred to plan 3 under RCW 41.40.795.

(36) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(37) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(38) "Index B" means the index for the year prior to index A.

(39) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(40) "Adjustment ratio" means the value of index A divided by index B.

(41) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(42) "Separation from service" occurs when a person has terminated all employment with an employer. Separation from service or employment does not occur, and if claimed by an employer or employee may be a violation of RCW 41.40.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination.

(43) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3. [2003 c 412 § 4; 2000 c 247 § 102; 1998 c 341 § 601. Prior: 1997 c 254 § 10; 1997 c 88 § 6; prior: 1995 c 345 § 10; 1995 c 286 § 1; 1995 c 244 § 3; prior: 1994 c 298 § 2; 1994 c 247 § 5; 1994 c 197 § 23; 1994 c 177 § 8; 1993 c 95 § 8; prior: 1991 c 343 § 6; 1991 c 35 § 70; 1990 c 274 § 3; prior: 1989 c 309 § 1; 1989 c 289 § 1; 1985 c 13 § 7; 1983 c 69 § 1; 1981 c 256 § 6; 1979 ex.s. c 249 § 7; 1977 ex.s. c 295 § 16; 1973 1st ex.s. c 190 § 2; 1972 ex.s. c 151 § 1; 1971 ex.s. c 271 § 2; 1969 c 128 § 1; 1965 c 155 § 1; 1963 c 225 § 1; 1963 c 174 § 1; 1961 c 291 § 1; 1957 c 231 § 1; 1955 c 277 § 1; 1953 c 200 § 1; 1951 c 50 § 1; 1949 c 240 § 1; 1947 c 274 § 1; Rem. Supp. 1949 § 11072-1.]

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

Intent—1994 c 298: "(1) This act provides cross-references to existing statutes that affect calculation of pensions under the retirement systems authorized by chapters 41.40 and 41.32 RCW to the relevant definition sections of those chapters. Except as provided in subsection (2) of this section, this act is technical in nature and neither enhances nor diminishes existing pension rights. Except for the amendment to RCW 41.40.010(5), it is not the intent of the legislature to change the substance or effect of any statute previously enacted. Rather, this act provides cross-references to applicable statutes in order to aid with the administration of benefits authorized in chapters 41.40 and 41.32 RCW.

(2) The amendments to RCW 41.40.010 (5) and (29) contained in section 2, chapter 298, Laws of 1994, and to RCW 41.32.010(31) contained in section 3, chapter 298, Laws of 1994, clarify the status of certain persons as either members or retirees. RCW 41.04.275 and section 7, chapter 298, Laws of 1994, create the pension funding account in the state treasury and direct the transfer of moneys deposited in the budget stabilization account by the 1993-95 operating appropriations act, section 919, chapter 24, Laws of 1993 sp. sess., for the continuing costs of state retirement system benefits in effect on July 1, 1993, consistent with section 919, chapter 24, Laws of 1993 sp. sess. to the pension funding account." [1994 c 298 § 1.]

Effective date—1994 c 247: See note following RCW 41.32.4991.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1994 c 177: See note following RCW 41.50.125.

Retroactive application—Effective date—1993 c 95: See notes following RCW 41.40.175.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Applicability—1983 c 69: "Section 1 of this 1983 act applies only to service credit accruing after July 24, 1983." [1983 c 69 § 3.]

Purpose—Severability—1981 c 256: See notes following RCW 41.26.030.

Severability—1973 1st ex.s. c 190: "If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 190 § 16.]

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

Severability—1969 c 128: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 c 128 § 19.]

Severability—1965 c 155: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1965 c 155 § 10.]

Severability—1963 c 174: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1963 c 174 § 19.]

Severability—1961 c 291: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 291 § 18.]

41.40.037 Service by retirees—Reduction of retirement allowance upon reemployment—Reestablishment of membership. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied

each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2)(a) Except as provided in (b) of this subsection, a retiree from plan 1 who enters employment with an employer at least one calendar month after his or her accrual date may continue to receive pension payments while engaged in such service for up to eight hundred sixty-seven hours of service in a calendar year without a reduction of pension.

(b) A retiree from plan 1 who enters employment with an employer at least three calendar months after his or her accrual date and:

(i) Is hired into a position for which the employer has documented a justifiable need to hire a retiree into the position;

(ii) Is hired through the established process for the position with the approval of: A school board for a school district; the chief executive officer of a state agency employer; the secretary of the senate for the senate; the chief clerk of the house of representatives for the house of representatives; the secretary of the senate and the chief clerk of the house of representatives jointly for the joint legislative audit and review committee, the legislative transportation committee, the joint committee on pension policy, the legislative evaluation and accountability program, the legislative systems committee, and the statute law committee; or according to rules adopted for the rehiring of retired plan 1 members for a local government employer;

(iii) The employer retains records of the procedures followed and decisions made in hiring the retiree, and provides those records in the event of an audit; and

(iv) The employee has not already rendered a cumulative total of more than one thousand nine hundred hours of service while in receipt of pension payments beyond an annual threshold of eight hundred sixty-seven hours; shall cease to receive pension payments while engaged in that service after the retiree has rendered service for more than one thousand five hundred hours in a calendar year. The one thousand nine hundred hour cumulative total under this subsection applies prospectively to those retiring after July 27, 2003, and retroactively to those who retired prior to July 27, 2003, and shall be calculated from the date of retirement.

(c) When a plan 1 member renders service beyond eight hundred sixty-seven hours, the department shall collect from the employer the applicable employer retirement contributions for the entire duration of the member's employment during that calendar year.

(d) A retiree from plan 2 or plan 3 who has satisfied the break in employment requirement of subsection (1) of this section may work up to eight hundred sixty-seven hours in a calendar year in an eligible position, as defined in RCW 41.32.010, 41.35.010, or 41.40.010, or as a fire fighter or law enforcement officer, as defined in RCW 41.26.030, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.40.023(12), he or she terminates his or her retirement status and becomes a member. Retirement benefits

shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.40.180. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated.

(4) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy.

(5) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than five months in a calendar year without a reduction of his or her pension. [2003 c 412 § 5; 2003 c 295 § 7; 2001 2nd sp.s. c 10 § 4; (2001 2nd sp.s. c 10 § 12 repealed by 2002 c 26 § 9); 1997 c 254 § 14.]

Reviser's note: This section was amended by 2003 c 295 § 7 and by 2003 c 412 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2001 2nd sp.s. c 10: "Except for section 12 of this act which takes effect December 31, 2004, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 2nd sp.s. c 10 § 14.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

41.40.0932 Death benefit—Course of employment.

(1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member has nominated by written designation duly executed and filed with the department. If no such designated person or persons are still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of injuries sustained in the course of employment. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2003 c 402 § 1.]

41.40.096 Law enforcement officers—Dual membership—Plan 1 exception.

(1) An employee who was a member of the public employees' retirement system plan 2 or plan 3 on or before January 1, 2003, and on July 27, 2003, is employed by the department of fish and wildlife as a law enforcement officer as defined in RCW 41.26.030, shall become a member of the law enforcement officers' and fire fighters' retirement system plan 2. All officers will be dual members as provided in chapter 41.54 RCW, and public employees' retirement system service credit may not be transferred to the law enforcement officers' and fire fighters' retirement system plan 2.

(2) An employee who was a member of the public employees' retirement system plan 1 on or before January 1, 2003, and on or after July 27, 2003, is employed by the department of fish and wildlife as a law enforcement officer as defined in RCW 41.26.030, shall remain a member of the public employees' retirement system plan 1. [2003 c 388 § 1.]

41.40.270 Death before retirement or within sixty days following application for disability retirement—Payment of contributions to nominee, surviving spouse, or legal representative—Waiver of payment, effect—Benefits. (1) Except as specified in subsection (4) of this section, should a member die before the date of retirement the amount of the accumulated contributions standing to the member's credit in the employees' savings fund, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, at the time of death:

(a) Shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there be no such designated person or persons still living at the time of the member's death, or if a member fails to file a new beneficiary designation subsequent to marriage, remarriage, dissolution of marriage, divorce, or reestablishment of membership following termination by withdrawal or retirement, such accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the surviving spouse as if in fact such spouse had been nominated by written designation as aforesaid, or if there be no such surviving spouse, then to the member's legal representatives.

(2) Upon the death in service, or while on authorized leave of absence for a period not to exceed one hundred and twenty days from the date of payroll separation, of any member who is qualified but has not applied for a service retirement allowance or has completed ten years of service at the time of death, the designated beneficiary, or the surviving spouse as provided in subsection (1) of this section, may elect to waive the payment provided by subsection (1) of this section. Upon such an election, a joint and one hundred percent survivor option under RCW 41.40.188, calculated under the retirement allowance described in RCW 41.40.185 or 41.40.190, whichever is greater, actuarially reduced, except under subsection (5) of this section, by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 shall automatically be given effect as if selected for the benefit of the designated beneficiary. If the member is not then qualified for a service retirement allowance, such benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance.

(3) Subsection (1) of this section, unless elected, shall not apply to any member who has applied for service retirement in RCW 41.40.180, as now or hereafter amended, and

thereafter dies between the date of separation from service and the member's effective retirement date, where the member has selected a survivorship option under RCW 41.40.188. In those cases the beneficiary named in the member's final application for service retirement may elect to receive either a cash refund, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, or monthly payments according to the option selected by the member.

(4) If a member dies within sixty days following application for disability retirement under RCW 41.40.230, the beneficiary named in the application may elect to receive the benefit provided by:

(a) This section; or

(b) RCW 41.40.235, according to the option chosen under RCW 41.40.188 in the disability application.

(5) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction. The member's retirement allowance is computed under RCW 41.40.185. [2003 c 155 § 6; 1997 c 73 § 2; 1996 c 227 § 2; 1995 c 144 § 5; 1991 c 365 § 27; 1990 c 249 § 11; 1979 ex.s. c 249 § 11; 1972 ex.s. c 151 § 12; 1969 c 128 § 11; 1965 c 155 § 5; 1963 c 174 § 13; 1961 c 291 § 9; 1953 c 201 § 1; 1953 c 200 § 14; 1951 c 141 § 1; 1949 c 240 § 19; 1947 c 274 § 28; Rem. Supp. 1949 § 11072-28.]

Applicability—2003 c 155: See note following RCW 41.32.520.

Effective date—1997 c 73: See note following RCW 41.32.520.

Severability—1991 c 365: See note following RCW 41.50.500.

Findings—1990 c 249: See note following RCW 2.10.146.

Severability—1969 c 128: See note following RCW 41.40.010.

41.40.660 Options for payment of retirement allowances—Retirement allowance adjustment—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.40.630 or retirement for disability under RCW 41.40.670, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written design-

nation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant

to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.40.720 and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.40.630(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2003 c 294 § 6; 2002 c 158 § 13; 2000 c 186 § 8; 1998 c 340 § 9; 1996 c 175 § 7; 1995 c 144 § 6; 1990 c 249 § 10; 1977 ex.s. c 295 § 7.]

Effective date—1998 c 340: See note following RCW 41.31.010.

Findings—1990 c 249: See note following RCW 2.10.146.

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

41.40.700 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's

death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.40.630, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.40.660 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.40.630; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, estate, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction under RCW

41.40.630. The member's retirement allowance is computed under RCW 41.40.620. [2003 c 155 § 7; 2000 c 247 § 1004; 1995 c 144 § 8; 1993 c 236 § 5; 1991 c 365 § 28; 1990 c 249 § 18; 1977 ex.s. c 295 § 11.]

Applicability—2003 c 155: See note following RCW 41.32.520.

Severability—1991 c 365: See note following RCW 41.50.500.

Findings—1990 c 249: See note following RCW 2.10.146.

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

41.40.748 Commercial vehicle enforcement officers—Limited optional transfer to Washington state patrol retirement system.

(1) Active members of the Washington state patrol retirement system who have previously established service credit in the public employees' retirement system plan 2 while employed in the state patrol as a commercial vehicle enforcement officer, and who became a commissioned officer after July 1, 2000, and prior to June 30, 2001, have the following options:

(a) Remain a member of the public employees' retirement system; or

(b) Transfer service credit earned under the retirement system as a commercial vehicle enforcement officer to the Washington state patrol retirement system by making an irrevocable choice filed in writing with the department of retirement systems within one year of the department's announcement of the ability to make such a transfer.

(2)(a) Any commissioned officer choosing to transfer under this section shall have transferred from the retirement system to the Washington state patrol retirement system:

(i) All the employee's applicable accumulated contributions plus interest, and an equal amount of employer contributions attributed to such employee; and

(ii) All applicable months of service as a commercial vehicle enforcement officer credited to the employee under this chapter as though that service was rendered as a member of the Washington state patrol retirement system.

(b) For the applicable period of service, the employee shall pay:

(i) The difference between the contributions the employee paid to the retirement system, and the contributions which would have been paid by the employee had the employee been a member of the Washington state patrol retirement system, plus interest as determined by the director. This payment shall be made no later than December 31, 2010, or the date of retirement, whichever comes first;

(ii) The difference between the employer contributions paid to the public employees' retirement system, and the employer contributions which would have been payable to the Washington state patrol retirement system; and

(iii) An amount sufficient to ensure that the funding status of the Washington state patrol retirement system will not change due to this transfer.

(c) If the payment required by this subsection is not paid in full by the deadline, the transferred service credit shall not be used to determine eligibility for benefits nor to calculate benefits under the Washington state patrol retirement system. In such case, the employee's accumulated contributions plus interest transferred under this subsection, and any payments made under this subsection, shall be refunded to the

employee. The employer shall be entitled to a credit for the employer contributions transferred under this subsection.

(d) An individual who transfers service credit and contributions under this subsection is permanently excluded from the public employees' retirement system for all service as a commercial vehicle enforcement officer. [2003 c 294 § 7; 2002 c 269 § 1.]

41.40.787 Right to waive benefit—Irrevocable choice. Any member receiving or having received a distribution under chapter 41.34 RCW may make an irrevocable choice to waive all rights to a benefit under RCW 41.40.790 by notifying the department in writing of their intention. [2003 c 349 § 3.]

Effective date—2003 c 349: See note following RCW 41.32.837.

41.40.801 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.40.820, 41.40.825, or 41.40.835 is eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances payable to eligible members no longer in service, but qualifying for such an allowance pursuant to RCW 41.40.820 shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits shall accrue from the first day of the calendar month immediately following the member's death. [2003 c 294 § 8; 2000 c 247 § 305.]

41.40.835 Death benefits. (1) If a member dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in RCW 41.40.790 actuarially reduced to reflect a joint and one hundred percent survivor option and, except under subsection (2) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.40.820.

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death.

(2) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction under RCW 41.40.820. The member's retirement allowance is computed under RCW 41.40.790. [2003 c 155 § 8; 2000 c 247 § 312.]

Applicability—2003 c 155: See note following RCW 41.32.520.

41.40.845 Options for payment of retirement allowances—Court-approved property settlement. (1) Upon retirement for service as prescribed in RCW 41.40.820 or retirement for disability under RCW 41.40.825, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. Upon the death of the member, the member's benefits shall cease.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3) No later than July 1, 2002, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted under this section and satisfies the conditions of (a)(i) of this subsection

shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.40.820(1) and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the age provided in RCW 41.40.820(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (3) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) Any benefit distributed under chapter 41.31A RCW after the date of the dissolution order creating separate benefits for a member and nonmember ex spouse shall be paid solely to the member.

(d) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2003 c 294 § 9; 2002 c 158 § 14; 2000 c 247 § 314.]

Chapter 41.45 RCW

ACTUARIAL FUNDING OF STATE RETIREMENT SYSTEMS

Sections

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41.45.110	Pension funding council—Audits required—Select committee on pension policy.

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

(1) "Council" means the pension funding council created in RCW 41.45.100.

(2) "Department" means the department of retirement systems.

(3) "Law enforcement officers' and fire fighters' retirement system plan 1" and "law enforcement officers' and fire fighters' retirement system plan 2" means the benefits and funding provisions under chapter 41.26 RCW.

(4) "Public employees' retirement system plan 1," "public employees' retirement system plan 2," and "public employees' retirement system plan 3" mean the benefits and funding provisions under chapter 41.40 RCW.

(5) "Teachers' retirement system plan 1," "teachers' retirement system plan 2," and "teachers' retirement system plan 3" mean the benefits and funding provisions under chapter 41.32 RCW.

(6) "School employees' retirement system plan 2" and "school employees' retirement system plan 3" mean the benefits and funding provisions under chapter 41.35 RCW.

(7) "Washington state patrol retirement system" means the retirement benefits provided under chapter 43.43 RCW.

(8) "Unfunded liability" means the unfunded actuarial accrued liability of a retirement system.

(9) "Actuary" or "state actuary" means the state actuary employed under chapter 44.44 RCW.

(10) "State retirement systems" means the retirement systems listed in RCW 41.50.030.

(11) "Classified employee" means a member of the Washington school employees' retirement system plan 2 or plan 3 as defined in RCW 41.35.010.

(12) "Teacher" means a member of the teachers' retirement system as defined in RCW 41.32.010(15).

(13) "Select committee" means the select committee on pension policy created in RCW 41.04.276. [2003 c 295 § 8; 2002 c 26 § 4. Prior: 2001 2nd sp.s. c 11 § 4; 2001 2nd sp.s. c 11 § 3; 2000 c 247 § 502; 1998 c 341 § 402; 1998 c 283 § 1; 1995 c 239 § 306; 1989 c 273 § 2.]

Effective date—2001 2nd sp.s. c 11: See note following RCW 41.45.010.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.45.035 Long-term economic assumptions—Asset value smoothing technique. (1) Beginning July 1, 2001, the

following long-term economic assumptions shall be used by the state actuary for the purposes of RCW 41.45.030:

(a) The growth in inflation assumption shall be 3.5 percent;

(b) The growth in salaries assumption, exclusive of merit or longevity increases, shall be 4.5 percent;

(c) The investment rate of return assumption shall be 8 percent; and

(d) The growth in system membership assumption shall be 1.25 percent for the public employees' retirement system, the school employees' retirement system, and the law enforcement officers' and fire fighters' retirement system. The assumption shall be .90 percent for the teachers' retirement system.

(2) Beginning with actuarial studies done after July 1, 2003, changes to plan asset values that vary from the long-term investment rate of return assumption shall be recognized over a period that varies up to eight years depending on the magnitude of the deviation of each year's investment rate of return relative to the long-term rate of return assumption. Beginning April 1, 2004, the council, by affirmative vote of four councilmembers, may adopt changes to this asset value smoothing technique. Any changes adopted by the council shall be subject to revision by the legislature. [2003 1st sp.s. c 11 § 1; 2001 2nd sp.s. c 11 § 6.]

Effective date—2003 1st sp.s. c 11: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 1st sp.s. c 11 § 4.]

Effective date—2001 2nd sp.s. c 11: See note following RCW 41.45.030.

41.45.054 Contribution rates—Applicable dates.

The basic employer and state contribution rates and plan 2 member contribution rates are changed to reflect the 2000 actuarial valuation, incorporating the 1995-2000 actuarial experience study conducted by the office of the state actuary. The results of the 2001 actuarial valuation for the public employees' retirement system, the teachers' retirement system, and the school employees' retirement system shall be restated as a result of the new asset smoothing method adopted in RCW 41.45.035, and suspension of payments on the unfunded liability in the public employees' retirement system and teachers' retirement system, to collect the following contribution rates:

(1) Beginning July 1, 2003, the following employer contribution rates shall be charged:

(a) 1.18 percent for the public employees' retirement system; and

(b) 3.03 percent for the law enforcement officers' and fire fighters' retirement system plan 2.

(2) Beginning July 1, 2003, the basic state contribution rate for the law enforcement officers' and fire fighters' retirement system plan 2 shall be 2.02 percent.

(3) Beginning September 1, 2003, the following employer contribution rates shall be charged:

(a) 0.84 percent for the school employees' retirement system; and

(b) 1.17 percent for the teachers' retirement system.

(4) Beginning July 1, 2003, the following member contribution rates shall be charged:

(a) 1.18 percent for the public employees' retirement system plan 2; and

(b) 5.05 percent for the law enforcement officers' and fire fighters' retirement system plan 2.

(5) Beginning September 1, 2003, the following member contribution rates shall be charged:

(a) 0.84 percent for the school employees' retirement system plan 2; and

(b) 0.87 percent for the teachers' retirement system plan 2.

(6) The contribution rates in this section shall be collected through June 30, 2005, for the public employees' retirement system and the law enforcement officers' and fire fighters' retirement system, and August 31st, 2005, for the school employees' retirement system and the teachers' retirement system.

(7) The July 1, 2003, contribution rate changes provided in this section shall be implemented notwithstanding the thirty-day advanced notice provisions of RCW 41.45.067. [2003 1st sp.s. c 11 § 2; 2002 c 7 § 1.]

Effective date—2003 1st sp.s. c 11: See note following RCW 41.45.035.

Effective date—2002 c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 1, 2002." [2002 c 7 § 3.]

41.45.060 Basic state and employer contribution rates adopted by council.

(1) The state actuary shall provide actuarial valuation results based on the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted by the council under RCW 41.45.030 or 41.45.035.

(2) Not later than September 30, 2002, and every two years thereafter, consistent with the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted under RCW 41.45.030 or 41.45.035, the council shall adopt and may make changes to:

(a) A basic state contribution rate for the law enforcement officers' and fire fighters' retirement system plan 1;

(b) Basic employer contribution rates for the public employees' retirement system, the teachers' retirement system, and the Washington state patrol retirement system to be used in the ensuing biennial period; and

(c) A basic employer contribution rate for the school employees' retirement system for funding both that system and the public employees' retirement system plan 1.

The contribution rates adopted by the council shall be subject to revision by the legislature.

(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the public employees' retirement system plan 1, the teachers' retirement system plan 1, and the law enforcement officers' and fire fighters' retirement system plan 1 not later than June 30, 2024; and

(b) To also continue to fully fund the public employees' retirement system plans 2 and 3, the teachers' retirement system plans 2 and 3, and the school employees' retirement system plans 2 and 3 in accordance with RCW 41.45.061, 41.45.067, and this section.

(4) The aggregate actuarial cost method shall be used to calculate a combined plan 2 and 3 employer contribution rate and a Washington state patrol retirement system contribution rate.

(5) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted. The rates shall be effective for the ensuing biennial period, subject to any legislative modifications.

(6) The director of the department of retirement systems shall collect the rates established in *RCW 41.45.053 through June 30, 2003. Thereafter, the director shall collect those rates adopted by the council. The rates established in *RCW 41.45.053, or by the council, shall be subject to revision by the council. [2003 c 294 § 10; 2003 c 92 § 3; 2002 c 26 § 2. Prior: 2001 2nd sp.s. c 11 § 10; 2001 c 329 § 10; 2000 2nd sp.s. c 1 § 905; 2000 c 247 § 504; prior: 1998 c 341 § 404; 1998 c 340 § 11; 1998 c 283 § 6; 1995 c 239 § 309; 1993 c 519 § 19; 1992 c 239 § 2; 1990 c 18 § 1; 1989 c 273 § 6.]

Reviser's note: *(1) RCW 41.45.053 was repealed by 2002 c 7 § 2. Compare provisions of RCW 41.45.054.

(2) This section was amended by 2003 c 92 § 3 and by 2003 c 294 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2003 c 92: See RCW 41.26.905 and 41.26.906.

Effective date—2001 2nd sp.s. c 11: See note following RCW 41.45.030.

Effective date—2001 c 329: See note following RCW 43.43.120.

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Effective date—1998 c 341: See note following RCW 41.34.060.

Effective date—1998 c 340: See note following RCW 41.31.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Part headings not law—Effective date—1993 c 519: See notes following RCW 28A.400.212.

Effective date—1992 c 239: "This act shall take effect September 1, 1992." [1992 c 239 § 6.]

Effective date—1990 c 18: "This act shall take effect September 1, 1991." [1990 c 18 § 3.]

Benefits not contractual right until date specified: RCW 41.34.100.

41.45.0604 Contribution rates—Law enforcement officers' and fire fighters' retirement system plan 2. (1) Not later than September 30, 2004, and every even-numbered year thereafter, the law enforcement officers' and fire fighters' plan 2 retirement board shall adopt contribution rates for the law enforcement officers' and fire fighters' retirement system plan 2 as provided in RCW 41.26.720(1)(a).

(2) The law enforcement officers' and fire fighters' plan 2 retirement board shall immediately notify the directors of the office of financial management and department of retirement systems of the state, employer, and employee rates adopted. Thereafter, the director shall collect those rates adopted by the board. The rates shall be effective for the

ensuing biennial period, subject to any legislative modifications. [2003 c 92 § 4.]

Severability—Effective date—2003 c 92: See RCW 41.26.905 and 41.26.906.

41.45.070 Supplemental rate (as amended by 2003 c 92). (1) In addition to the basic employer contribution rate established in RCW 41.45.060 (~~(or 41.45.053)~~), the department shall also charge employers of public employees' retirement system, teachers' retirement system, school employees' retirement system, or Washington state patrol retirement system members an additional supplemental rate to pay for the cost of additional benefits, if any, granted to members of those systems. Except as provided in subsections (6) and (7) of this section, the supplemental contribution rates required by this section shall be calculated by the state actuary and shall be charged regardless of language to the contrary contained in the statute which authorizes additional benefits.

(2) In addition to the basic ~~member, employer, and~~ state contribution rate established in (~~RCW 41.45.060 or 41.45.053~~) RCW 41.45.0604 for the law enforcement officers' and fire fighters' retirement system plan 2, the department shall also establish (~~an~~) supplemental rates to pay for the cost of additional benefits, if any, granted to members of the law enforcement officers' and fire fighters' retirement system plan 2. Except as provided in subsection (6) of this section, (~~this~~) these supplemental rates shall be calculated by the actuary retained by the law enforcement officers' and fire fighters' board and the state actuary through the process provided in RCW 41.26.720(1)(a) and the state treasurer shall transfer the additional required contributions regardless of language to the contrary contained in the statute which authorizes the additional benefits.

(3) The supplemental rate charged under this section to fund benefit increases provided to active members of the public employees' retirement system plan 1, the teachers' retirement system plan 1, and Washington state patrol retirement system, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit not later than June 30, 2024.

(4) The supplemental rate charged under this section to fund benefit increases provided to active and retired members of the public employees' retirement system plan 2 and plan 3, the teachers' retirement system plan 2 and plan 3, or the school employees' retirement system plan 2 and plan 3 (~~or the law enforcement officers' and fire fighters' retirement system plan 2~~;) shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit, as calculated under RCW 41.45.060, 41.45.061, or 41.45.067.

(5) The supplemental rate charged under this section to fund postretirement adjustments which are provided on a nonautomatic basis to current retirees shall be calculated as the percentage of pay needed to fund the adjustments as they are paid to the retirees. The supplemental rate charged under this section to fund automatic postretirement adjustments for active or retired members of the public employees' retirement system plan 1 and the teachers' retirement system plan 1 shall be calculated as the level percentage of pay needed to fund the cost of the automatic adjustments not later than June 30, 2024.

(6) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 340, Laws of 1998.

(7) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 41.31A RCW; section 309, chapter 341, Laws of 1998; or section 701, chapter 341, Laws of 1998. [2003 c 92 § 5. Prior: 2001 2nd sp.s. c 11 § 16; 2001 2nd sp.s. c 11 § 15; 2000 c 247 § 505; 1998 c 340 § 10; 1995 c 239 § 310; 1990 c 18 § 2; 1989 1st ex.s. c 1 § 1; 1989 c 273 § 7.]

Severability—Effective date—2003 c 92: See RCW 41.26.905 and 41.26.906.

41.45.070 Supplemental rate (as amended by 2003 1st sp.s. c 11). (1) In addition to the basic employer contribution rate established in RCW 41.45.060 or (~~41.45.053~~) 41.45.054, the department shall also charge employers of public employees' retirement system, teachers' retirement system, school employees' retirement system, or Washington state patrol retirement system members an additional supplemental rate to pay for the cost of additional benefits, if any, granted to members of those systems. Except as provided in subsections (6) and (7) of this section, the supplemental contribution rates required by this section shall be calculated by the state actuary and shall be charged regardless of language to the contrary contained in the statute which authorizes additional benefits.

(2) In addition to the basic state contribution rate established in RCW 41.45.060 or ((41.45.053)) 41.45.054 for the law enforcement officers' and fire fighters' retirement system plan 2, the department shall also establish a supplemental rate to pay for the cost of additional benefits, if any, granted to members of the law enforcement officers' and fire fighters' retirement system plan 2. Except as provided in subsection (6) of this section, this supplemental rate shall be calculated by the state actuary and the state treasurer shall transfer the additional required contributions regardless of language to the contrary contained in the statute which authorizes the additional benefits.

(3) The supplemental rate charged under this section to fund benefit increases provided to active members of the public employees' retirement system plan 1, the teachers' retirement system plan 1, and Washington state patrol retirement system, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit not later than June 30, 2024.

(4) The supplemental rate charged under this section to fund benefit increases provided to active and retired members of the public employees' retirement system plan 2 and plan 3, the teachers' retirement system plan 2 and plan 3, the school employees' retirement system plan 2 and plan 3, or the law enforcement officers' and fire fighters' retirement system plan 2, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit, as calculated under RCW 41.45.060, 41.45.061, or 41.45.067.

(5) The supplemental rate charged under this section to fund postretirement adjustments which are provided on a nonautomatic basis to current retirees shall be calculated as the percentage of pay needed to fund the adjustments as they are paid to the retirees. The supplemental rate charged under this section to fund automatic postretirement adjustments for active or retired members of the public employees' retirement system plan 1 and the teachers' retirement system plan 1 shall be calculated as the level percentage of pay needed to fund the cost of the automatic adjustments not later than June 30, 2024.

(6) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 340, Laws of 1998.

(7) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 41.31A RCW; section 309, chapter 341, Laws of 1998; or section 701, chapter 341, Laws of 1998. [2003 1st sp.s. c 11 § 3. Prior: 2001 2nd sp.s. c 11 § 16; 2001 2nd sp.s. c 11 § 15; 2000 c 247 § 505; 1998 c 340 § 10; 1995 c 239 § 310; 1990 c 18 § 2; 1989 1st ex.s. c 1 § 1; 1989 c 273 § 7.]

Reviser's note: RCW 41.45.070 was amended twice during the 2003 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2003 1st sp.s. c 11: See note following RCW 41.45.035.

Effective date—2001 2nd sp.s. c 11: See note following RCW 41.45.010.

Effective date—2001 2nd sp.s. c 11: See note following RCW 41.45.030.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Effective date—1998 c 341: See RCW 41.35.901.

Effective date—1998 c 340: See note following RCW 41.31.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Effective date—1990 c 18: See note following RCW 41.45.060.

Benefits not contractual right until date specified: RCW 41.34.100.

41.45.090 Collection of actuarial data. The department shall collect and keep in convenient form such data as shall be necessary for an actuarial valuation of the assets and liabilities of the state retirement systems, and for making an actuarial investigation into the mortality, service, compensation, and other experience of the members and beneficiaries of those systems. The department and state actuary shall enter into a memorandum of understanding regarding the specific data the department will collect, when it will be collected, and how it will be maintained. The department shall

notify the state actuary of any changes it makes, or intends to make, in the collection and maintenance of such data.

At least once in each six-year period, the state actuary shall conduct an actuarial experience study of the mortality, service, compensation and other experience of the members and beneficiaries of each state retirement system, and into the financial condition of each system. The results of each investigation shall be filed with the department, the office of financial management, the budget writing committees of the Washington house of representatives and senate, the select committee on pension policy, and the pension funding council. Upon the basis of such actuarial investigation the department shall adopt such tables, schedules, factors, and regulations as are deemed necessary in the light of the findings of the actuary for the proper operation of the state retirement systems. [2003 c 295 § 9; 1998 c 283 § 7; 1989 c 273 § 9.]

41.45.110 Pension funding council—Audits required—Select committee on pension policy. The pension funding council shall solicit and administer a biennial actuarial audit of the actuarial valuations used for rate-setting purposes. This audit will be conducted concurrent with the actuarial valuation performed by the state actuary. At least once in each six-year period, the pension funding council shall solicit and administer an actuarial audit of the results of the experience study required in RCW 41.45.090. Upon receipt of the results of the actuarial audits required by this section, the pension funding council shall submit the results to the select committee on pension policy. [2003 c 295 § 10; 1998 c 283 § 3.]

Chapter 41.50 RCW

DEPARTMENT OF RETIREMENT SYSTEMS

Sections

41.50.110	Expenses of administration paid from department of retirement systems expense fund—Administrative expense fee.
41.50.700	Property division obligations—Cessation upon death of obligee or obligor—Payment treated as deduction from member's periodic retirement payment.

41.50.110 Expenses of administration paid from department of retirement systems expense fund—Administrative expense fee. (1) Except as provided by RCW 41.50.255 and subsection (6) of this section, all expenses of the administration of the department, the expenses of administration of the retirement systems, and the expenses of the administration of the office of the state actuary created in chapters 2.10, 2.12, 41.26, 41.32, 41.40, 41.34, 41.35, 43.43, and 44.44 RCW shall be paid from the department of retirement systems expense fund.

(2) In order to reimburse the department of retirement systems expense fund on an equitable basis the department shall ascertain and report to each employer, as defined in RCW 41.26.030, 41.32.010, 41.35.010, or 41.40.010, the sum necessary to defray its proportional share of the entire expense of the administration of the retirement system that the employer participates in during the ensuing biennium or fiscal year whichever may be required. Such sum is to be computed in an amount directly proportional to the estimated entire expense of the administration as the ratio of monthly salaries of the employer's members bears to the total salaries of all members in the entire system. It shall then be the duty

of all such employers to include in their budgets or otherwise provide the amounts so required.

(3) The department shall compute and bill each employer, as defined in RCW 41.26.030, 41.32.010, 41.35.010, or 41.40.010, at the end of each month for the amount due for that month to the department of retirement systems expense fund and the same shall be paid as are its other obligations. Such computation as to each employer shall be made on a percentage rate of salary established by the department. However, the department may at its discretion establish a system of billing based upon calendar year quarters in which event the said billing shall be at the end of each such quarter.

(4) The director may adjust the expense fund contribution rate for each system at any time when necessary to reflect unanticipated costs or savings in administering the department.

(5) An employer who fails to submit timely and accurate reports to the department may be assessed an additional fee related to the increased costs incurred by the department in processing the deficient reports. Fees paid under this subsection shall be deposited in the retirement system expense fund.

(a) Every six months the department shall determine the amount of an employer's fee by reviewing the timeliness and accuracy of the reports submitted by the employer in the preceding six months. If those reports were not both timely and accurate the department may prospectively assess an additional fee under this subsection.

(b) An additional fee assessed by the department under this subsection shall not exceed fifty percent of the standard fee.

(c) The department shall adopt rules implementing this section.

(6) Expenses other than those under RCW 41.34.060(3) shall be paid pursuant to subsection (1) of this section.

(7) During the 2003-2005 fiscal biennium, the legislature may transfer from the department of retirement systems' expense fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2003 1st sp.s. c 25 § 914. Prior: 2003 c 295 § 3; 2003 c 294 § 11; 1998 c 341 § 508; 1996 c 39 § 17; 1995 c 239 § 313; 1990 c 8 § 3; 1979 ex.s. c 249 § 8.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Effective date—1998 c 341: See RCW 41.35.901.

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Findings—1990 c 8: See note following RCW 41.50.065.

Benefits not contractual right until date specified: RCW 41.34.100.

41.50.700 Property division obligations—Cessation upon death of obligee or obligor—Payment treated as deduction from member's periodic retirement payment.

(1) Except under subsection (3) of this section and RCW 41.26.460(5), 41.32.530(5), 41.32.785(5), 41.32.851(4), 41.35.220(4), 41.40.188(5), 41.40.660(5), 41.40.845(4), 43.43.271(4), and 41.34.080, the department's obligation to provide direct payment of a property division obligation to an

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obligee under RCW 41.50.670 shall cease upon the death of the obligee or upon the death of the obligor, whichever comes first. However, if an obligor dies and is eligible for a lump sum death benefit, the department shall be obligated to provide direct payment to the obligee of all or a portion of the withdrawal of accumulated contributions pursuant to a court order that complies with RCW 41.50.670.

(2) The direct payment of a property division obligation to an obligee under RCW 41.50.670 shall be paid as a deduction from the member's periodic retirement payment. An obligee may not direct the department to withhold any funds from such payment.

(3) The department's obligation to provide direct payment to a nonmember ex spouse from a preretirement divorce meeting the criteria of RCW 41.26.162(2) or 43.43.270(2) may continue for the life of the member's surviving spouse qualifying for benefits under RCW 41.26.160, 41.26.161, or 43.43.270(2). Upon the death of the member's surviving spouse qualifying for benefits under RCW 41.26.160, 41.26.161, or 43.43.270(2), the department's obligation under this subsection shall cease. The department's obligation to provide direct payment to a nonmember ex spouse qualifying for a continued split benefit payment under RCW 41.26.162(3) shall continue for the life of that nonmember ex spouse. [2003 c 294 § 12; 2002 c 158 § 6; 1991 c 365 § 16.]

Severability—1991 c 365: See note following RCW 41.50.500.

**Chapter 41.54 RCW
PORTABILITY OF PUBLIC
RETIREMENT BENEFITS**

Sections

41.54.030 Calculation of service retirement allowance.
41.54.061 Decodified.

41.54.030 Calculation of service retirement allowance. (1) A dual member may combine service in all systems for the purpose of:

(a) Determining the member's eligibility to receive a service retirement allowance; and

(b) Qualifying for a benefit under RCW 41.32.840(2), 41.35.620, or 41.40.790.

(2) A dual member who is eligible to retire under any system may elect to retire from all the member's systems and to receive service retirement allowances calculated as provided in this section. Each system shall calculate the allowance using its own criteria except that the member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(3) The service retirement allowances from a system which, but for this section, would not be allowed to be paid at this date based on the dual member's age may be received immediately or deferred to a later date. The allowances shall be actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system.

(4) The service retirement eligibility requirements of RCW 41.40.180 shall apply to any dual member whose prior system is plan 1 of the public employees' retirement system established under chapter 41.40 RCW. [2003 c 294 § 13; 1998 c 341 § 703. Prior: 1996 c 55 § 4; 1996 c 55 § 3; 1996

c 39 § 19; 1995 c 239 § 319; 1990 c 192 § 2; 1988 c 195 § 2; 1987 c 192 § 3.]

Effective date—1998 c 341: See RCW 41.35.901.

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.54.061 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 41.56 RCW

PUBLIC EMPLOYEES' COLLECTIVE BARGAINING

Sections

41.56.027 Application of chapter to passenger-only ferry employees.

41.56.027 Application of chapter to passenger-only ferry employees. In addition to the entities listed in RCW 41.56.020, this chapter does apply to:

(1) Public employees of public transportation benefit areas providing passenger-only ferry service as provided in RCW 47.64.090; and

(2) Public employees of ferry districts providing passenger-only ferry service as provided in RCW 47.64.090. [2003 c 91 § 2.]

Contingent effective date—2003 c 91: See note following RCW 47.64.090.

Title 42

PUBLIC OFFICERS AND AGENCIES

Chapters

42.12 Vacancies.

42.17 Disclosure—Campaign finances—Lobbying—Records.

42.20 Misconduct of public officers.

42.30 Open public meetings act.

42.44 Notaries public.

42.52 Ethics in public service.

Chapter 42.12 RCW

VACANCIES

Sections

42.12.040 Vacancy in partisan elective office—Successor elected—When. (*Effective if the proposed amendment to Article II, section 15 of the state Constitution is approved at the November 2003 general election.*)

42.12.040 Vacancy in partisan elective office—Successor elected—When. (*Effective if the proposed amendment to Article II, section 15 of the state Constitution is approved at the November 2003 general election.*) (1) If a vacancy occurs in any partisan elective office in the executive or legislative branches of state government or in any partisan county elective office before the sixth Tuesday prior to the primary for the next general election following the occurrence of the vacancy, a successor shall be elected to that office at that general election. Except during the last year of

the term of office, if such a vacancy occurs on or after the sixth Tuesday prior to the primary for that general election, the election of the successor shall occur at the next succeeding general election. The elected successor shall hold office for the remainder of the unexpired term. This section shall not apply to any vacancy occurring in a charter county which has charter provisions inconsistent with this section.

(2) If a vacancy occurs in any legislative office or in any partisan county office after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in *RCW 29.01.135 and shall continue through the term for which he or she was elected. [2003 c 238 § 4; 2002 c 108 § 2; 1981 c 180 § 1.]

***Reviser's note:** RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Contingent effective date—2003 c 238: See note following RCW 36.16.110.

Severability—1981 c 180: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1981 c 180 § 6.]

County office, appointment of acting official: RCW 36.16.115.

Filing period, special: RCW 29A.24.210.

Chapter 42.17 RCW

DISCLOSURE—CAMPAIGN FINANCES— LOBBYING—RECORDS

Sections

42.17.090	Contents of report.
42.17.093	Out-of-state political committees—Reports.
42.17.310	Certain personal and other records exempt. (<i>Expires June 30, 2005.</i>)
42.17.310	Certain personal and other records exempt. (<i>Effective June 30, 2005.</i>)
42.17.31919	Public livestock market information exempt.
42.17.710	Time limit for state official to solicit or accept contributions.

42.17.090 Contents of report. (1) Each report required under RCW 42.17.080 (1) and (2) shall disclose the following:

(a) The funds on hand at the beginning of the period;

(b) The name and address of each person who has made one or more contributions during the period, together with the money value and date of such contributions and the aggregate value of all contributions received from each such person during the campaign or in the case of a continuing political committee, the current calendar year: PROVIDED, That pledges in the aggregate of less than one hundred dollars from any one person need not be reported: PROVIDED FURTHER, That the income which results from a fund-raising activity conducted in accordance with RCW 42.17.067 may be reported as one lump sum, with the exception of that portion of such income which was received from persons whose names and addresses are required to be included in the report required by RCW 42.17.067: PROVIDED FURTHER, That contributions of no more than twenty-five dollars in the aggregate from any one person during the election campaign may be reported as one lump sum so long as the campaign treasurer maintains a separate and private list of the name, address, and amount of each such contributor: PRO-

VIDED FURTHER, That the money value of contributions of postage shall be the face value of such postage;

(c) Each loan, promissory note, or security instrument to be used by or for the benefit of the candidate or political committee made by any person, together with the names and addresses of the lender and each person liable directly, indirectly or contingently and the date and amount of each such loan, promissory note, or security instrument;

(d) All other contributions not otherwise listed or exempted;

(e) The name and address of each candidate or political committee to which any transfer of funds was made, together with the amounts and dates of such transfers;

(f) The name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by this report, and the amount, date, and purpose of each such expenditure. A candidate for state executive or state legislative office or the political committee of such a candidate shall report this information for an expenditure under one of the following categories, whichever is appropriate: (i) Expenditures for the election of the candidate; (ii) expenditures for nonreimbursed public office-related expenses; (iii) expenditures required to be reported under (e) of this subsection; or (iv) expenditures of surplus funds and other expenditures. The report of such a candidate or committee shall contain a separate total of expenditures for each category and a total sum of all expenditures. Other candidates and political committees need not report information regarding expenditures under the categories listed in (i) through (iv) of this subsection or under similar such categories unless required to do so by the commission by rule. The report of such an other candidate or committee shall also contain the total sum of all expenditures;

(g) The name and address of each person to whom any expenditure was made directly or indirectly to compensate the person for soliciting or procuring signatures on an initiative or referendum petition, the amount of such compensation to each such person, and the total of the expenditures made for this purpose. Such expenditures shall be reported under this subsection (1)(g) whether the expenditures are or are not also required to be reported under (f) of this subsection;

(h) The name and address of any person and the amount owed for any debt, obligation, note, unpaid loan, or other liability in the amount of more than two hundred fifty dollars or in the amount of more than fifty dollars that has been outstanding for over thirty days;

(i) The surplus or deficit of contributions over expenditures;

(j) The disposition made in accordance with RCW 42.17.095 of any surplus funds; and

(k) Such other information as shall be required by the commission by rule in conformance with the policies and purposes of this chapter.

(2) The treasurer and the candidate shall certify the correctness of each report. [2003 c 123 § 1; 1993 c 256 § 6; 1989 c 280 § 9. Prior: 1986 c 228 § 1; 1986 c 12 § 2; 1983 c 96 § 1; 1982 c 147 § 7; 1977 ex.s. c 336 § 2; 1975-'76 2nd ex.s. c 112 § 3; 1975 1st ex.s. c 294 § 7; 1973 c 1 § 9 (Initiative Measure No. 276, approved November 7, 1972).]

Severability—Effective date—1993 c 256: See notes following RCW 29.79.500.

Effective date—1989 c 280: See note following RCW 42.17.020.

Severability—1977 ex.s. c 336: See note following RCW 42.17.040.

Appearance of fairness doctrine—Application to candidates for public office—Campaign contributions: RCW 42.36.040, 42.36.050.

42.17.093 Out-of-state political committees—Reports. (1) An out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17.040 through 42.17.090 shall report as required in this section when it makes an expenditure supporting or opposing a Washington state candidate or political committee. The committee shall file with the commission a statement disclosing:

(a) Its name and address;

(b) The purposes of the out-of-state committee;

(c) The names, addresses, and titles of its officers or, if it has no officers, the names, addresses, and the titles of its responsible leaders;

(d) The name, office sought, and party affiliation of each candidate in the state of Washington whom the out-of-state committee is supporting or opposing and, if such committee is supporting or opposing the entire ticket of any party, the name of the party;

(e) The ballot proposition supported or opposed in the state of Washington, if any, and whether such committee is in favor of or opposed to such proposition;

(f) The name and address of each person residing in the state of Washington or corporation which has a place of business in the state of Washington who has made one or more contributions in the aggregate of more than twenty-five dollars to the out-of-state committee during the current calendar year, together with the money value and date of such contributions;

(g) The name and address of each person in the state of Washington to whom an expenditure was made by the out-of-state committee with respect to a candidate or political committee in the aggregate amount of more than fifty dollars, the amount, date, and purpose of such expenditure, and the total sum of such expenditures; and

(h) Such other information as the commission may prescribe by rule in keeping with the policies and purposes of this chapter.

(2) Each statement shall be filed no later than the twentieth day of the month following any month in which a contribution or other expenditure reportable under subsection (1) of this section is made. An out-of-state committee incurring an obligation to file additional statements in a calendar year may satisfy the obligation by timely filing reports that supplement previously filed information.

(3) A political committee required to file campaign reports with the federal election commission or its successor is exempt from reporting under this section. [2003 c 123 § 2.]

42.17.310 Certain personal and other records exempt. (Expires June 30, 2005.) (1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or deprecation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (i) a ferry system construction or repair contract as required by RCW 47.60.680 through

47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under *RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses or residential telephone numbers of employees or volunteers of a public agency which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed

under RCW 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

(hh) Information and documents created specifically for, and collected and maintained by a quality improvement committee pursuant to RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under **RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records

held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law.

(tt) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related

to an application for a liquor license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the depart-

ment of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

(bbb) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety.

(ccc) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school.

(ddd) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

(eee) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW.

(fff) Proprietary data, trade secrets, or other information that relates to: (i) A vendor's unique methods of conducting business; (ii) data unique to the product or services of the vendor; or (iii) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011.

(ggg) Proprietary information deemed confidential for the purposes of section 923, chapter 26, Laws of 2003 1st sp. sess.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [2003 1st sp.s. c 26 § 926; 2003 c 277 § 3; 2003 c 124 § 1. Prior: 2002 c 335 § 1; 2002 c 224 § 2; 2002 c 205 § 4; 2002 c 172 § 1; prior: 2001 c 278 § 1; 2001 c 98 § 2; 2001 c 70 § 1; prior: 2000 c 134 § 3; 2000 c 56 § 1; 2000 c 6 § 5; prior: 1999 c 326 § 3; 1999 c 290 § 1; 1999 c 215 § 1; 1998 c 69 § 1; prior: 1997 c 310 § 2; 1997 c 274 § 8; 1997 c 250 § 7; 1997 c 239 § 4; 1997 c 220 § 120 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 58 § 900; prior: 1996 c 305 § 2; 1996 c 253 § 302; 1996 c 191 § 88; 1996 c 80 § 1; 1995 c 267 § 6; prior: 1994 c 233 § 2; 1994 c 182 § 1; prior: 1993 c 360 § 2; 1993 c 320 § 9; 1993 c 280 § 35; prior: 1992 c 139 § 5; 1992 c 71 § 12; 1991 c 301 § 13; 1991 c 87 § 13; 1991 c 23 § 10; 1991 c 1 § 1; 1990 2nd ex.s. c 1 § 1103; 1990 c 256 § 1; prior: 1989 1st ex.s. c 9 § 407; 1989 c 352 § 7; 1989 c 279 § 23; 1989 c 238 § 1; 1989 c 205 § 20; 1989 c 189 § 3; 1989 c 11 § 12; prior: 1987 c 411 § 10; 1987 c 404 § 1; 1987 c 370 § 16; 1987 c 337 § 1; 1987 c 107 § 2; prior: 1986 c 299 § 25; 1986 c 276 § 7; 1985 c 414 § 8; 1984 c 143 § 21; 1983 c 133 § 10; 1982 c 64 § 1; 1977 ex.s. c 314 § 13; 1975-76 2nd ex.s. c 82 § 5; 1975 1st ex.s. c

294 § 17; 1973 c 1 § 31 (Initiative Measure No. 276, approved November 7, 1972).]

Reviser's note: *(1) RCW 81.34.070 was repealed by 1991 c 49 § 1.

***(2) RCW 43.07.360 expired December 31, 2000, pursuant to 1996 c 253 § 502.

(3) This section was amended by 2003 c 124 § 1, 2003 c 277 § 3, and by 2003 1st sp.s. c 26 § 926, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—Severability—Effective dates—2003 1st sp.s. c 26: See notes following RCW 43.135.045.

Working group on veterans' records: "The protection from identity theft for veterans who choose to file their discharge papers with the county auditor is a matter of gravest concern. At the same time, the integrity of the public record of each county is a matter of utmost importance to the economic life of this state and to the right of each citizen to be secure in his or her ownership of real property and other rights and obligations of our citizens that rely upon the public record for their proof. Likewise the integrity of the public record is essential for the establishment of ancestral ties that may be of interest to this and future generations. While the public record as now kept by the county auditors is sufficient by itself for the accomplishment of these and many other public and private purposes, the proposed use of the public record for purposes that in their nature and intent are not public, so as to keep the veterans' discharge papers from disclosure to those of ill intent, causes concern among many segments of the population of this state.

In order to voice these concerns effectively and thoroughly, a working group may be convened by the joint committee on veterans' and military affairs to develop a means to preserve the integrity of the public record while protecting those veterans from identity theft." [2002 c 224 § 1.]

Effective date—2002 c 224 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 224 § 4.]

Findings—Severability—Effective dates—2002 c 205 §§ 2, 3, and 4: See notes following RCW 28A.320.125.

Finding—2001 c 98: "The legislature finds that public health and safety is promoted when the public has knowledge that enables them to make informed choices about their health and safety. Therefore, the legislature declares, as a matter of public policy, that the public has a right to information necessary to protect members of the public from harm caused by alleged hazards or threats to the public.

The legislature also recognizes that the public disclosure of those portions of records containing specific and unique vulnerability assessments or specific and unique response plans, either of which is intended to prevent or mitigate criminal terrorist acts as defined in RCW 70.74.285, could have a substantial likelihood of threatening public safety. Therefore, the legislature declares, as a matter of public policy, that such specific and unique information should be protected from unnecessary disclosure." [2001 c 98 § 1.]

Findings—Conflict with federal requirements—Severability—2000 c 134: See notes following RCW 50.13.060.

Effective date—1998 c 69: See note following RCW 28B.95.025.

Effective date—1997 c 274: See note following RCW 41.05.021.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability—1996 c 305: See note following RCW 28B.85.020.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

Captions not law—Severability—Effective dates—1995 c 267: See notes following RCW 43.70.052.

Effective date—1994 c 233: See note following RCW 70.123.075.

Effective date—1994 c 182: "This act shall take effect July 1, 1994." [1994 c 182 § 2.]

Effective date—1993 c 360: See note following RCW 18.130.085.

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

Finding—1991 c 301: See note following RCW 10.99.020.

Effective date—1991 c 87: See note following RCW 18.64.350.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1989 c 279: See RCW 43.163.901.

Severability—1989 c 11: See note following RCW 9A.56.220.

Severability—1987 c 411: See RCW 69.45.900.

Severability—Effective date—1986 c 299: See RCW 28C.10.900 and 28C.10.902.

Severability—1986 c 276: See RCW 53.31.901.

Basic health plan records: RCW 70.47.150.

Exemptions from public inspection

accounting records of special inquiry judge: RCW 10.29.090.

bill drafting service of code reviser's office: RCW 1.08.027, 44.68.060.

certificate submitted by physically or mentally disabled person seeking a driver's license: RCW 46.20.041.

commercial fertilizers, sales reports: RCW 15.54.362.

criminal records: Chapter 10.97 RCW.

employer information: RCW 50.13.060.

family and children's ombudsman: RCW 43.06A.050.

joint legislative service center, information: RCW 44.68.060.

medical quality assurance commission, reports required to be filed with: RCW 18.71.0195.

organized crime

advisory board files: RCW 10.29.030.

investigative information: RCW 43.43.856.

public transportation information: RCW 47.04.230.

salary and fringe benefit survey information: RCW 41.06.160.

42.17.310 Certain personal and other records exempt. (Effective June 30, 2005.) (1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the

public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (i) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under *RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses or residential telephone numbers of employees or volunteers of a public agency which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

(hh) Information and documents created specifically for, and collected and maintained by a quality improvement committee pursuant to RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under **RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law.

(tt) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a liquor license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or

essential to the assessments, or to the response or deployment plans; and

(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor

before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

(bbb) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety.

(ccc) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school.

(ddd) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

(eee) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW.

(fff) Proprietary data, trade secrets, or other information that relates to: (i) A vendor's unique methods of conducting business; (ii) data unique to the product or services of the vendor; or (iii) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would

violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [2003 c 277 § 3; 2003 c 124 § 1. Prior: 2002 c 335 § 1; 2002 c 224 § 2; 2002 c 205 § 4; 2002 c 172 § 1; prior: 2001 c 278 § 1; 2001 c 98 § 2; 2001 c 70 § 1; prior: 2000 c 134 § 3; 2000 c 56 § 1; 2000 c 6 § 5; prior: 1999 c 326 § 3; 1999 c 290 § 1; 1999 c 215 § 1; 1998 c 69 § 1; prior: 1997 c 310 § 2; 1997 c 274 § 8; 1997 c 250 § 7; 1997 c 239 § 4; 1997 c 220 § 120 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 58 § 900; prior: 1996 c 305 § 2; 1996 c 253 § 302; 1996 c 191 § 88; 1996 c 80 § 1; 1995 c 267 § 6; prior: 1994 c 233 § 2; 1994 c 182 § 1; prior: 1993 c 360 § 2; 1993 c 320 § 9; 1993 c 280 § 35; prior: 1992 c 139 § 5; 1992 c 71 § 12; 1991 c 301 § 13; 1991 c 87 § 13; 1991 c 23 § 10; 1991 c 1 § 1; 1990 2nd ex.s. c 1 § 1103; 1990 c 256 § 1; prior: 1989 1st ex.s. c 9 § 407; 1989 c 352 § 7; 1989 c 279 § 23; 1989 c 238 § 1; 1989 c 205 § 20; 1989 c 189 § 3; 1989 c 11 § 12; prior: 1987 c 411 § 10; 1987 c 404 § 1; 1987 c 370 § 16; 1987 c 337 § 1; 1987 c 107 § 2; prior: 1986 c 299 § 25; 1986 c 276 § 7; 1985 c 414 § 8; 1984 c 143 § 21; 1983 c 133 § 10; 1982 c 64 § 1; 1977 ex.s. c 314 § 13; 1975-'76 2nd ex.s. c 82 § 5; 1975 1st ex.s. c 294 § 17; 1973 c 1 § 31 (Initiative Measure No. 276, approved November 7, 1972).]

Reviser's note: *(1) RCW 81.34.070 was repealed by 1991 c 49 § 1.

** (2) RCW 43.07.360 expired December 31, 2000, pursuant to 1996 c 253 § 502.

(3) This section was amended by 2003 c 124 § 1 and by 2003 c 277 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Working group on veterans' records: "The protection from identity theft for veterans who choose to file their discharge papers with the county auditor is a matter of gravest concern. At the same time, the integrity of the public record of each county is a matter of utmost importance to the economic life of this state and to the right of each citizen to be secure in his or her ownership of real property and other rights and obligations of our citizens that rely upon the public record for their proof. Likewise the integrity of the public record is essential for the establishment of ancestral ties that may be of interest to this and future generations. While the public record as now kept by the county auditors is sufficient by itself for the accomplishment of these and many other public and private purposes, the proposed use of the public record for purposes that in their nature and intent are not public, so as to keep the veterans' discharge papers from disclosure to those of ill intent, causes concern among many segments of the population of this state.

In order to voice these concerns effectively and thoroughly, a working group may be convened by the joint committee on veterans' and military affairs to develop a means to preserve the integrity of the public record while protecting those veterans from identity theft." [2002 c 224 § 1.]

Effective date—2002 c 224 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 224 § 4.]

Findings—Severability—Effective dates—2002 c 205 §§ 2, 3, and 4: See notes following RCW 28A.320.125.

Finding—2001 c 98: "The legislature finds that public health and safety is promoted when the public has knowledge that enables them to make informed choices about their health and safety. Therefore, the legislature declares, as a matter of public policy, that the public has a right to information necessary to protect members of the public from harm caused by alleged hazards or threats to the public.

The legislature also recognizes that the public disclosure of those portions of records containing specific and unique vulnerability assessments or specific and unique response plans, either of which is intended to prevent or mitigate criminal terrorist acts as defined in RCW 70.74.285, could have a substantial likelihood of threatening public safety. Therefore, the legislature declares, as a matter of public policy, that such specific and unique information should be protected from unnecessary disclosure." [2001 c 98 § 1.]

Findings—Conflict with federal requirements—Severability—2000 c 134: See notes following RCW 50.13.060.

Effective date—1998 c 69: See note following RCW 28B.95.025.

Effective date—1997 c 274: See note following RCW 41.05.021.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability—1996 c 305: See note following RCW 28B.85.020.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

Captions not law—Severability—Effective dates—1995 c 267: See notes following RCW 43.70.052.

Effective date—1994 c 233: See note following RCW 70.123.075.

Effective date—1994 c 182: "This act shall take effect July 1, 1994." [1994 c 182 § 2.]

Effective date—1993 c 360: See note following RCW 18.130.085.

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

Finding—1991 c 301: See note following RCW 10.99.020.

Effective date—1991 c 87: See note following RCW 18.64.350.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1989 c 279: See RCW 43.163.901.

Severability—1989 c 11: See note following RCW 9A.56.220.

Severability—1987 c 411: See RCW 69.45.900.

Severability—Effective date—1986 c 299: See RCW 28C.10.900 and 28C.10.902.

Severability—1986 c 276: See RCW 53.31.901.

Basic health plan records: RCW 70.47.150.

Exemptions from public inspection

accounting records of special inquiry judge: RCW 10.29.090.

bill drafting service of code reviser's office: RCW 1.08.027, 44.68.060.

certificate submitted by physically or mentally disabled person seeking a driver's license: RCW 46.20.041.

commercial fertilizers, sales reports: RCW 15.54.362.

criminal records: Chapter 10.97 RCW.

employer information: RCW 50.13.060.

family and children's ombudsman: RCW 43.06A.050.

joint legislative service center, information: RCW 44.68.060.

medical quality assurance commission, reports required to be filed with: RCW 18.71.0195.

organized crime

advisory board files: RCW 10.29.030.

investigative information: RCW 43.43.856.

public transportation information: RCW 47.04.230.

salary and fringe benefit survey information: RCW 41.06.160.

42.17.31919 Public livestock market information exempt. Financial statements provided under RCW 16.65.030(1)(d) are exempt from disclosure under this chapter. [2003 c 326 § 91.]

Effective dates—2003 c 326: See RCW 16.57.902.

42.17.710 Time limit for state official to solicit or accept contributions. (1) During the period beginning on the thirtieth day before the date a regular legislative session convenes and continuing thirty days past the date of final adjournment, and during the period beginning on the date a special legislative session convenes and continuing through the date that session adjourns, no state official or a person employed by or acting on behalf of a state official or state legislator may solicit or accept contributions to a public office fund, to a candidate or authorized committee, or to retire a campaign debt.

(2) This section does not apply to activities authorized in RCW 43.07.370. [2003 c 164 § 3; 1993 c 2 § 11 (Initiative Measure No. 134, approved November 3, 1992).]

Chapter 42.20 RCW

MISCONDUCT OF PUBLIC OFFICERS

Sections

42.20.070 Misappropriation and falsification of accounts by public officer. (*Effective July 1, 2004.*)

42.20.090 Misappropriation, etc., by treasurer. (*Effective July 1, 2004.*)

42.20.070 Misappropriation and falsification of accounts by public officer. (*Effective July 1, 2004.*) Every public officer, and every other person receiving money on behalf or for or on account of the people of the state or of any department of the state government or of any bureau or fund created by law in which the people are directly or indirectly interested, or for or on account of any county, city, town, or any school, diking, drainage, or irrigation district, who:

(1) Appropriates to his or her own use or the use of any person not entitled thereto, without authority of law, any money so received by him or her as such officer or otherwise; or

(2) Knowingly keeps any false account, or makes any false entry or erasure in any account, of or relating to any money so received by him or her; or

(3) Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or

(4) Willfully omits or refuses to pay over to the state, its officer or agent authorized by law to receive the same, or to such county, city, town, or such school, diking, drainage, or irrigation district or to the proper officer or authority empowered to demand and receive the same, any money received by him or her as such officer when it is a duty imposed upon him or her by law to pay over and account for the same,

is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than fifteen years. [2003 c 53 § 219; 1992 c 7 § 37; 1909 c 249 §

317; RRS § 2569. Prior: Code 1881 § 890; 1873 p 202 § 92; 1854 p 91 § 83.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

42.20.090 Misappropriation, etc., by treasurer. (*Effective July 1, 2004.*) Every state, county, city, or town treasurer who willfully misappropriates any moneys, funds, or securities received by or deposited with him or her as such treasurer, or who shall be guilty of any other malfeasance or willful neglect of duty in his or her office, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years or by a fine of not more than five thousand dollars. [2003 c 53 § 220; 1992 c 7 § 38; 1909 c 249 § 319; RRS § 2571.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

County treasurer, suspension for misconduct: RCW 36.29.090.

State treasurer, embezzlement: RCW 43.08.140.

Chapter 42.30 RCW OPEN PUBLIC MEETINGS ACT

Sections

42.30.110 Executive sessions.

42.30.110 Executive sessions. (1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

- (a) To consider matters affecting national security;
- (b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;
- (c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;
- (d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;
- (e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;
- (f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;
- (g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

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(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(A) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(B) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(C) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW 41.05.026.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer. [2003 c 277 § 1; 2001 c 216 § 1; 1989 c 238 § 2; 1987 c 389 § 3; 1986 c 276 § 8; 1985 c 366 § 2; 1983 c 155 § 3; 1979 c 42 § 1; 1973 c 66 § 2; 1971 ex.s. c 250 § 11.]

Severability—Effective date—1987 c 389: See notes following RCW 41.06.070.

Severability—1986 c 276: See RCW 53.31.901.

Chapter 42.44 RCW NOTARIES PUBLIC

Sections

42.44.040 Repealed.

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

Chapter 42.52 RCW

ETHICS IN PUBLIC SERVICE

Sections

42.52.150	Limitations on gifts.
42.52.801	Exemption—Solicitation to promote tourism.
42.52.802	Exemption—Solicitation for oral history, state library, and archives account.
42.52.810	Solicitation for the legislative international trade account—Report.
42.52.820	Solicitation for hosting national legislative association conference.

42.52.150 Limitations on gifts. (1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.010. The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

(2) Except as provided in subsection (4) of this section, the following items are presumed not to influence under RCW 42.52.140, and may be accepted without regard to the limit established by subsection (1) of this section:

- (a) Unsolicited flowers, plants, and floral arrangements;
- (b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;
- (c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- (d) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;
- (e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;
- (f) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(g) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for deposit in the legislative international trade account created in RCW 44.04.270;

(h) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise

accepted and solicited for the purpose of promoting the expansion of tourism as provided for in RCW 43.330.090;

(i) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, solicited on behalf of a national legislative association or host committee for the purpose of hosting an official conference under the circumstances specified in RCW 42.52.820. Anything solicited or accepted may only be received by the national association or host committee and may not be commingled with any funds or accounts that are the property of any person;

(j) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(k) Unsolicited gifts from dignitaries from another state or a foreign country that are intended to be personal in nature.

(3) The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

(4) Notwithstanding subsections (2) and (5) of this section, a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:

(a) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(b) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(c) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(d) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(f) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(g) Those items excluded from the definition of gift in RCW 42.52.010 except:

(i) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity;

(ii) Payments for seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution; and

(iii) Flowers, plants, and floral arrangements.

(5) A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties. Gifts in the form of food and beverage that exceed fifty dollars on a single occasion shall be reported as provided in

chapter 42.17 RCW. [2003 1st sp.s. c 23 § 2. Prior: 2003 c 265 § 3; 2003 c 153 § 6; 1998 c 7 § 2; 1994 c 154 § 115.]

Findings—2003 c 153: See note following RCW 43.330.090.

42.52.801 Exemption—Solicitation to promote tourism. When soliciting charitable gifts, grants, or donations solely for the purposes of promoting the expansion of tourism as provided for in RCW 43.330.090, state officers and state employees are presumed not to be in violation of the solicitation and receipt of gift provisions in RCW 42.52.140. [2003 c 153 § 5.]

Findings—2003 c 153: See note following RCW 43.330.090.

42.52.802 Exemption—Solicitation for oral history, state library, and archives account. This chapter does not prohibit the secretary of state or a designee from soliciting and accepting contributions to the oral history, state library, and archives account created in RCW 43.07.380. [2003 c 164 § 4.]

42.52.810 Solicitation for the legislative international trade account—Report. (1) When soliciting charitable gifts, grants, or donations solely for the legislative international trade account created in RCW 44.04.270, the president of the senate is presumed not to be in violation of the solicitation and receipt of gift provisions in RCW 42.52.140.

(2) When soliciting charitable gifts, grants, or donations solely for the legislative international trade account created in RCW 44.04.270, state officers and state employees are presumed not to be in violation of the solicitation and receipt of gift provisions in RCW 42.52.140.

(3) An annual report of the legislative international trade account activities, including a list of receipts and expenditures, shall be published by the president of the senate and submitted to the house of representatives and the senate and be a public record for the purposes of RCW 42.17.260. [2003 c 265 § 2.]

42.52.820 Solicitation for hosting national legislative association conference. When soliciting gifts, grants, or donations to host an official conference within the state of Washington of a national legislative association as approved by both the chief clerk and the secretary of the senate, designated legislative officials and designated legislative employees are presumed not to be in violation of the solicitation and receipt of gift provisions in this chapter. For the purposes of this section, any legislative association must include among its membership the Washington state legislature or individual legislators or legislative staff. [2003 1st sp.s. c 23 § 1.]

Title 43

STATE GOVERNMENT—EXECUTIVE

Chapters

- 43.01** State officers—General provisions.
- 43.03** Salaries and expenses.
- 43.06** Governor.
- 43.07** Secretary of state.
- 43.08** State treasurer.
- 43.09** State auditor.

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- 43.10** Attorney general.
- 43.12** Commissioner of public lands.
- 43.19** Department of general administration.
- 43.20** State board of health.
- 43.20A** Department of social and health services.
- 43.20B** Revenue recovery for department of social and health services.
- 43.21A** Department of ecology.
- 43.21B** Environmental hearings office—Pollution control hearings board.
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- 43.30** Department of natural resources.
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- 43.99R** Financing for appropriations—2003-2005 biennium.
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- 43.162** Economic development commission.
- 43.175** Governor's small business improvement council.
- 43.185B** Washington housing policy act.
- 43.200** Radioactive waste act.
- 43.211** 211 information system.
- 43.300** Department of fish and wildlife.
- 43.320** Department of financial institutions.
- 43.330** Department of community, trade, and economic development.
- 43.332** Office of the Washington state trade representative.

Chapter 43.01 RCW

STATE OFFICERS—GENERAL PROVISIONS

Sections

- 43.01.015 Repealed. (*Effective July 1, 2004.*)
- 43.01.100 Application forms—Employment—Licenses—Mention of race or religion prohibited—Penalty. (*Effective July 1, 2004.*)
- 43.01.110 Repealed. (*Effective July 1, 2004.*)

43.01.015 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.01.100 Application forms—Employment—Licenses—Mention of race or religion prohibited—Penalty. (Effective July 1, 2004.) (1) The inclusion of any question relative to an applicant's race or religion in any application blank or form for employment or license required to be filled in and submitted by an applicant to any department, board, commission, officer, agent, or employee of this state or the disclosure on any license of the race or religion of the licensee is hereby prohibited.

(2) A person violating this section is guilty of a misdemeanor. [2003 c 53 § 221; 1965 c 8 § 43.01.100. Prior: 1955 c 87 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Discrimination—Human rights commission: Chapter 49.60 RCW.

Subversive activities, public officials and employees: Chapter 9.81 RCW.

43.01.110 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.03 RCW

SALARIES AND EXPENSES

Sections

- 43.03.011 Salaries of state elected officials of the executive branch.
43.03.012 Salaries of judges.
43.03.013 Salaries of members of the legislature.
43.03.050 Subsistence, lodging and refreshment, and per diem allowance for officials, employees, and members of boards, commissions, or committees.

43.03.011 Salaries of state elected officials of the executive branch. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 43.03.010 and 43.03.310, the annual salaries of the state elected officials of the executive branch shall be as follows:

- (1) Effective September 1, 2002:
(a) Governor \$ 142,286
(b) Lieutenant governor \$ 74,377
(c) Secretary of state \$ 91,048
(d) Treasurer \$ 99,708
(e) Auditor \$ 99,708
(f) Attorney general \$ 129,351
(g) Superintendent of public instruction \$ 101,750
(h) Commissioner of public lands \$ 101,750
(i) Insurance commissioner \$ 92,702
(2) Effective September 1, 2003:
(a) Governor \$ 142,286
(b) Lieutenant governor \$ 74,377
(c) Secretary of state \$ 99,708
(d) Treasurer \$ 99,708
(e) Auditor \$ 99,708
(f) Attorney general \$ 129,351
(g) Superintendent of public instruction \$ 101,750
(h) Commissioner of public lands \$ 101,750
(i) Insurance commissioner \$ 99,708
(3) Effective September 1, 2004:

- (a) Governor \$ 145,132
(b) Lieutenant governor \$ 75,865
(c) Secretary of state \$ 101,702
(d) Treasurer \$ 101,702
(e) Auditor \$ 101,702
(f) Attorney general \$ 131,938
(g) Superintendent of public instruction \$ 103,785
(h) Commissioner of public lands \$ 103,785
(i) Insurance commissioner \$ 101,702
(4) The lieutenant governor shall receive the fixed amount of his salary plus 1/260th of the difference between his salary and that of the governor for each day that the lieutenant governor is called upon to perform the duties of the governor by reason of the absence from the state, removal, resignation, death, or disability of the governor. [2003 1st sp.s. c 1 § 1; 2001 1st sp.s. c 3 § 1; 1999 sp.s. c 3 § 1; 1997 c 458 § 1; 1995 2nd sp.s. c 1 § 1; 1993 sp.s. c 26 § 1; 1991 sp.s. c 1 § 1; 1989 2nd ex.s. c 4 § 1; 1987 1st ex.s. c 1 § 1, part.]

43.03.012 Salaries of judges. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 2.04.092, 2.06.062, 2.08.092, 3.58.010, and 43.03.310, the annual salaries of the judges of the state shall be as follows:

- (1) Effective September 1, 2002:
(a) Justices of the supreme court \$ 134,584
(b) Judges of the court of appeals \$ 128,116
(c) Judges of the superior court \$ 121,972
(d) Full-time judges of the district court \$ 116,135
(2) Effective September 1, 2003:
(a) Justices of the supreme court \$ 134,584
(b) Judges of the court of appeals \$ 128,116
(c) Judges of the superior court \$ 121,972
(d) Full-time judges of the district court \$ 116,135
(3) Effective September 1, 2004:
(a) Justices of the supreme court \$ 137,276
(b) Judges of the court of appeals \$ 130,678
(c) Judges of the superior court \$ 124,411
(d) Full-time judges of the district court \$ 118,458
(4) The salary for a part-time district court judge shall be the proportion of full-time work for which the position is authorized, multiplied by the salary for a full-time district court judge. [2003 1st sp.s. c 1 § 2; 2001 1st sp.s. c 3 § 2; 1999 sp.s. c 3 § 2; 1997 c 458 § 2; 1995 2nd sp.s. c 1 § 2; 1993 sp.s. c 26 § 2; 1991 sp.s. c 1 § 2; 1989 2nd ex.s. c 4 § 2; 1987 1st ex.s. c 1 § 1, part.]

43.03.013 Salaries of members of the legislature. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 43.03.010 and 43.03.310, the annual salary of members of the legislature shall be:

- (1) Effective September 1, 2002:
(a) Legislators \$ 33,556
(b) Speaker of the house \$ 41,556
(c) Senate majority leader \$ 41,556
(d) House minority leader \$ 37,556
(e) Senate minority leader \$ 37,556
(2) Effective September 1, 2003:
(a) Legislators \$ 33,556
(b) Speaker of the house \$ 41,556
(c) Senate majority leader \$ 41,556
(d) House minority leader \$ 37,556

- (e) Senate minority leader \$ 37,556
- (3) Effective September 1, 2004:
- (a) Legislators \$ 34,227
- (b) Speaker of the house \$ 42,227
- (c) Senate majority leader \$ 42,227
- (d) House minority leader \$ 38,227
- (e) Senate minority leader \$ 38,227

[2003 1st sp.s. c 1 § 3; 2001 1st sp.s. c 3 § 3; 1999 sp.s. c 3 § 3; 1997 c 458 § 3; 1995 2nd sp.s. c 1 § 3; 1993 sp.s. c 26 § 3; 1991 sp.s. c 1 § 3; 1989 2nd ex.s. c 4 § 3; 1987 1st ex.s. c 1 § 1, part.]

43.03.050 Subsistence, lodging and refreshment, and per diem allowance for officials, employees, and members of boards, commissions, or committees. (1) The director of financial management shall prescribe reasonable allowances to cover reasonable and necessary subsistence and lodging expenses for elective and appointive officials and state employees while engaged on official business away from their designated posts of duty. The director of financial management may prescribe and regulate the allowances provided in lieu of subsistence and lodging expenses and may prescribe the conditions under which reimbursement for subsistence and lodging may be allowed. The schedule of allowances adopted by the office of financial management may include special allowances for foreign travel and other travel involving higher than usual costs for subsistence and lodging. The allowances established by the director shall not exceed the rates set by the federal government for federal employees. However, during the 2003-05 fiscal biennium, the allowances for any county that is part of a metropolitan statistical area, the largest city of which is in another state, shall equal the allowances prescribed for that larger city.

(2) Those persons appointed to serve without compensation on any state board, commission, or committee, if entitled to payment of travel expenses, shall be paid pursuant to special per diem rates prescribed in accordance with subsection (1) of this section by the office of financial management.

(3) The director of financial management may prescribe reasonable allowances to cover reasonable expenses for meals, coffee, and light refreshment served to elective and appointive officials and state employees regardless of travel status at a meeting where: (a) The purpose of the meeting is to conduct official state business or to provide formal training to state employees or state officials; (b) the meals, coffee, or light refreshment are an integral part of the meeting or training session; (c) the meeting or training session takes place away from the employee's or official's regular workplace; and (d) the agency head or authorized designee approves payments in advance for the meals, coffee, or light refreshment. In order to prevent abuse, the director may regulate such allowances and prescribe additional conditions for claiming the allowances.

(4) Upon approval of the agency head or authorized designee, an agency may serve coffee or light refreshments at a meeting where: (a) The purpose of the meeting is to conduct state business or to provide formal training that benefits the state; and (b) the coffee or light refreshment is an integral part of the meeting or training session. The director of financial

management shall adopt requirements necessary to prohibit abuse of the authority authorized in this subsection.

(5) The schedule of allowances prescribed by the director under the terms of this section and any subsequent increases in any maximum allowance or special allowances for areas of higher than usual costs shall be reported to the ways and means committees of the house of representatives and the senate at each regular session of the legislature. [2003 1st sp.s. c 25 § 915; 1990 c 30 § 1; 1983 1st ex.s. c 29 § 1; 1979 c 151 § 83; 1977 ex.s. c 312 § 1; 1975-'76 2nd ex.s. c 34 § 94; 1970 ex.s. c 34 § 1; 1965 ex.s. c 77 § 1; 1965 c 8 § 43.03.050. Prior: 1961 c 220 § 1; 1959 c 194 § 1; 1953 c 259 § 1; 1949 c 17 § 1; 1943 c 86 § 1; Rem. Supp. 1949 § 10981-1.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Effective date—Construction—1977 ex.s. c 312: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately except that any new schedule of allowances under either RCW 43.03.050 and 43.03.060 as now or hereafter amended shall not be effective until July 1, 1977 or later." [1977 ex.s. c 312 § 5.]

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

**Chapter 43.06 RCW
GOVERNOR**

Sections

- 43.06.220 State of emergency—Powers of governor pursuant to proclamation. (*Effective July 1, 2004.*)
- 43.06.230 State of emergency—Destroying or damaging property or causing personal injury—Penalty. (*Effective July 1, 2004.*)
- 43.06.460 Cigarette tax contracts—Eligible tribes—Tax rate.

43.06.220 State of emergency—Powers of governor pursuant to proclamation. (*Effective July 1, 2004.*) (1) The governor after proclaiming a state of emergency and prior to terminating such, may, in the area described by the proclamation issue an order prohibiting:

(a) Any person being on the public streets, or in the public parks, or at any other public place during the hours declared by the governor to be a period of curfew;

(b) Any number of persons, as designated by the governor, from assembling or gathering on the public streets, parks, or other open areas of this state, either public or private;

(c) The manufacture, transfer, use, possession or transportation of a molotov cocktail or any other device, instrument or object designed to explode or produce uncontained combustion;

(d) The transporting, possessing or using of gasoline, kerosene, or combustible, flammable, or explosive liquids or materials in a glass or uncapped container of any kind except in connection with the normal operation of motor vehicles, normal home use or legitimate commercial use;

(e) The possession of firearms or any other deadly weapon by a person (other than a law enforcement officer) in a place other than that person's place of residence or business;

(f) The sale, purchase or dispensing of alcoholic beverages;

(g) The sale, purchase or dispensing of other commodities or goods, as he or she reasonably believes should be pro-

hibited to help preserve and maintain life, health, property or the public peace;

(h) The use of certain streets, highways or public ways by the public; and

(i) Such other activities as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace.

(2) In imposing the restrictions provided for by RCW 43.06.010, and 43.06.200 through 43.06.270, the governor may impose them for such times, upon such conditions, with such exceptions and in such areas of this state he or she from time to time deems necessary.

(3) Any person willfully violating any provision of an order issued by the governor under this section is guilty of a gross misdemeanor. [2003 c 53 § 222; 1969 ex.s. c 186 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

43.06.230 State of emergency—Destroying or damaging property or causing personal injury—Penalty. (Effective July 1, 2004.) After the proclamation of a state of emergency as provided in RCW 43.06.010, any person who maliciously destroys or damages any real or personal property or maliciously injures another is guilty of a class B felony and upon conviction thereof shall be imprisoned in a state correctional facility for not less than two years nor more than ten years. [2003 c 53 § 223; 1992 c 7 § 39; 1969 ex.s. c 186 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

43.06.460 Cigarette tax contracts—Eligible tribes—Tax rate. (1) The governor is authorized to enter into cigarette tax contracts with the Squaxin Island Tribe, the Nisqually Tribe, Tulalip Tribes, the Muckleshoot Indian Tribe, the Quinault Nation, the Jamestown S'Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the Stillaguamish Tribe, the Sauk-Suiattle Tribe, the Skokomish Indian Tribe, the Yakama Nation, the Suquamish Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis Confederated Tribes, the Upper Skagit Tribe, the Snoqualmie Tribe, the Swinomish Tribe, the Samish Indian Nation, the Quileute Tribe, and the Kalispel Tribe. Each contract adopted under this section shall provide that the tribal cigarette tax rate be one hundred percent of the state cigarette and state and local sales and use taxes within three years of enacting the tribal tax and shall be set no lower than eighty percent of the state cigarette and state and local sales and use taxes during the three-year phase-in period. The three-year phase-in period shall be shortened by three months each quarter the number of cartons of nontribal manufactured cigarettes is at least ten percent or more than the quarterly average number of cartons of nontribal manufactured cigarettes from the six-month period preceding the imposition of the tribal tax under the contract. Sales at a retailer operation not in existence as of the date a tribal tax under this section is imposed are subject to the full rate of the tribal tax under the contract. The tribal cigarette tax is in lieu of the state cigarette and state and local sales and use taxes, as provided in RCW 43.06.455(3).

(2) A cigarette tax contract under this section is subject to RCW 43.06.455. [2003 c 236 § 1; 2002 c 87 § 1; 2001 2nd sp.s. c 21 § 1; 2001 c 235 § 3.]

Chapter 43.07 RCW SECRETARY OF STATE

Sections

43.07.310	Division of elections—Duties. (<i>Effective July 1, 2004.</i>)
43.07.370	Oral history, state library, and archives programs—Gifts, grants, conveyances—Rules.
43.07.380	Oral history, state library, and archives account.

43.07.310 Division of elections—Duties. (Effective July 1, 2004.) The secretary of state, through the division of elections, is responsible for the following duties, as prescribed by Title 29A RCW:

- (1) The filing, verification of signatures, and certification of state initiative, referendum, and recall petitions;
- (2) The production and distribution of a state voters' pamphlet;
- (3) The examination, testing, and certification of voting equipment, voting devices, and vote-tallying systems;
- (4) The administration, canvassing, and certification of the presidential primary, state primaries, and state general elections;
- (5) The administration of motor voter and other voter registration and voter outreach programs;
- (6) The training, testing, and certification of state and local elections personnel as established in RCW 29A.04.530;
- (7) The training of state and local party observers required by RCW 29A.04.540;
- (8) The conduct of postelection reviews as established in RCW 29A.04.570; and
- (9) Other duties that may be prescribed by the legislature. [2003 c 111 § 2303; 1992 c 163 § 2.]

Effective date—2003 c 111: See RCW 29A.04.903.

43.07.370 Oral history, state library, and archives programs—Gifts, grants, conveyances—Rules. (1) The secretary of state may solicit and accept gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise, and sell, lease, exchange, invest, or expend these donations or the proceeds, rents, profits, and income from the donations except as limited by the donor's terms.

(2) Moneys received under this section may be used only for the following purposes:

- (a) Conducting oral histories;
- (b) Archival activities; and
- (c) Washington state library activities.

(3) Moneys received under this section must be deposited in the oral history, state library, and archives account established in RCW 43.07.380.

(4) The secretary of state shall adopt rules to govern and protect the receipt and expenditure of the proceeds. [2003 c 164 § 1.]

43.07.380 Oral history, state library, and archives account. The oral history, state library, and archives account is created in the custody of the state treasurer. All moneys

received under RCW 43.07.370 must be deposited in the account. Expenditures from the account may be made only for the purposes of the oral history program under RCW 43.07.220, archives program under RCW 40.14.020, and state library program under chapter 27.04 RCW. Only the secretary of state or the secretary of state's designee may authorize expenditures from the account. An appropriation is not required for expenditures, but the account is subject to allotment procedures under chapter 43.88 RCW. [2003 c 164 § 2.]

Chapter 43.08 RCW STATE TREASURER

Sections

43.08.140	Embezzlement—Penalty. (<i>Effective July 1, 2004.</i>)
43.08.190	State treasurer's service fund—Creation—Purpose.
43.08.250	Public safety and education account—Use.

43.08.140 Embezzlement—Penalty. (*Effective July 1, 2004.*) If any person holding the office of state treasurer fails to account for and pay over all moneys in his or her hands in accordance with law, or unlawfully converts to his or her own use in any way whatever, or uses by way of investment in any kind of property, or loans without authority of law, any portion of the public money intrusted to him or her for safekeeping, transfer, or disbursement, or unlawfully converts to his or her own use any money that comes into his or her hands by virtue of his or her office, the person is guilty of a class B felony, and upon conviction thereof, shall be imprisoned in a state correctional facility not exceeding fourteen years, and fined a sum equal to the amount embezzled. [2003 c 53 § 224; 1992 c 7 § 40; 1965 c 8 § 43.08.140. Prior: 1890 p 644 § 10; RRS § 11027; prior: 1886 p 105 § 11.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Misappropriation of funds: RCW 42.20.070, 42.20.090.

43.08.190 State treasurer's service fund—Creation—Purpose. There is hereby created a fund within the state treasury to be known as the "state treasurer's service fund". Such fund shall be used solely for the payment of costs and expenses incurred in the operation and administration of the state treasurer's office.

Moneys shall be allocated monthly and placed in the state treasurer's service fund equivalent to a maximum of one percent of the trust and treasury average daily cash balances from the earnings generated under the authority of RCW 43.79A.040 and 43.84.080 other than earnings generated from investment of balances in funds and accounts specified in RCW *43.79.040 or 43.84.092(4)(b). The allocation shall precede the distribution of the remaining earnings as prescribed under RCW 43.79A.040 and 43.84.092. The state treasurer shall establish a uniform allocation rate based on the appropriations for the treasurer's office.

During the 2003-2005 fiscal biennium, the legislature may transfer from the state treasurer's service fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2003 1st sp.s. c 25 § 916; 1991 sp.s. c 13 § 83; 1985 c 405 § 506; 1973 c 27 § 2.]

[2003 RCW Supp—page 534]

***Reviser's note:** The reference to RCW 43.79.040 is incorrect. RCW 43.79A.040 was apparently intended.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

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

Severability—1985 c 405: See note following RCW 9.46.100.

43.08.250 Public safety and education account—Use. The money received by the state treasurer from fees, fines, forfeitures, penalties, reimbursements or assessments by any court organized under Title 3 or 35 RCW, or chapter 2.08 RCW, shall be deposited in the public safety and education account which is hereby created in the state treasury. The legislature shall appropriate the funds in the account to promote traffic safety education, highway safety, criminal justice training, crime victims' compensation, judicial education, the judicial information system, civil representation of indigent persons, winter recreation parking, drug court operations, and state game programs. During the fiscal biennium ending June 30, 2005, the legislature may appropriate moneys from the public safety and education account for purposes of appellate indigent defense and other operations of the office of public defense, the criminal litigation unit of the attorney general's office, the treatment alternatives to street crimes program, crime victims advocacy programs, justice information network telecommunication planning, treatment for supplemental security income clients, sexual assault treatment, operations of the office of administrator for the courts, security in the common schools, alternative school start-up grants, programs for disruptive students, criminal justice data collection, Washington state patrol criminal justice activities, drug court operations, unified family courts, local court backlog assistance, financial assistance to local jurisdictions for extraordinary costs incurred in the adjudication of criminal cases, domestic violence treatment and related services, the department of corrections' costs in implementing chapter 196, Laws of 1999, reimbursement of local governments for costs associated with implementing criminal and civil justice legislation, the replacement of the department of corrections' offender-based tracking system, secure and semi-secure crisis residential centers, HOPE beds, the family policy council and community public health and safety networks, the street youth program, public notification about registered sex offenders, and narcotics or methamphetamine-related enforcement, education, training, and drug and alcohol treatment services. [2003 1st sp.s. c 25 § 918. Prior: 2001 2nd sp.s. c 7 § 914; 2001 c 289 § 4; 2000 2nd sp.s. c 1 § 911; 1999 c 309 § 915; 1997 c 149 § 910; 1996 c 283 § 901; 1995 2nd sp.s. c 18 § 912; 1993 sp.s. c 24 § 917; 1992 c 54 § 3; prior: 1991 sp.s. c 16 § 919; 1991 sp.s. c 13 § 25; 1985 c 57 § 27; 1984 c 258 § 338.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Severability—1997 c 149: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected." [1997 c 149 § 917.]

Effective date—1997 c 149: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 149 § 918.]

Severability—1996 c 283: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 283 § 904.]

Effective date—1996 c 283: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1996]." [1996 c 283 § 905.]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.165.070.

Effective date—1992 c 54: See note following RCW 36.18.020.

Severability—Effective date—1991 sp.s. c 16: See notes following RCW 9.46.100.

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

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

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

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

Public safety and education assessment: RCW 3.62.090.

Chapter 43.09 RCW STATE AUDITOR

Sections

43.09.165 Subpoenas—Compulsory process—Witnesses—Oaths—Testimony—Penalty. (*Effective July 1, 2004.*)

43.09.165 Subpoenas—Compulsory process—Witnesses—Oaths—Testimony—Penalty. (*Effective July 1, 2004.*) (1) The state auditor, his or her employees and every person legally appointed to perform such service, may issue subpoenas and compulsory process and direct the service thereof by any constable or sheriff, compel the attendance of witnesses and the production of books and papers before him or her at any designated time and place, and may administer oaths.

(2) When any person summoned to appear and give testimony neglects or refuses to do so, or neglects or refuses to answer any question that may be put to him or her touching any matter under examination, or to produce any books or papers required, the person making such examination shall apply to a superior court judge of the proper county to issue a subpoena for the appearance of such person before him or her; and the judge shall order the issuance of a subpoena for the appearance of such person forthwith before him or her to give testimony; and if any person so summoned fails to appear, or appearing, refuses to testify, or to produce any books or papers required, he or she shall be subject to like proceedings and penalties for contempt as witnesses in the superior court.

(3) Willful false swearing in any such examination is perjury under chapter 9A.72 RCW. [2003 c 53 § 225; 1995 c 301 § 5.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 43.10 RCW ATTORNEY GENERAL

Sections

43.10.180 Legal services revolving fund—Allocation of costs to funds and agencies—Accounting—Billing.

43.10.180 Legal services revolving fund—Allocation of costs to funds and agencies—Accounting—Billing. (1) The attorney general shall keep such records as are necessary to facilitate proper allocation of costs to funds and agencies served and the director of financial management shall prescribe appropriate accounting procedures to accurately allocate costs to funds and agencies served. Billings shall be adjusted in line with actual costs incurred at intervals not to exceed six months.

(2) During the 2003-05 fiscal biennium, all expenses for administration of the office of the attorney general shall be allocated to and paid from the legal services revolving fund in accordance with accounting procedures prescribed by the director of financial management. [2003 1st sp.s. c 25 § 917; 1979 c 151 § 95; 1974 ex.s. c 146 § 3; 1971 ex.s. c 71 § 4.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Effective date—1974 ex.s. c 146: See note following RCW 43.10.150.

Chapter 43.12 RCW COMMISSIONER OF PUBLIC LANDS

Sections

43.12.021 Commissioner—Deputy—Appointment—Powers—Oath.
43.12.025 Recodified as RCW 43.30.630.
43.12.031 Auditors and cashiers—Other assistants.
43.12.035 Recodified as RCW 43.30.640.
43.12.041 Official bonds.
43.12.055 Enforcement in accordance with RCW 43.05.100 and 43.05.110.
43.12.065 Rules pertaining to public use of state lands—Enforcement—Penalty. (*Effective until July 1, 2004.*)
43.12.065 Rules pertaining to public use of state lands—Enforcement—Penalty. (*Effective July 1, 2004.*)
43.12.075 Duty of attorney general—Commissioner may represent state.

43.12.021 Commissioner—Deputy—Appointment—Powers—Oath. The commissioner shall have the power to appoint an assistant, who shall be deputy commissioner of public lands with power to perform any act or duty relating to the office of the commissioner, and, in case of vacancy by death or resignation of the commissioner, shall perform the duties of the office until the vacancy is filled, and shall act as chief clerk in the office of the commissioner, and, before performing any duties, shall take, subscribe, and file in the office of the secretary of state the oath of office required by law of state officers. [2003 c 334 § 305; 1927 c 255 § 14; RRS § 7797-14. Prior: 1903 c 33 § 1; RRS § 7815. Formerly RCW 79.01.056, 43.12.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.12.025 Recodified as RCW 43.30.630. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.12.031 Auditors and cashiers—Other assistants. The commissioner shall have the power to appoint an auditor

and cashier and such number of other assistants, as the commissioner deems necessary for the performance of the duties of the office. [2003 c 334 § 306; 1927 c 255 § 15; RRS § 7797-15. Formerly RCW 79.01.060, 43.12.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.12.035 Recodified as RCW 43.30.640. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.12.041 Official bonds. The commissioner and those appointed by the commissioner shall enter into good and sufficient surety company bonds as required by law, in the following sums: Commissioner, fifty thousand dollars; and other appointees in such sum as may be fixed in the manner provided by law. [2003 c 334 § 307; 1927 c 255 § 16; RRS § 7797-16. Prior: 1907 c 119 §§ 1, 2; RRS §§ 7816, 7817. Formerly RCW 79.01.064, 43.12.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.12.055 Enforcement in accordance with RCW 43.05.100 and 43.05.110. Enforcement action taken after July 23, 1995, by the commissioner of public lands or the supervisor of natural resources shall be in accordance with RCW 43.05.100 and 43.05.110. [2003 c 334 § 103; 1995 c 403 § 622.]

Intent—2003 c 334: See note following RCW 79.02.010.

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

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

43.12.065 Rules pertaining to public use of state lands—Enforcement—Penalty. (Effective until July 1, 2004.) For the promotion of the public safety and the protection of public property, the department of natural resources may, in accordance with chapter 34.05 RCW, issue, promulgate, adopt, and enforce rules pertaining to use by the public of state-owned lands and property which are administered by the department.

A violation of any rule adopted under this section shall constitute a misdemeanor unless the department specifies by rule, when not inconsistent with applicable statutes, that violation of the rule is an infraction under chapter 7.84 RCW: PROVIDED, That violation of a rule relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of a rule equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

The commissioner of public lands and such of his employees as he may designate shall be vested with police powers when enforcing:

(1) The rules of the department adopted under this section; or

(2) The general criminal statutes or ordinances of the state or its political subdivisions where enforcement is necessary for the protection of state-owned lands and property. [1987 c 380 § 14; 1979 ex.s. c 136 § 38; 1969 ex.s. c 160 § 1. Formerly RCW 43.30.310.]

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

[2003 RCW Supp—page 536]

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

43.12.065 Rules pertaining to public use of state lands—Enforcement—Penalty. (Effective July 1, 2004.)

(1) For the promotion of the public safety and the protection of public property, the department of natural resources may, in accordance with chapter 34.05 RCW, issue, promulgate, adopt, and enforce rules pertaining to use by the public of state-owned lands and property which are administered by the department.

(2)(a) Except as otherwise provided in this subsection, a violation of any rule adopted under this section is a misdemeanor.

(b) Except as provided in (c) of this subsection, the department may specify by rule, when not inconsistent with applicable statutes, that violation of such a rule is an infraction under chapter 7.84 RCW: PROVIDED, That violation of a rule relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(c) Violation of such a rule equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

(3) The commissioner of public lands and such of his or her employees as he or she may designate shall be vested with police powers when enforcing:

(a) The rules of the department adopted under this section; or

(b) The general criminal statutes or ordinances of the state or its political subdivisions where enforcement is necessary for the protection of state-owned lands and property. [2003 c 53 § 229; 1987 c 380 § 14; 1979 ex.s. c 136 § 38; 1969 ex.s. c 160 § 1. Formerly RCW 43.30.310.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

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

43.12.075 Duty of attorney general—Commissioner may represent state. It shall be the duty of the attorney general, to institute, or defend, any action or proceeding to which the state, or the commissioner or the board, is or may be a party, or in which the interests of the state are involved, in any court of this state, or any other state, or of the United States, or in any department of the United States, or before any board or tribunal, when requested so to do by the commissioner, or the board, or upon the attorney general's own initiative.

The commissioner is authorized to represent the state in any such action or proceeding relating to any public lands of the state. [2003 c 334 § 431; 1959 c 257 § 40; 1927 c 255 § 194; RRS § 7797-194. Prior: 1909 c 223 § 7; 1897 c 89 § 65; 1895 c 178 § 100. Formerly RCW 79.01.736, 79.08.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 43.19 RCW

DEPARTMENT OF GENERAL ADMINISTRATION

Sections

- 43.19.1911 Competitive bids—Notice of modification or cancellation—Cancellation requirements—Lowest responsible bidder—Preferential purchase—Life cycle costing.
- 43.19.1939 Unlawful to offer, give, accept, benefits as inducement for or to refrain from bidding—Penalty. (*Effective July 1, 2004.*)
- 43.19.520 Purchase of products and services from entities serving or providing opportunities for disadvantaged or disabled persons—Intent.
- 43.19.525 Purchases from entities serving or providing opportunities for disadvantaged or disabled persons—Definitions.
- 43.19.530 Purchases from entities serving or providing opportunities for disadvantaged or disabled persons—Authorized—Fair market price.
- 43.19.531 Purchases from entities serving or providing opportunities for disadvantaged or disabled persons—Vendors in good standing—Notice to purchasing agents—Notice to vendors—Reports. (*Expires December 31, 2007.*)
- 43.19.533 Purchases from entities serving or providing opportunities for disadvantaged or disabled persons—Existing contracts not impaired—Solicitation of vendors in good standing.
- 43.19.642 Diesel-powered vehicles and equipment—Biodiesel fuel blends.
- 43.19.643 Diesel-powered vehicles and equipment—Biodiesel fuel blends—Definitions.
- 43.19.651 Fuel cells and renewable or alternative energy sources.

43.19.1911 Competitive bids—Notice of modification or cancellation—Cancellation requirements—Lowest responsible bidder—Preferential purchase—Life cycle costing.

(1) Preservation of the integrity of the competitive bid system dictates that after competitive bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid pursuant to subsections (7) and (9) of this section, unless there is a compelling reason to reject all bids and cancel the solicitation.

(2) Every effort shall be made to anticipate changes in a requirement before the date of opening and to provide reasonable notice to all prospective bidders of any resulting modification or cancellation. If, in the opinion of the purchasing agency, division, or department head, it is not possible to provide reasonable notice, the published date for receipt of bids may be postponed and all known bidders notified. This will permit bidders to change their bids and prevent unnecessary exposure of bid prices. In addition, every effort shall be made to include realistic, achievable requirements in a solicitation.

(3) After the opening of bids, a solicitation may not be canceled and resolicited solely because of an increase in requirements for the items being acquired. Award may be made on the initial solicitation and an increase in requirements may be treated as a new acquisition.

(4) A solicitation may be canceled and all bids rejected before award but after bid opening only when, consistent with subsection (1) of this section, the purchasing agency, division, or department head determines in writing that:

(a) Unavailable, inadequate, ambiguous specifications, terms, conditions, or requirements were cited in the solicitation;

(b) Specifications, terms, conditions, or requirements have been revised;

(c) The supplies or services being contracted for are no longer required;

(d) The solicitation did not provide for consideration of all factors of cost to the agency;

(e) Bids received indicate that the needs of the agency can be satisfied by a less expensive article differing from that for which the bids were invited;

(f) All otherwise acceptable bids received are at unreasonable prices or only one bid is received and the agency cannot determine the reasonableness of the bid price;

(g) No responsive bid has been received from a responsible bidder; or

(h) The bid process was not fair or equitable.

(5) The agency, division, or department head may not delegate his or her authority under this section.

(6) After the opening of bids, an agency may not reject all bids and enter into direct negotiations to complete the planned acquisition. However, the agency can enter into negotiations exclusively with the lowest responsible bidder in order to determine if the lowest responsible bid may be improved. Until December 31, 2007, for purchases requiring a formal bid process the agency shall also enter into negotiations with and may consider for award the lowest responsible bidder that is a vendor in good standing, as defined in RCW 43.19.525. An agency shall not use this negotiation opportunity to permit a bidder to change a nonresponsive bid into a responsive bid.

(7) In determining the lowest responsible bidder, the agency shall consider any preferences provided by law to Washington products and vendors and to RCW 43.19.704, and further, may take into consideration the quality of the articles proposed to be supplied, their conformity with specifications, the purposes for which required, and the times of delivery.

(8) Each bid with the name of the bidder shall be entered of record and each record, with the successful bid indicated, shall, after letting of the contract, be open to public inspection.

(9) In determining "lowest responsible bidder", in addition to price, the following elements shall be given consideration:

(a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;

(b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(c) Whether the bidder can perform the contract within the time specified;

(d) The quality of performance of previous contracts or services;

(e) The previous and existing compliance by the bidder with laws relating to the contract or services;

(f) Such other information as may be secured having a bearing on the decision to award the contract: PROVIDED, That in considering bids for purchase, manufacture, or lease, and in determining the "lowest responsible bidder," whenever there is reason to believe that applying the "life cycle costing" technique to bid evaluation would result in lowest total cost to the state, first consideration shall be given by state purchasing activities to the bid with the lowest life cycle cost which complies with specifications. "Life cycle cost" means the total cost of an item to the state over its estimated useful life, including costs of selection, acquisition, operation, maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life. The "estimated useful life" of an item means the estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner. Nothing in this section

shall prohibit any state agency, department, board, commission, committee, or other state-level entity from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused. [2003 c 136 § 6; 1996 c 69 § 2; 1989 c 431 § 60; 1983 c 183 § 4; 1980 c 172 § 8; 1965 c 8 § 43.19.1911. Prior: 1959 c 178 § 6.]

Intent—1996 c 69: "It is the intent of the legislature to preserve the integrity of the competitive bidding system for state contracts. This dictates that, after competitive bids have been opened, the agency must award the contract to the responsible bidder who submitted the lowest responsive bid and that only in limited compelling circumstances may the agency reject all bids and cancel the solicitation. Further, after opening the competitive bids, the agency may not reject all bids and enter into direct negotiations with the bidders to complete the acquisition." [1996 c 69 § 1.]

Severability—1989 c 431: See RCW 70.95.901.

Energy conservation—Legislative finding—Declaration—Purpose: RCW 43.19.668 and 43.19.669.

43.19.1939 Unlawful to offer, give, accept, benefits as inducement for or to refrain from bidding—Penalty. (Effective July 1, 2004.) (1) When any competitive bid or bids are to be or have been solicited, requested, or advertised for by the state under the provisions of RCW 43.19.190 through 43.19.1939, it shall be unlawful for any person acting for himself, herself, or as agent of another, to offer, give, or promise to give, any money, check, draft, property, or other thing of value, to another for the purpose of inducing such other person to refrain from submitting any bids upon such purchase or to enter into any agreement, understanding or arrangement whereby full and unrestricted competition for the securing of such public work will be suppressed, prevented, or eliminated; and it shall be unlawful for any person to solicit, accept or receive any money, check, draft, property, or other thing of value upon a promise or understanding, express or implied, that he or she individually or as an agent or officer of another will refrain from bidding upon such contract, or that he or she will on behalf of himself, herself, or such others submit or permit another to submit for him or her any bid upon such purchase in such sum as to eliminate full and unrestricted competition thereon.

(2) Any person violating this section is guilty of a misdemeanor. [2003 c 53 § 226; 1965 c 8 § 43.19.1939. Prior: 1959 c 178 § 20.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Competitive bidding on public works, suppression or collusion, penalty: RCW 9.18.120 through 9.18.150.

43.19.520 Purchase of products and services from entities serving or providing opportunities for disadvantaged or disabled persons—Intent. It is the intent of the legislature to encourage state agencies and departments to purchase products and/or services manufactured or provided by:

(1) Community rehabilitation programs of the department of social and health services which operate facilities serving disadvantaged persons and persons with disabilities and have achieved or consistently make progress towards the goal of enhancing opportunities for disadvantaged persons and persons with disabilities to maximize their opportunities for employment and career advancement, and increase the number employed and their wages; and

(2) Until December 31, 2007, businesses owned and operated by persons with disabilities that have achieved or consistently make progress towards the goal of enhancing opportunities for disadvantaged persons and persons with disabilities to maximize their opportunities for employment and career advancement, and increase the number employed and their wages. [2003 c 136 § 1; 1974 ex.s. c 40 § 1.]

43.19.525 Purchases from entities serving or providing opportunities for disadvantaged or disabled persons—Definitions. The definitions in this section apply throughout RCW 43.19.520 through 43.19.530 unless the context clearly requires otherwise.

(1) "Businesses owned and operated by persons with disabilities" means any for-profit business certified under chapter 39.19 RCW as being owned and controlled by persons who have been either:

(a) Determined by the department of social and health services to have a developmental disability, as defined in RCW 71A.10.020;

(b) Determined by an agency established under Title I of the federal vocational rehabilitation act to be or have been eligible for vocational rehabilitation services;

(c) Determined by the federal social security administration to be or have been eligible for either social security disability insurance or supplemental security income; or

(d) Determined by the United States department of veterans affairs to be or have been eligible for vocational rehabilitation services due to service-connected disabilities, under 38 U.S.C. Sec. 3100 et seq.

(2) "Community rehabilitation programs of the department of social and health services" means any entity that:

(a) Is registered as a nonprofit corporation with the secretary of state; and

(b) Is recognized by the department of social and health services, division of vocational rehabilitation as eligible to do business as a community rehabilitation program.

(3) "Vendor in good standing" means a business owned and operated by persons with disabilities or a community rehabilitation program, that has been determined under RCW 43.19.531 and 50.40.065 to meet the following criteria:

(a) Has not been in material breach of any quality or performance provision of any contract for the purchase of goods or services during the past thirty-six months; and

(b) Has achieved, or continues to work towards, the goal of enhancing opportunities for disadvantaged persons and persons with disabilities to maximize their opportunities for employment and career advancement, and increase the number employed and their wages, as determined by the governor's committee on disability issues and employment. [2003 c 136 § 2; 1974 ex.s. c 40 § 2.]

43.19.530 Purchases from entities serving or providing opportunities for disadvantaged or disabled persons—Authorized—Fair market price. The state agencies and departments are hereby authorized to purchase products and/or services manufactured or provided by:

(1) Community rehabilitation programs of the department of social and health services; and

(2) Until December 31, 2007, businesses owned and operated by persons with disabilities.

Such purchases shall be at the fair market price of such products and services as determined by the division of purchasing of the department of general administration. To determine the fair market price the division shall use the last comparable bid on the products and/or services or in the alternative the last price paid for the products and/or services. The increased cost of labor, materials, and other documented costs since the last comparable bid or the last price paid are additional cost factors which shall be considered in determining fair market price. Upon the establishment of the fair market price as provided for in this section the division is hereby empowered to negotiate directly for the purchase of products or services with officials in charge of the community rehabilitation programs of the department of social and health services and, until December 31, 2007, businesses owned and operated by persons with disabilities. [2003 c 136 § 3; 1977 ex.s. c 10 § 2; 1974 ex.s. c 40 § 3.]

43.19.531 Purchases from entities serving or providing opportunities for disadvantaged or disabled persons—Vendors in good standing—Notice to purchasing agents—Notice to vendors—Reports. (Expires December 31, 2007.) (1) The department of general administration shall identify in the department's vendor registry all vendors in good standing, as defined in RCW 43.19.525.

(2) The department of general administration shall annually, but no less often than once every fifteen months:

(a) Request that vendors in good standing update their information in the department's vendor registry including but not limited to the Washington state commodity codes for products and services that the vendors propose to offer to state agencies during at least the subsequent fifteen-month period;

(b) Disseminate the information obtained in response to the request made pursuant to (a) of this subsection to at least one purchasing official in each state agency; and

(c) Notify each vendor in good standing of all contracts for the purchase of goods and services by state agencies with respect to which the department of general administration anticipates either renewing or requesting bids or proposals within at least twelve months of the date of the notice.

(3) The department of general administration and the governor's committee on disability issues and employment shall jointly prepare and, on or before December 31, 2006, issue a report to the governor and the legislature. The report shall describe the activities authorized or required by chapter 136, Laws of 2003, and their effect on enhancing opportunities for disadvantaged persons and persons with disabilities to maximize their opportunities for employment and career advancement, and increase the number employed and their wages.

(4) This section expires December 31, 2007. [2003 c 136 § 4.]

43.19.533 Purchases from entities serving or providing opportunities for disadvantaged or disabled persons—Existing contracts not impaired—Solicitation of vendors in good standing. (1) Nothing in chapter 136, Laws of 2003 requires any state agency to take any action that interferes with or impairs an existing contract between any

state agency and any other party, including but not limited to any other state agency.

(2) Until December 31, 2007, except as provided under RCW 43.19.1906(2) for purchases up to three thousand dollars, RCW 43.19.534, and subsection (1) of this section, a state agency shall not purchase any product or service identified in the notice most recently disseminated by the department of general administration, as provided under RCW 43.19.531(2)(b), from other than a vendor in good standing until the state agency has included in the solicitation process at least one vendor in good standing supplying the goods or service needed by the agency, unless no vendor in good standing supplying the goods or service needed by the agency is available. [2003 c 136 § 5.]

43.19.642 Diesel-powered vehicles and equipment—Biodiesel fuel blends. (1) All state agencies are encouraged to use a fuel blend of twenty percent biodiesel and eighty percent petroleum diesel for use in diesel-powered vehicles and equipment.

(2) Effective June 1, 2006, for agencies complying with the ultra-low sulfur diesel mandate of the United States environmental protection agency for on-highway diesel fuel, agencies shall use biodiesel as an additive to ultra-low sulfur diesel for lubricity, provided that the use of a lubricity additive is warranted and that the use of biodiesel is comparable in performance and cost with other available lubricity additives. The amount of biodiesel added to the ultra-low sulfur diesel fuel shall be not less than two percent. [2003 c 17 § 2.]

Findings—2003 c 17: "The legislature recognizes that:

- (1) Biodiesel is less polluting than petroleum diesel;
- (2) Using biodiesel in neat form or blended with petroleum diesel significantly reduces air toxics and cancer-causing compounds as well as the soot associated with petroleum diesel exhaust;
- (3) Biodiesel degrades much faster than petroleum diesel;
- (4) Biodiesel is less toxic than petroleum fuels;
- (5) The United States environmental protection agency's new emission standards for petroleum diesel that take effect June 1, 2006, will require the addition of a lubricant to ultra-low sulfur diesel to counteract premature wear of injection pumps;
- (6) Biodiesel provides the needed lubricity to ultra-low sulfur diesel;
- (7) Biodiesel use in state-owned diesel-powered vehicles provides a means for the state to comply with the alternative fuel vehicle purchase requirements of the energy policy act of 1992, P.L. 102-486; and
- (8) The state is in a position to set an example of large scale use of biodiesel in diesel-powered vehicles and equipment." [2003 c 17 § 1.]

43.19.643 Diesel-powered vehicles and equipment—Biodiesel fuel blends—Definitions. The definitions in this section apply throughout RCW 43.19.642 unless the context clearly requires otherwise.

(1) "Biodiesel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

(2) "Ultra-low sulfur diesel" means petroleum diesel in which the sulfur content is not more than thirty parts per million. [2003 c 17 § 3.]

Findings—2003 c 17: See note following RCW 43.19.642.

43.19.651 Fuel cells and renewable or alternative energy sources. (1) When planning for the capital construc-

tion or renovation of a state facility, state agencies shall consider the utilization of fuel cells and renewable or alternative energy sources as a primary source of power for applications that require an uninterruptible power source.

(2) When planning the purchase of back-up or emergency power systems and remote power systems, state agencies shall consider the utilization of fuel cells and renewable or alternative energy sources instead of batteries or internal combustion engines.

(3) The director of general administration shall develop criteria by which state agencies can identify, evaluate, and develop potential fuel cell applications at state facilities.

(4) For the purposes of this section, "fuel cell" means an electrochemical reaction that generates electric energy by combining atoms of hydrogen and oxygen in the presence of a catalyst. [2003 c 340 § 1.]

Chapter 43.20 RCW

STATE BOARD OF HEALTH

Sections

- 43.20.145 Food service rules—Consideration of federal food code.
43.20.260 Review of water system plan, requirements—Municipal water suppliers, retail service.

43.20.145 Food service rules—Consideration of federal food code. The state board shall consider the most recent version of the United States food and drug administration's food code for the purpose of adopting rules for food service. [2003 c 65 § 2.]

Intent—2003 c 65: "The United States food and drug administration's food code incorporates the most recent food science and technology. The code is regularly updated in consultation with the states, the scientific community, and the food service industry. The food and drug administration's food code provides consistency for food service regulations, and it serves as a model for many states' food service rules. It is the legislature's intent that the state board of health use the United States food and drug administration's food code as guidance when developing food service rules for this state." [2003 c 65 § 1.]

43.20.260 Review of water system plan, requirements—Municipal water suppliers, retail service. In approving the water system plan of a public water system, the department shall ensure that water service to be provided by the system under the plan for any new industrial, commercial, or residential use is consistent with the requirements of any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county for the service area. A municipal water supplier, as defined in RCW 90.03.015, has a duty to provide retail water service within its retail service area if: (1) Its service can be available in a timely and reasonable manner; (2) the municipal water supplier has sufficient water rights to provide the service; (3) the municipal water supplier has sufficient capacity to serve the water in a safe and reliable manner as determined by the department of health; and (4) it is consistent with the requirements of any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county for the service area and, for

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water service by the water utility of a city or town, with the utility service extension ordinances of the city or town. [2003 1st sp.s. c 5 § 8.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

Chapter 43.20A RCW

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Sections

- 43.20A.890 Pathological gambling treatment program.

43.20A.890 Pathological gambling treatment program. (1) A program for the treatment of pathological gambling is established within the department of social and health services, to be administered by a qualified person who has training and experience in handling pathological gambling problems or the organization and administration of treatment services for persons suffering from pathological gambling problems. The department shall track program participation and client outcomes.

(2) To receive treatment under subsection (1) of this section, a person must:

(a) Need treatment for pathological gambling, but be unable to afford treatment; and

(b) Be targeted by the department of social and health services as to be most amenable to treatment.

(3) Treatment under this section is limited to the funds available to the department of social and health services.

(4) The department of social and health services shall report to the legislature by September 1, 2002, with a plan for implementing this section.

(5) The department of social and health services shall report to the legislature by November 1, 2003, on program participation and client outcomes. [2002 c 349 § 4. Formerly RCW 67.70.350.]

Chapter 43.20B RCW

REVENUE RECOVERY FOR DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Sections

- 43.20B.030 Overpayments and debts due the department—Time limit—Write-offs and compromises.

43.20B.030 Overpayments and debts due the department—Time limit—Write-offs and compromises. (1) Except as otherwise provided by law, there will be no collection of overpayments and other debts due the department after the expiration of six years from the date of notice of such overpayment or other debt unless the department has commenced recovery action in a court of law or unless an administrative remedy authorized by statute is in place. However, any amount due in a case thus extended shall cease to be a debt due the department at the expiration of ten years from the date of the notice of the overpayment or other debt unless a court-ordered remedy would be in effect for a longer period.

(2) The department, at any time, may accept offers of compromise of disputed claims or may grant partial or total write-off of any debt due the department if it is no longer

cost-effective to pursue. The department shall adopt rules establishing the considerations to be made in the granting or denial of a partial or total write-off of debts. [2003 c 207 § 1; 1997 c 130 § 5; 1989 c 78 § 4; 1987 c 283 § 6; 1979 c 141 § 308; 1965 ex.s. c 91 § 2. Formerly RCW 74.04.306.]

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

Chapter 43.21A RCW

DEPARTMENT OF ECOLOGY

Sections

43.21A.690 Cost-reimbursement agreements.

43.21A.690 Cost-reimbursement agreements. (1)

The department may enter into a written cost-reimbursement agreement with a permit applicant to recover from the applicant the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement.

(2) The written cost-reimbursement agreement shall be negotiated with the permit applicant. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement.

(3) The department may not enter into any new cost-reimbursement agreements on or after July 1, 2007. The department may continue to administer any cost-reimbursement agreement that was entered into before July 1, 2007, until the project is completed. [2003 c 70 § 1; 2000 c 251 § 2.]

Intent—2000 c 251: "It is the intent of the legislature to allow applicants for environmental permits for complex projects to compensate permitting agencies for providing environmental review through the voluntary

negotiation of cost-reimbursement agreements with the permitting agency. It is the further intent of the legislature that cost-reimbursement agreements for complex projects free permitting agency resources to focus on the review of small projects permits." [2000 c 251 § 1.]

Captions not law—2000 c 251: "Captions used in this act are not any part of the law." [2000 c 251 § 8.]

Effective date—2000 c 251: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2000]." [2000 c 251 § 9.]

Chapter 43.21B RCW

ENVIRONMENTAL HEARINGS OFFICE— POLLUTION CONTROL HEARINGS BOARD

Sections

43.21B.005 Environmental hearings office created—Composition—Administrative appeals judges—Contracts for services.
43.21B.110 Pollution control hearings board jurisdiction.

43.21B.005 Environmental hearings office created—Composition—Administrative appeals judges—Contracts for services. (1)

There is created an environmental hearings office of the state of Washington. The environmental hearings office shall consist of the pollution control hearings board created in RCW 43.21B.010, the forest practices appeals board created in RCW 76.09.210, the shorelines hearings board created in RCW 90.58.170, the environmental and land use hearings board created in chapter 43.21L RCW, and the hydraulic appeals board created in RCW 77.55.170. The chair of the pollution control hearings board shall be the chief executive officer of the environmental hearings office. Membership, powers, functions, and duties of the pollution control hearings board, the forest practices appeals board, the shorelines hearings board, and the hydraulic appeals board shall be as provided by law.

(2) The chief executive officer of the environmental hearings office may appoint an administrative appeals judge who shall possess the powers and duties conferred by the administrative procedure act, chapter 34.05 RCW, in cases before the boards comprising the office. The administrative appeals judge shall have a demonstrated knowledge of environmental law, and shall be admitted to the practice of law in the state of Washington. Additional administrative appeals judges may also be appointed by the chief executive officer on the same terms. Administrative appeals judges shall not be subject to chapter 41.06 RCW.

(3) The administrative appeals judges appointed under subsection (2) of this section are subject to discipline and termination, for cause, by the chief executive officer. Upon written request by the person so disciplined or terminated, the chief executive officer shall state the reasons for such action in writing. The person affected has a right of review by the superior court of Thurston county on petition for reinstatement or other remedy filed within thirty days of receipt of such written reasons.

(4) The chief executive officer may appoint, discharge, and fix the compensation of such administrative or clerical staff as may be necessary.

(5) The chief executive officer may also contract for required services. [2003 c 393 § 18; 2003 c 39 § 22; 1999 c 125 § 1; 1990 c 65 § 1; 1986 c 173 § 3; 1979 ex.s. c 47 § 2.]

Reviser's note: This section was amended by 2003 c 39 § 22 and by 2003 c 393 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Implementation—Effective date—2003 c 393: See RCW 43.21L.900 and 43.21L.901.

Intent—1979 ex.s. c 47: "It is the intent of the legislature to consolidate administratively the pollution control hearings board, the forest practices appeals board, and the shorelines hearings board into one agency of state government with minimum disturbance to these boards. It is not the intent of the legislature in consolidating these boards to change the existing membership of these boards.

All full-time employees of the pollution control hearings board and the full-time employee of the forest practices appeals board shall be full-time employees of the environmental hearings office without loss of rights. Property and obligations of these boards and the shorelines hearings board shall be property and obligations of the environmental hearings office." [1979 ex.s. c 47 § 1.]

43.21B.110 Pollution control hearings board jurisdiction. (1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Proceedings conducted by the department, or the department's designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(e) Appeals of decisions by the department as provided in chapter 43.21L RCW.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW. [2003 c 393 § 19; 2001 c 220 § 2. Prior: 1998 c 262 § 18; 1998 c 156 § 8; 1998 c 36 § 22; 1993 c 387 § 22; prior: 1992 c 174 § 13; 1992 c 73 § 1; 1989 c 175 § 102; 1987 c 109 § 10; 1970 ex.s. c 62 § 41.]

Implementation—Effective date—2003 c 393: See RCW 43.21L.900 and 43.21L.901.

Intent—2001 c 220: "The legislature intends to assure that appeals of department of ecology decisions regarding changes or transfers of water rights that are the subject of an ongoing general adjudication of water rights are governed by an appeals process that is efficient and eliminates unnecessary duplication, while fully preserving the rights of all affected parties. The legislature intends to address only the judicial review process for certain decisions of the pollution control hearings board when a general adjudication is being actively litigated. The legislature intends to fully preserve the role of the pollution control hearings board, except as specifically provided in this act." [2001 c 220 § 1.]

Construction—2001 c 220: "Nothing in this act shall be construed to affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under federal law. Nothing in this act is intended or shall be construed as affecting or modifying any existing right of a federally recognized Indian tribe to protect from impairment its federally reserved water rights in federal court." [2001 c 220 § 6.]

Effective date—2001 c 220: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2001]." [2001 c 220 § 7.]

Effective date—1998 c 262: See RCW 90.64.900.

Intent—1998 c 36: See RCW 15.54.265.

Short title—1998 c 36: See note following RCW 15.54.265.

Effective date—1993 c 387: See RCW 18.104.930.

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

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

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Order for compliance with oil spill contingency or prevention plan not subject to review by pollution control hearings board: RCW 90.56.270.

Chapter 43.21C RCW

STATE ENVIRONMENTAL POLICY

Sections

43.21C.0382	Application of RCW 43.21C.030(2)(c) to watershed restoration projects—Fish habitat enhancement projects.
43.21C.229	Infill development—Categorical exemptions from chapter.
43.21C.240	Project review under the growth management act.
43.21C.260	Certain actions not subject to RCW 43.21C.030(2)(c)—Threshold determination on a watershed analysis.

43.21C.0382 Application of RCW 43.21C.030(2)(c) to watershed restoration projects—Fish habitat enhancement projects. Decisions pertaining to watershed restora-

tion projects as defined in RCW 89.08.460 are not subject to the requirements of RCW 43.21C.030(2)(c). Decisions pertaining to fish habitat enhancement projects meeting the criteria of RCW 77.55.290(1) and being reviewed and approved according to the provisions of RCW 77.55.290 are not subject to the requirements of RCW 43.21C.030(2)(c). [2003 c 39 § 23; 1998 c 249 § 12; 1995 c 378 § 12.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.290.

43.21C.229 Infill development—Categorical exemptions from chapter. (1) In order to accommodate infill development and thereby realize the goals and policies of comprehensive plans adopted according to chapter 36.70A RCW, a city or county planning under RCW 36.70A.040 is authorized by this section to establish categorical exemptions from the requirements of this chapter. An exemption adopted under this section applies even if it differs from the categorical exemptions adopted by rule of the department under RCW 43.21C.110(1)(a). An exemption may be adopted by a city or county under this section if it meets the following criteria:

(a) It categorically exempts government action related to development that is new residential or mixed-use development proposed to fill in an urban growth area designated according to RCW 36.70A.110, where current density and intensity of use in the area is lower than called for in the goals and policies of the applicable comprehensive plan;

(b) It does not exempt government action related to development that would exceed the density or intensity of use called for in the goals and policies of the applicable comprehensive plan; and

(c) The city or county's applicable comprehensive plan was previously subjected to environmental analysis through an environmental impact statement under the requirements of this chapter prior to adoption.

(2) Any categorical exemption adopted by a city or county under this section shall be subject to the rules of the department adopted according to RCW 43.21C.110(1)(a) that provide exceptions to the use of categorical exemptions adopted by the department. [2003 c 298 § 1.]

Severability—2003 c 298: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 298 § 3.]

43.21C.240 Project review under the growth management act. (1) If the requirements of subsection (2) of this section are satisfied, a county, city, or town reviewing a project action shall determine that the requirements for environmental analysis, protection, and mitigation measures in the county, city, or town's development regulations and comprehensive plans adopted under chapter 36.70A RCW, and in other applicable local, state, or federal laws and rules provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action to which the requirements apply. Rules adopted by the department according to RCW 43.21C.110 regarding project specific impacts that may not have been adequately addressed apply to any determination made under this section. In these situations, in which all adverse environmental impacts will be mit-

igated below the level of significance as a result of mitigation measures included by changing, clarifying, or conditioning of the proposed action and/or regulatory requirements of development regulations adopted under chapter 36.70A RCW or other local, state, or federal laws, a determination of nonsignificance or a mitigated determination of nonsignificance is the proper threshold determination.

(2) A county, city, or town shall make the determination provided for in subsection (1) of this section if:

(a) In the course of project review, including any required environmental analysis, the local government considers the specific probable adverse environmental impacts of the proposed action and determines that these specific impacts are adequately addressed by the development regulations or other applicable requirements of the comprehensive plan, subarea plan element of the comprehensive plan, or other local, state, or federal rules or laws; and

(b) The local government bases or conditions its approval on compliance with these requirements or mitigation measures.

(3) If a county, city, or town's comprehensive plans, subarea plans, and development regulations adequately address a project's probable specific adverse environmental impacts, as determined under subsections (1) and (2) of this section, the county, city, or town shall not impose additional mitigation under this chapter during project review. Project review shall be integrated with environmental analysis under this chapter.

(4) A comprehensive plan, subarea plan, or development regulation shall be considered to adequately address an impact if the county, city, or town, through the planning and environmental review process under chapter 36.70A RCW and this chapter, has identified the specific adverse environmental impacts and:

(a) The impacts have been avoided or otherwise mitigated; or

(b) The legislative body of the county, city, or town has designated as acceptable certain levels of service, land use designations, development standards, or other land use planning required or allowed by chapter 36.70A RCW.

(5) In deciding whether a specific adverse environmental impact has been addressed by an existing rule or law of another agency with jurisdiction with environmental expertise with regard to a specific environmental impact, the county, city, or town shall consult orally or in writing with that agency and may expressly defer to that agency. In making this deferral, the county, city, or town shall base or condition its project approval on compliance with these other existing rules or laws.

(6) Nothing in this section limits the authority of an agency in its review or mitigation of a project to adopt or otherwise rely on environmental analyses and requirements under other laws, as provided by this chapter.

(7) This section shall apply only to a county, city, or town planning under RCW 36.70A.040. [2003 c 298 § 2; 1995 c 347 § 202.]

Severability—2003 c 298: See note following RCW 43.21C.229.

Findings—Intent—1995 c 347 § 202: "(1) The legislature finds in adopting RCW 43.21C.240 that:

(a) Comprehensive plans and development regulations adopted by counties, cities, and towns under chapter 36.70A RCW and environmental laws and rules adopted by the state and federal government have addressed a wide range of environmental subjects and impacts. These plans, regulations,

rules, and laws often provide environmental analysis and mitigation measures for project actions without the need for an environmental impact statement or further project mitigation.

(b) Existing plans, regulations, rules, or laws provide environmental analysis and measures that avoid or otherwise mitigate the probable specific adverse environmental impacts of proposed projects should be integrated with, and should not be duplicated by, environmental review under chapter 43.21C RCW.

(c) Proposed projects should continue to receive environmental review, which should be conducted in a manner that is integrated with and does not duplicate other requirements. Project-level environmental review should be used to: (i) Review and document consistency with comprehensive plans and development regulations; (ii) provide prompt and coordinated review by government agencies and the public on compliance with applicable environmental laws and plans, including mitigation for specific project impacts that have not been considered and addressed at the plan or development regulation level; and (iii) ensure accountability by local government to applicants and the public for requiring and implementing mitigation measures.

(d) When a project permit application is filed, an agency should analyze the proposal's environmental impacts, as required by applicable regulations and the environmental review process required by this chapter, in one project review process. The project review process should include land use, environmental, public, and governmental review, as provided by the applicable regulations and the rules adopted under this chapter, so that documents prepared under different requirements can be reviewed together by the public and other agencies. This project review will provide an agency with the information necessary to make a decision on the proposed project.

(e) Through this project review process: (i) If the applicable regulations require studies that adequately analyze all of the project's specific probable adverse environmental impacts, additional studies under this chapter will not be necessary on those impacts; (ii) if the applicable regulations require measures that adequately address such environmental impacts, additional measures would likewise not be required under this chapter; and (iii) if the applicable regulations do not adequately analyze or address a proposal's specific probable adverse environmental impacts, this chapter provides the authority and procedures for additional review.

(2) The legislature intends that a primary role of environmental review under chapter 43.21C RCW is to focus on the gaps and overlaps that may exist in applicable laws and requirements related to a proposed action. The review of project actions conducted by counties, cities, and towns planning under RCW 36.70A.040 should integrate environmental review with project review. Chapter 43.21C RCW should not be used as a substitute for other land use planning and environmental requirements." [1995 c 347 § 201.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

43.21C.260 Certain actions not subject to RCW 43.21C.030(2)(c)—Threshold determination on a watershed analysis. (1) Decisions pertaining to the following kinds of actions under chapter 4, Laws of 1999 sp. sess. are not subject to any procedural requirements implementing RCW 43.21C.030(2)(c): (a) Approval of forest road maintenance and abandonment plans under chapter 76.09 RCW and RCW 77.55.100; (b) approval by the department of natural resources of future timber harvest schedules involving east-side clear cuts under rules implementing chapter 76.09 RCW; (c) acquisitions of forest lands in stream channel migration zones under RCW 76.09.040; and (d) acquisitions of conservation easements pertaining to forest lands in riparian zones under RCW 76.13.120.

(2) For purposes of the department's threshold determination on a watershed analysis, the department shall not make a determination of significance unless the prescriptions themselves, compared to rules or prescriptions in place prior to the analysis, will cause probable significant adverse impact on elements of the environment other than those addressed in the watershed analysis process. Nothing in this subsection shall be construed to effect the outcome of pending litigation regarding the department's authority in making a threshold

determination on a watershed analysis. [2003 c 39 § 24; 1999 sp.s. c 4 § 1201.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Chapter 43.21K RCW

ENVIRONMENTAL EXCELLENCE PROGRAM AGREEMENTS

Sections

43.21K.010 Definitions.

43.21K.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "State, regional, or local agency" means an agency, board, department, authority, or commission that administers environmental laws.

(2) "Coordinating agency" means the state, regional, or local agency with the primary regulatory responsibility for the proposed environmental excellence program agreement. If multiple agencies have jurisdiction to administer state environmental laws affected by an environmental excellence agreement, the department of ecology shall designate or act as the coordinating agency.

(3) "Director" means the individual or body of individuals in whom the ultimate legal authority of an agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the director.

(4) "Environmental laws" means chapters 43.21A, 70.94, 70.95, 70.105, 70.119A, 77.55, 90.48, 90.52, 90.58, 90.64, and 90.71 RCW, and RCW 90.54.020(3)(b) and rules adopted under those chapters and section. The term environmental laws as used in this chapter does not include any provision of the Revised Code of Washington, or of any municipal ordinance or enactment, that regulates the selection of a location for a new facility.

(5) "Facility" means a site or activity that is regulated under any of the provisions of the environmental laws.

(6) "Legal requirement" includes any provision of an environmental law, rule, order, or permit.

(7) "Sponsor" means the owner or operator of a facility, including a municipal corporation, subject to regulation under the environmental laws of the state of Washington, or an authorized representative of the owner or operator, that submits a proposal for an environmental excellence program agreement.

(8) "Stakeholder" means a person who has a direct interest in the proposed environmental excellence program agreement or who represents a public interest in the proposed environmental excellence program agreement. Stakeholders may include communities near the project, local or state governments, permittees, businesses, environmental and other public interest groups, employees or employee representatives, or other persons. [2003 c 39 § 25; 1997 c 381 § 2.]

Chapter 43.21L RCW

ECONOMIC DEVELOPMENT PROJECTS—APPEALS AND REVIEWS OF PERMIT DECISIONS

Sections

- 43.21L.005 Purpose.
- 43.21L.010 Definitions.
- 43.21L.020 Exclusive review process—Exception—Procedural rules.
- 43.21L.030 Designation as qualifying project—Request for determination—Duties of office of permit assistance.
- 43.21L.040 Environmental and land use hearings board.
- 43.21L.050 Review proceedings—Commencement—Rules for filing and service.
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43.21L.005 Purpose. The purpose of this chapter is to reform the process of appeal and review of final permit decisions made by state agencies and local governments for qualifying economic development projects, by establishing uniform, expedited, and coordinated appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely review. The appeal process authorized in this chapter is intended to be the exclusive process for review of final decisions made by state agencies and local governments on permit applications for qualifying economic development projects, superseding other existing administrative board and judicial appeal procedures. [2003 c 393 § 1.]

43.21L.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the environmental and land use hearings board established in this chapter.

(2) "Final decision" means the highest and last decision available within the permit agency with respect to a permit application to the agency, including but not limited to decisions resulting from internal appeals available within the agency for the permit decision.

(3) "Participating permit agency" means any permit agency in which the applicant for a qualifying project has filed an application for an environmental or land use permit that is required for the qualifying project.

(4) "Permit" means any license, permit, certificate, certification, approval, compliance schedule, or other similar document pertaining to any regulatory or management program related to the protection, conservation, use of, or interference with the land, air, or water in the state. This document must be required to be obtained from a state agency or local government, including but not limited to counties, cities, and air agencies, prior to constructing or operating a qualifying project. Local government permits include, but are not limited to, subdivisions, binding site plans, planned unit developments, shoreline permits or other approvals under RCW 90.58.140, master plan approvals, site plan approvals, permits or approvals required by critical area ordinances, conditional use permits, variances, and site-specific rezones authorized by a comprehensive plan or subarea plan or other equivalent documents however titled or denominated. Local

government permits excluded under this definition include the adoption or amendment of a comprehensive plan, subarea plan, legislative actions on development regulations, certifications by local health districts of water and sewer availability, and building, grading, flood hazard, utility connection, and other nondiscretionary construction permits.

(5) "Permit agency" means any state agency or local government, including but not limited to air agencies, authorized by law to issue permits.

(6) "Qualifying project" means an economic development project that is (a) located within a county that in its entirety qualifies as a distressed area as defined in RCW 43.168.020(3) and a rural natural resources impact area as defined in RCW 43.160.020, (b) designed to provide at least thirty full-time year-round jobs, and (c) designated as a qualifying project by the office of permit assistance established under chapter 43.42 RCW if a request for a determination of such designation is made to the office by the project applicant as provided under this chapter. [2003 c 393 § 2.]

43.21L.020 Exclusive review process—Exception—Procedural rules. The appeal process authorized in this chapter shall, notwithstanding any other provisions of this code, be the exclusive process for review of the decisions made by participating permit agencies on permit applications for a qualifying project. This chapter shall not apply to applications for certification by the energy facility site evaluation council pursuant to chapter 80.50 RCW. The superior court civil rules and the rules of appellate procedure shall govern procedural matters for the judicial appeal process under this chapter to the extent that the rules are consistent with this chapter. [2003 c 393 § 3.]

43.21L.030 Designation as qualifying project—Request for determination—Duties of office of permit assistance. (1) Any applicant for a project that meets the criteria set forth in RCW 43.21L.010(6) (a) and (b) may use the process of appeal and review of this chapter by filing with the office of permit assistance a request for a determination of designation as a qualifying project as required in RCW 43.21L.010(6)(c). Such request shall be filed with the office no later than thirty days after the filing with a permit agency of the first application for a permit relating to the subject project that is filed after May 20, 2003. No requests may be filed with the office of permit assistance after December 31, 2010. The request shall include a list of permits that the project applicant reasonably believes will be required for the subject project.

(2) The office of permit assistance shall: (a) Respond to such request within thirty days after the filing of the request; and (b) if the office determines to designate the project as a qualifying project under RCW 43.21L.010(6)(c), contemporaneously provide a copy of the designation response to all permit agencies responsible for the project permits listed in the request. The office of permit assistance shall provide notice of any project designation to the code reviser for publication in the state register and to any persons that have filed with the office of permit assistance a general request for such notice. Nothing in this section creates an independent cause of action or affects any existing cause of action.

(3) All final decisions of a permit agency notified under subsection (2) of this section shall include the following sentence: Any appeal of this decision shall be in accordance with the provisions of this chapter. [2003 c 393 § 4.]

43.21L.040 Environmental and land use hearings board. (1) An environmental and land use hearings board is hereby established within the environmental hearings office created under RCW 43.21B.005. The environmental and land use hearings board shall be composed of six members, as provided in RCW 90.58.170. The chairperson of the pollution control hearings board shall be the chairperson of the environmental and land use hearings board. The members of the environmental and land use hearings board shall receive the compensation, travel, and subsistence expenses as provided in RCW 43.03.050 and 43.03.060.

(2) All proceedings before the board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may adopt. In all such proceedings, the board shall have all powers relating to the administration of oaths, issuance of subpoenas, and taking of depositions as set forth in RCW 34.05.446. The board shall publish any such rules and arrange for the reasonable distribution thereof. Failure to adopt such rules shall not deprive the board of jurisdiction nor relieve the board of the duty to hear petitions for review filed under this chapter. [2003 c 393 § 5.]

43.21L.050 Review proceedings—Commencement—Rules for filing and service. (1) Proceedings for review under this chapter shall be commenced by filing a petition with the environmental and land use hearings board. The board may adopt by rule procedures for filing and service that are consistent with this chapter.

(2) Such petition is barred, and the board may not grant review, unless the petition is timely filed with the board and timely served on the following persons who shall be parties to the review of the petition:

(a) The participating permit agencies, which for purposes of the petition shall be (i) if a state agency, the director thereof, and (ii) if a local government, the jurisdiction's corporate entity which shall be served as provided in RCW 4.28.080; and

(b) Each of the following persons if the person is not the petitioner:

(i) Each person identified by name and address as applicant in the application to the participating permit agencies;

(ii) Each person identified in project application documents as an owner of the property at issue or, if none, each person identified as a taxpayer for the property at issue in the records of the county assessor.

(3) The petition is timely if it is filed and served on all parties listed in subsection (2) of this section within twenty-one days of the issuance by the permit agency of the permit for the qualifying project.

(4) For the purposes of this section, the date on which a permit decision is issued is:

(a) Three days after a written decision is mailed by the permit agency to the project applicant or, if not mailed, the date on which the permit agency provides notice that a written decision is publicly available; or

(b) If (a) of this subsection does not apply, the date the decision is entered into the public record.

(5) Service on all parties shall be by personal service or by mail. Service by mail is effective on the date of mailing. Proof of service shall be by affidavit or declaration under penalty of perjury. [2003 c 393 § 6.]

43.21L.060 Standing. Standing to bring a petition under this chapter is limited to the following persons:

(1) The applicant and the owner of the property to which the permit decision is directed;

(2) Another person aggrieved or adversely affected by the permit decision, or who would be aggrieved or adversely affected by a reversal or modification of the permit decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:

(a) The permit decision has prejudiced or is likely to prejudice that person;

(b) That person's asserted interests are among those that the permit agency was required to consider when it made its permit decision;

(c) A decision of the board in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the permit decision; and

(d) The petitioner has exhausted his or her administrative remedies to the extent required by law;

(3) A participating permit agency under this chapter. [2003 c 393 § 7.]

43.21L.070 Petition requirements. A petition must set forth:

(1) The name and mailing address of the petitioner;

(2) The name and mailing address of the petitioner's attorney, if any;

(3) The name and mailing address of the permit agency whose permit is at issue, if any;

(4) A duplicate copy of the permit decision;

(5) Identification of each person to be made a party under this chapter;

(6) Facts demonstrating that the petitioner has standing to seek board review under this chapter;

(7) A separate and concise statement of each error alleged to have been committed;

(8) A concise statement of facts upon which the petitioner relies to sustain the statement of error; and

(9) A request for relief, specifying the type and extent of relief requested. [2003 c 393 § 8.]

43.21L.080 Affidavit certifying applications for permits—Initial hearing on jurisdictional and preliminary matters. (1) Within seven days after receipt of service of the petition filed pursuant to RCW 43.21L.050, the project applicant shall file with the board and serve on all parties an affidavit certifying all applications for permits that the project applicant has filed with participating permit agencies for the qualifying project, provided, however, that no permit may be included that has been issued and appealed to an administrative hearings board or to court prior to the date of service of the petition filed with the board under this chapter. The board

shall request verification from the participating agencies of the permit applications certified in the project applicant's affidavit and of the expected date for final decision on the permit applications. Filing of the affidavit shall toll the schedule for hearing by the board until twenty-one days after issuance of the final permit decision on the last permit required for the qualifying project that has been certified in the project applicant's affidavit and verified by a participating agency as applied for, unless the petition filed and served by the petitioner relates to the final permit decision.

(2) Within seven days after the expiration of the appeal period for the final permit decision on the last permit required for the qualifying project, the petitioner shall note an initial hearing on jurisdictional and other preliminary matters, and, if applicable, on other pretrial matters. This initial hearing shall be set no sooner than thirty-five days and not later than fifty days after the expiration of the appeal period for the final permit decision on the last permit required for the qualifying project.

(3) If petitions for review of more than one permit issued by participating permit agencies for a qualifying project are filed with the board, the board shall contemporaneously process all such petitions in accordance with the case schedule requirements set forth in chapter 393, Laws of 2003.

(4) The parties shall note all motions on jurisdictional and procedural issues for resolution at the initial hearing, except that a motion to allow discovery may be brought sooner.

(5) The defenses of lack of standing, untimely filing or service of the petition, lack of good faith or improper purpose in filing, and failure to join persons needed for just adjudication are waived if not raised by timely motion noted to be heard at the initial hearing, unless the board allows discovery on such issues.

(6) The petitioner shall move the board for an order at the initial hearing that sets the date on which the permit decision record or records of the applicable permit agency or agencies, if any, must be submitted, sets a briefing schedule, sets a discovery schedule if discovery is to be allowed, and schedules a hearing or hearings on the merits.

(7) The parties may waive the initial hearing by scheduling with the board a date for the hearing or hearings on the merits and filing a stipulated order that resolves the jurisdictional and procedural issues raised by the petition, including the issues identified in subsections (5) and (6) of this section.

(8) A party need not file an answer to a petition for review filed pursuant to RCW 43.21L.050. [2003 c 393 § 9.]

43.21L.090 Expedited review of petitions. The board shall provide expedited review of petitions filed under this chapter. Any matter reviewed on the decision record as provided in RCW 43.21L.120(1) must be set for hearing within sixty days of the date set for submitting the decision record of all participating permit agencies, absent a showing of good cause for a different date or a stipulation of the parties. Any matter reviewed de novo as provided in RCW 43.21L.120(3) must be set for hearing or trial no later than one hundred twenty days after the initial hearing date. The board shall issue a final decision and order within thirty days after the final hearing required in this section. [2003 c 393 § 10.]

43.21L.100 Stay or suspension of board action. (1) A petitioner or other party may request the board to stay or suspend an action by a participating permit agency or another party to implement the decision under review. The request must set forth a statement of grounds for the stay and the factual basis for the request.

(2) The board may grant a stay only if the board finds that: (a) The party requesting the stay is likely to prevail on the merits, (b) without the stay the party requesting it will suffer irreparable harm, (c) the grant of a stay will not substantially harm other parties to the proceedings, and (d) the request for the stay is timely in light of the circumstances of the case.

(3) The board may grant the request for a stay upon such terms and conditions, including the filing of security, as are necessary to prevent harm to other parties by the stay. [2003 c 393 § 11.]

43.21L.110 Decision record—Certified copy to board—Costs. (1) Within forty-five days after entry of an order to submit the decision record, where applicable, or within such a further time as the board allows or as the parties agree, each participating agency shall submit to the board a certified copy of the decision record for board review of the permit decision, except that the petitioner shall prepare at the petitioner's expense and submit a verbatim transcript of any hearings held on the matter.

(2) If the parties agree, or upon order of the board, the record shall be shortened or summarized to avoid reproduction and transcription of portions of the record that are duplicative or not relevant to the issues to be reviewed by the board.

(3) The petitioner shall pay the participating agency the cost of preparing the record before the participating agency submits the decision record to the board. Failure by the petitioner to timely pay the participating agency relieves the participating agency of responsibility to submit the record and is grounds for dismissal of the petition.

(4) If the relief sought by the petitioner is granted in whole or in part the board shall equitably assess the cost of preparing the record among the parties. In assessing costs the board shall take into account the extent to which each party prevailed and the reasonableness of the parties' conduct in agreeing or not agreeing to shorten or summarize the record under subsection (2) of this section. [2003 c 393 § 12.]

43.21L.120 Board review of permit decisions—Correction of errors and omissions—Pretrial discovery—Requests for records under chapter 42.17 RCW. (1) For all permit decisions being reviewed that were made by quasi-judicial bodies or permit agency officers who made factual determinations in support of the decisions, after the conduct of proceedings in which the parties had an opportunity consistent with due process to make records on the factual issues, board review of factual issues and the conclusions drawn from the factual issues shall be confined to the records created by the quasi-judicial bodies or permit agency officers, except as provided in subsections (2) through (4) of this section.

(2) For decisions described in subsection (1) of this section, the records may be supplemented by additional evidence only if the additional evidence relates to:

(a) Grounds for disqualification of a member of the body or of the officer that made the permit decision, when such grounds were unknown by the petitioner at the time the record was created;

(b) Matters that were improperly excluded from the record after being offered by a party to a permit decision proceeding; or

(c) Matters that were outside the jurisdiction of the body or officer that made the permit decision.

(3) For permit decisions other than those described in subsection (1) of this section, the board review of the permit decision shall be de novo on issues presented as error in the petition.

(4) The board may require or permit corrections of ministerial errors or inadvertent omissions in the preparation of the record.

(5)(a) The parties may not conduct pretrial discovery except with the prior permission of the board, which may be sought by motion, subject to any applicable rules adopted by the board, at any time after service of the petition. The board shall not grant permission unless the party requesting it makes a prima facie showing of need. The board shall strictly limit discovery to what is necessary for equitable and timely review of the issues.

(b) If the board allows the record to be supplemented, or in any de novo proceeding under subsection (3) of this section, the board shall require the parties to disclose before the hearing or trial on the merits the identity of witnesses and the specific evidence they intend to offer.

(c) If any party, or anyone acting on behalf of any party, requests records under chapter 42.17 RCW relating to the matters at issue, a copy of the request shall simultaneously be given to all other parties, and the board shall take such request into account in fashioning an equitable discovery order under this section. [2003 c 393 § 13.]

43.21L.130 Standards for granting relief—Action by board. (1) The board shall review the decision record and all such evidence as is permitted to supplement the record for review restricted to the decision record or is required for de novo review under RCW 43.21L.120. The board may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met. The standards are:

(a) The body or officer that made the permit decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

(b) The permit decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by an agency with expertise;

(c) The permit decision is not supported by evidence that is substantial when viewed in light of the whole record before the board;

(d) The permit decision is a clearly erroneous application of the law to the facts;

(e) The permit decision is outside the authority or jurisdiction of the body or officer making the decision; or

(f) The permit decision violates the constitutional rights of the party seeking relief.

(2) The board may affirm or reverse each and every permit decision under review or remand the decision for modification or further proceedings involving the permit agencies. [2003 c 393 § 14.]

43.21L.140 Judicial review. (1) In order to obtain judicial review of a final decision of the environmental and land use hearings board, a party to the board case as consolidated shall timely file a petition for judicial review in the superior court for Thurston county and timely serve the board and all parties to the proceedings before the board by personal service or by mail. Such petition is timely filed and served only if it is filed and served on all parties within thirty days after the filing of the final decision and order of the board. Service by mail shall be deemed effective on the date of deposit with the United States postal service. Any party may apply for direct review by the court of appeals. An application for direct review must be filed with the superior court within ten days after the filing of the petition for judicial review. In considering an application for direct review under this chapter, it shall be presumed that: (a) The qualifying project presents fundamental and urgent issues affecting the public interest which require a prompt determination, and (b) delay in obtaining a final and prompt determination of such issues would be detrimental to a party and the public interest.

(2) The presumption set forth in subsection (1) of this section shall require that the superior court certify the direct review not less than ten days, and not more than fifteen days, after the filing of the application therefore, unless, upon motion of a party with supporting excerpts from the record within ten days after the filing of such application, the superior court finds that: (a) The project is not a qualifying project, or (b) the project will not in fact provide new employment within the county in which the project is located. The court may make such findings upon a showing that said record contains clear, cogent, and convincing evidence to support such findings, which evidence has been testified to by at least one witness competent to testify on employment matters.

(3) A motion as set forth in subsection (2) of this section shall be heard within fourteen days after the filing of the motion and shall be confined to certified excerpts from the record, which any party may produce. It shall not be necessary to certify the entire record to the court for the purpose of hearing such motion.

(4) The court of appeals shall accept direct review of a case unless it finds that the superior court's certification under the standards contained in this section was clearly erroneous. Review by the court of appeals shall be restricted to the decision record of the permit agency and the board proceedings. All certified appeals shall be provided priority processing by the court of appeals. [2003 c 393 § 15.]

43.21L.900 Implementation—2003 c 393. The legislature does not intend to appropriate additional funds for the implementation of this act and expects all affected state agencies to implement this act's provisions within existing appropriations. [2003 c 393 § 24.]

43.21L.901 Effective date—2003 c 393. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 2003]. [2003 c 393 § 25.]

Chapter 43.22 RCW

DEPARTMENT OF LABOR AND INDUSTRIES

Sections

43.22.300	Compelling attendance of witnesses and testimony—Penalty. (<i>Effective July 1, 2004.</i>)
43.22.340	Manufactured homes, mobile homes, recreational vehicles—Safety rules—Compliance—Penalty. (<i>Effective July 1, 2004.</i>)
43.22.345	Repealed. (<i>Effective July 1, 2004.</i>)
43.22.434	Inspections and investigations necessary to adopt or enforce rules—Director's duties—Fees.

43.22.300 Compelling attendance of witnesses and testimony—Penalty. (*Effective July 1, 2004.*) (1) The director may issue subpoenas, administer oaths and take testimony in all matters relating to the duties herein required, such testimony to be taken in some suitable place in the vicinity to which testimony is applicable.

(2) Witnesses subpoenaed and testifying before any officer of the department shall be paid the same fees as witnesses before a superior court, such payment to be made from the funds of the department.

(3) Any person duly subpoenaed under the provisions of this section who willfully neglects or refuses to attend or testify at the time and place named in the subpoena, is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not exceeding thirty days. [2003 c 53 § 227; 1965 c 8 § 43.22.300. Prior: 1901 c 74 § 4; RRS § 7589.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

43.22.340 Manufactured homes, mobile homes, recreational vehicles—Safety rules—Compliance—Penalty. (*Effective July 1, 2004.*) (1) The director shall adopt specific rules for conversion vending units and medical units. The rules for conversion vending units and medical units shall be established to protect the occupants from fire; to address other life safety issues; and to ensure that the design and construction are capable of supporting any concentrated load of five hundred pounds or more.

(2) The director of labor and industries shall adopt rules governing safety of body and frame design, and the installation of plumbing, heating, and electrical equipment in mobile homes, commercial coaches, recreational vehicles, and/or park trailers: PROVIDED, That the director shall not prescribe or enforce rules governing the body and frame design of recreational vehicles and park trailers until after the American National Standards Institute shall have published standards and specifications upon this subject. The rules shall be reasonably consistent with recognized and accepted principles of safety for body and frame design and plumbing, heating, and electrical installations, in order to protect the health and safety of the people of this state from dangers inherent in the use of substandard and unsafe body and frame design,

construction, plumbing, heating, electrical, and other equipment and shall correlate with and, so far as practicable, conform to the then current standards and specifications of the American National Standards Institute standards A119.1 for mobile homes and commercial coaches, A119.2 for recreational vehicles, and A119.5 for park trailers.

(3) Except as provided in RCW 43.22.436, it shall be unlawful for any person to lease, sell or offer for sale, within this state, any mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, and/or park trailers manufactured after January 1, 1968, containing plumbing, heating, electrical, or other equipment, and after July 1, 1970, body and frame design or construction, unless such equipment, design, or construction meets the requirements of the rules provided for in this section.

(4) Any person violating this section is guilty of a misdemeanor. Each day upon which a violation occurs shall constitute a separate violation. [2003 c 53 § 228; 2002 c 268 § 6; 1999 c 22 § 2; 1995 c 280 § 2; 1970 ex.s. c 27 § 1; 1969 ex.s. c 229 § 1; 1967 c 157 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Purpose—Finding—Effective dates—2002 c 268: See notes following RCW 43.22.434.

43.22.345 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.22.434 Inspections and investigations necessary to adopt or enforce rules—Director's duties—Fees. (1) The director or the director's authorized representative may conduct such inspections, investigations, and audits as may be necessary to adopt or enforce manufactured and mobile home, commercial coach, conversion vending units, medical units, recreational vehicle, park trailer, factory built housing, and factory built commercial structure rules adopted under the authority of this chapter or to carry out the director's duties under this chapter.

(2) For purposes of enforcement of this chapter, persons duly designated by the director upon presenting appropriate credentials to the owner, operator, or agent in charge may:

(a) At reasonable times and without advance notice enter any factory, warehouse, or establishment in which manufactured and mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, park trailers, factory built housing, and factory built commercial structures are manufactured, stored, or held for sale;

(b) At reasonable times, within reasonable limits, and in a reasonable manner inspect any factory, warehouse, or establishment as required to comply with the standards adopted by the secretary of housing and urban development under the national manufactured home construction and safety standards act of 1974. Each inspection shall be commenced and completed with reasonable promptness; and

(c) As requested by an owner of a conversion vending unit or medical unit, inspect an alteration.

(3) For purposes of determining compliance with this chapter's permitting requirements for alterations of mobile and manufactured homes, the department may audit the records of a contractor as defined in chapter 18.27 RCW or

RCW 18.106.020(1) or an electrical contractor as defined in RCW 19.28.006 when the department has reason to believe that a violation of the permitting requirements has occurred. The department shall adopt rules implementing the auditing procedures. Information obtained from a contractor through an audit authorized by this subsection is confidential and not open to public inspection under chapter 42.17 RCW.

(4)(a) The department shall set a schedule of fees by rule which will cover the costs incurred by the department in the administration of RCW 43.22.335 through 43.22.490.

(b)(i) Until April 1, 2004, subject to (a) of this subsection, and for the purposes of implementing the pilot project approved by the mobile/manufactured home alteration task force, the department may adopt by rule a temporary state-wide fee schedule that decreases fees for mobile/manufactured home alteration permits and increases fees for factory-built housing and commercial structures plan review and inspection services. Under the temporary fee schedule, the department may waive mobile/manufactured home alteration permit fees for indigent permit applicants. The department may increase fees for factory-built housing and commercial structures plan review and inspection services in excess of the fiscal growth factor under chapter 43.135 RCW, if the increases are necessary to fund the cost of administering RCW 43.22.335 through 43.22.490. In no instance shall any fee that applies to the factory-built housing and commercial plan review and inspection services be increased in excess of forty percent.

(ii) Effective April 1, 2004, the department must adopt a new fee schedule that is the same as the fee schedule that was in effect immediately prior to the temporary fee schedule authorized in (b)(i) of this subsection. However, the new fee schedule must be adjusted by the fiscal growth factors not applied during the period that the temporary fee schedule was in effect. [2003 c 67 § 1. Prior: 2002 c 268 § 3; 2002 c 268 § 2; 2001 c 335 § 5; 1999 c 22 § 10; 1995 c 280 § 5; 1977 ex.s. c 21 § 5.]

Purpose—Finding—2002 c 268: "The purpose of this act is to implement the recommendations of the joint legislative task force created by chapter 335, Laws of 2001. The legislature recognizes the need to improve communications among mobile/manufactured homeowners, regulatory agencies, and other interested parties, to streamline the complex regulatory environment and inflexible enforcement system, and to promote problem-solving at an early stage. To assist in achieving these goals, the legislature:

(1) Encourages the relevant agencies to conduct a pilot project that tests an interagency coordinated system for processing permits for alterations or repairs of mobile and manufactured homes; and

(2) Recognizes the task force's work in reviewing agency rules related to alteration permit requirements and supports the task force's recommendations to the agency regarding those rules. The legislature finds that assisting consumers to understand when an alteration of a mobile or manufactured home is subject to a permit, and when it is not, will improve compliance with the agency rules and further the code's safety goals." [2002 c 268 § 1.]

Effective date—2002 c 268: "Sections 1, 2, and 4 through 9 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 29, 2002]." [2003 c 67 § 2; 2002 c 268 § 10.]

Application—2001 c 335: See note following RCW 43.22.335.

Construction—1977 ex.s. c 21: See note following RCW 43.22.431.

Chapter 43.30 RCW

DEPARTMENT OF NATURAL RESOURCES

Sections

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PART 1 GENERAL

43.30.040 Recodified as RCW 43.30.205.
43.30.050 Recodified as RCW 43.30.105.
43.30.055 Employees—Applicability of merit system.
43.30.060 Recodified as RCW 43.30.155.
43.30.095 Repealed.

PART 2 ORGANIZATION

43.30.105 Administrator of department.
43.30.115 Recodified as RCW 43.30.385.
43.30.125 Recodified as RCW 43.30.600.
43.30.130 Recodified as RCW 43.30.411.
43.30.135 Recodified as RCW 43.30.700.
43.30.138 Recodified as RCW 43.30.610.
43.30.141 Recodified as RCW 43.30.650.
43.30.145 Recodified as RCW 43.30.660.
43.30.150 Recodified as RCW 43.30.215.
43.30.155 Supervisor of natural resources—Appointment.
43.30.160 Recodified as RCW 43.30.421.
43.30.170 Recodified as RCW 43.30.430.
43.30.180 Recodified as RCW 43.30.440.

PART 3 BOARD OF NATURAL RESOURCES

43.30.205 Board of natural resources—Composition.
43.30.210 Recodified as RCW 43.30.510.
43.30.215 Powers and duties of board.
43.30.225 Board's duties—Meetings—Organization.
43.30.235 Records—Rules.
43.30.250 Recodified as RCW 43.30.520.
43.30.260 Recodified as RCW 43.30.530.
43.30.265 Recodified as RCW 79.17.210.
43.30.270 Recodified as RCW 43.30.055.
43.30.280 Recodified as RCW 43.30.305.
43.30.290 Recodified as RCW 43.30.315.
43.30.300 Recodified as RCW 79.10.140.

PART 4 FUNDS

43.30.305 Natural resources equipment fund—Authorized—Purposes—Expenditure.
43.30.310 Recodified as RCW 43.12.065.
43.30.315 Natural resources equipment fund—Reimbursement.
43.30.325 Deposit of money and fees—Natural resources deposit fund—Repayments.
43.30.340 Federal funds for management and protection of forests, forest and range lands.
43.30.345 Federal funds for management and protection of forests, forest and range lands—Disbursement of funds.
43.30.350 Recodified as RCW 43.30.620.
43.30.355 Recodified as RCW 43.30.460.
43.30.385 Park land trust revolving fund.
43.30.390 Recodified as RCW 79.10.340.
43.30.400 Recodified as RCW 43.30.470.
43.30.410 Recodified as RCW 43.30.480.

PART 5 POWERS AND DUTIES—GENERAL

43.30.411 Department to exercise powers and duties—Indemnification of private parties.
43.30.420 Recodified as RCW 43.30.490.
43.30.421 Administrator.
43.30.430 Supervisor.
43.30.440 Oaths may be administered by supervisor and deputies.
43.30.450 Right of entry in course of duty by representatives of department.
43.30.460 Department to participate in and administer federal Safe Drinking Water Act in conjunction with other departments.
43.30.470 Senior environmental corps.
43.30.480 Watershed restoration projects—Permit processing.
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43.30.510 Administrator may designate substitute for member of board, commission, etc.
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PART 6
DUTIES AND POWERS—MINING AND GEOLOGY

43.30.600	State geological survey.
43.30.610	Mining.
43.30.620	Department of natural resources to exercise mining and geology powers and duties of department of conservation.
43.30.630	Sealing of open holes and mine shafts.
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43.30.700	Powers of department—Forested lands.
43.30.710	Sale or exchange of tree seedling stock and tree seed—Provision of stock or seed to local governments or nonprofit organizations.
43.30.720	Use of proceeds specified.
43.30.800	Olympic natural resources center—Finding, intent.
43.30.810	Olympic natural resources center—Purpose, programs.
43.30.820	Olympic natural resources center—Administration.
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PART 1
GENERAL

43.30.040 Recodified as RCW 43.30.205. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.050 Recodified as RCW 43.30.105. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.055 Employees—Applicability of merit system. All employees of the department shall be governed by any merit system which is now or may hereafter be enacted by law governing such employment. [2003 c 334 § 119; 1965 c 8 § 43.30.270. Prior: 1957 c 38 § 27. Formerly RCW 43.30.270.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.30.060 Recodified as RCW 43.30.155. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

PART 2
ORGANIZATION

43.30.105 Administrator of department. The commissioner of public lands shall be the administrator of the department. [1965 c 8 § 43.30.050. Prior: 1957 c 38 § 5. Formerly RCW 43.30.050.]

43.30.115 Recodified as RCW 43.30.385. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.125 Recodified as RCW 43.30.600. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.130 Recodified as RCW 43.30.411. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.135 Recodified as RCW 43.30.700. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.138 Recodified as RCW 43.30.610. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.141 Recodified as RCW 43.30.650. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.145 Recodified as RCW 43.30.660. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.150 Recodified as RCW 43.30.215. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.155 Supervisor of natural resources—Appointment. The supervisor shall be appointed by the administrator with the advice and consent of the board. The supervisor shall serve at the pleasure of the administrator. [2003 c 334 § 105; 1965 c 8 § 43.30.060. Prior: 1957 c 38 § 6. Formerly RCW 43.30.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.30.160 Recodified as RCW 43.30.421. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.170 Recodified as RCW 43.30.430. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.180 Recodified as RCW 43.30.440. See Supplementary Table of Disposition of Former RCW Sections, this volume.

PART 3
BOARD OF NATURAL RESOURCES

43.30.205 Board of natural resources—Composition. The board shall consist of six members: The governor or the governor's designee, the superintendent of public instruction, the commissioner of public lands, the dean of the college of forest resources of the University of Washington, the dean of the college of agriculture of Washington State University, and a representative of those counties that contain state forest lands acquired or transferred under RCW 79.22.010, 79.22.040, and 79.22.020.

The county representative shall be selected by the legislative authorities of those counties that contain state forest lands acquired or transferred under RCW 79.22.010, 79.22.040, and 79.22.020. In the selection of the county rep-

representative, each participating county shall have one vote. The Washington state association of counties shall conduct a meeting for the purpose of making the selection and shall notify the board of the selection. The county representative shall be a duly elected member of a county legislative authority who shall serve a term of four years unless the representative should leave office for any reason. The initial term shall begin on July 1, 1986. [2003 c 334 § 104; 1986 c 227 § 1; 1979 ex.s. c 57 § 9; 1965 c 8 § 43.30.040. Prior: 1957 c 38 § 4. Formerly RCW 43.30.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.30.210 Recodified as RCW 43.30.510. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.215 Powers and duties of board. The board shall:

(1) Perform duties relating to appraisal, appeal, approval, and hearing functions as provided by law;

(2) Establish policies to ensure that the acquisition, management, and disposition of all lands and resources within the department's jurisdiction are based on sound principles designed to achieve the maximum effective development and use of such lands and resources consistent with laws applicable thereto;

(3) Constitute the board of appraisers provided for in Article 16, section 2 of the state Constitution;

(4) Constitute the commission on harbor lines provided for in Article 15, section 1 of the state Constitution as amended;

(5) Adopt and enforce rules as may be deemed necessary and proper for carrying out the powers, duties, and functions imposed upon it by this chapter. [2003 c 334 § 112; 1988 c 128 § 10; 1986 c 227 § 2; 1975-'76 2nd ex.s. c 34 § 107; 1965 c 8 § 43.30.150. Prior: 1957 c 38 § 15. Formerly RCW 43.30.150.]

Intent—2003 c 334: See note following RCW 79.02.010.

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

43.30.225 Board's duties—Meetings—Organization. The board shall:

(1) Hold regular monthly meetings at such times as it may determine, and such special meetings as may be called by the chair or majority of the board membership upon written notice to all members. However, the board may dispense with any regular meetings, except that the board shall not dispense with two consecutive regular meetings;

(2) Employ and fix the compensation of technical, clerical, and other personnel as deemed necessary for the performance of its duties;

(3) Appoint such advisory committees as deemed appropriate to advise and assist it to more effectively discharge its responsibilities. The members of such committees shall receive no compensation, but are entitled to reimbursement for travel expenses in attending committee meetings in accordance with RCW 43.03.050 and 43.03.060;

(4) Meet and organize on the third Tuesday of each January following a state general election at which the elected ex

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officio members of the board are elected. The board shall select its own chair. The commissioner of public lands shall be the secretary of the board. The board may select a vice-chair from among its members. In the absence of the chair and vice-chair at a meeting of the board, the members shall elect a chair pro tem. No action shall be taken by the board except by the agreement of at least four members. The department and the board shall maintain its principal office at the capital;

(5) Be entitled to reimbursement individually for travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060. [2003 c 334 § 113.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.30.235 Records—Rules. (1) The board shall keep its records in the office of the commissioner, and shall keep a full and complete record of its proceedings relating to the appraisal of lands granted for educational purposes.

(2) Records for all forest lands acquired by the state and any lands owned by the state and designated as such by the department must be maintained by the department as provided in RCW 79.22.030.

(3) The board shall have the power, from time to time, to make and enforce rules for carrying out the provisions of this title relating to its duties not inconsistent with law. [2003 c 334 § 304; 1988 c 128 § 51; 1982 1st ex.s. c 21 § 149; 1927 c 255 § 13; RRS § 7797-13. Formerly RCW 79.01.052, 43.65.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

43.30.250 Recodified as RCW 43.30.520. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.260 Recodified as RCW 43.30.530. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.265 Recodified as RCW 79.17.210. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.270 Recodified as RCW 43.30.055. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.280 Recodified as RCW 43.30.305. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.290 Recodified as RCW 43.30.315. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.300 Recodified as RCW 79.10.140. See Supplementary Table of Disposition of Former RCW Sections, this volume.

PART 4
FUNDS

43.30.305 Natural resources equipment fund—Authorized—Purposes—Expenditure. A revolving fund in the custody of the state treasurer, to be known as the natural resources equipment fund, is hereby created to be expended by the department without appropriation solely for the purchase of equipment, machinery, and supplies for the use of the department and for the payment of the costs of repair and maintenance of such equipment, machinery, and supplies. [2003 c 334 § 120; 1965 c 8 § 43.30.280. Prior: 1963 c 141 § 1. Formerly RCW 43.30.280.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.30.310 Recodified as RCW 43.12.065. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.315 Natural resources equipment fund—Reimbursement. The natural resources equipment fund shall be reimbursed by the department for all moneys expended from it. Reimbursement may be prorated over the useful life of the equipment, machinery, and supplies purchased by moneys from the fund. Reimbursement may be made from moneys appropriated or otherwise available to the department for the purchase, repair, and maintenance of equipment, machinery, and supplies and shall be prorated on the basis of relative benefit to the programs. For the purpose of making reimbursement, all existing and hereafter acquired equipment, machinery, and supplies of the department shall be deemed to have been purchased from the natural resources equipment fund. [2003 c 334 § 121; 1965 c 8 § 43.30.290. Prior: 1963 c 141 § 2. Formerly RCW 43.30.290.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.30.325 Deposit of money and fees—Natural resources deposit fund—Repayments. (1) The department shall deposit daily all moneys and fees collected or received by the commissioner and the department in the discharge of official duties as follows:

(a) The department shall pay moneys received as advance payments, deposits, and security from successful bidders under RCW 79.15.100 and 79.11.150 to the state treasurer for deposit under (b) of this subsection. Moneys received from unsuccessful bidders shall be returned as provided in RCW 79.11.150;

(b) The department shall pay all moneys received on behalf of a trust fund or account to the state treasurer for deposit in the trust fund or account after making the deduction authorized under RCW 79.22.040, 79.22.050, 79.64.040, and 79.15.520;

(c) The natural resources deposit fund is hereby created. The state treasurer is the custodian of the fund. All moneys or sums which remain in the custody of the commissioner of public lands awaiting disposition or where the final disposition is not known shall be deposited into the natural resources deposit fund. Disbursement from the fund shall be on the authorization of the commissioner or the commissioner's designee, without necessity of appropriation;

(d) If it is required by law that the department repay moneys disbursed under (a) and (b) of this subsection the state treasurer shall transfer such moneys, without necessity of appropriation, to the department upon demand by the department from those trusts and accounts originally receiving the moneys.

(2) Money shall not be deemed to have been paid to the state upon any sale or lease of land until it has been paid to the state treasurer. [2003 c 334 § 125; 2003 c 313 § 9; 1981 2nd ex.s. c 4 § 1; 1965 c 8 § 43.85.130. Prior: (i) 1911 c 51 § 1; RRS § 5555. (ii) 1909 c 133 § 1, part; 1907 c 96 § 1, part; RRS § 5501, part. Formerly RCW 43.85.130.]

Reviser's note: This section was amended by 2003 c 313 § 9 and by 2003 c 334 § 125, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Moneys received and invested prior to December 1, 1981: "Moneys received as deposits from successful bidders, advance payments, and security under RCW 79.01.132 and 79.01.204, which have been invested prior to December 1, 1981, in time deposits, shall be subject to RCW 43.85.130 as each time deposit matures." [1981 2nd ex.s. c 4 § 2.]

Severability—1981 2nd ex.s. c 4: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 2nd ex.s. c 4 § 16.]

43.30.340 Federal funds for management and protection of forests, forest and range lands. The department is authorized to receive funds from the federal government for cooperative work in management and protection of forests and forest and range lands as may be authorized by any act of Congress which is now, or may hereafter be, adopted for such purposes. [2003 c 334 § 202; 1988 c 128 § 13; 1957 c 78 § 1. Formerly RCW 76.01.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.30.345 Federal funds for management and protection of forests, forest and range lands—Disbursement of funds. The department is authorized to disburse such funds, together with any funds which may be appropriated or contributed from any source for such purposes, on management and protection of forests and forest and range lands. [2003 c 334 § 203; 1988 c 128 § 14; 1957 c 78 § 2. Formerly RCW 76.01.050.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.30.350 Recodified as RCW 43.30.620. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.355 Recodified as RCW 43.30.460. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.385 Park land trust revolving fund. The park land trust revolving fund is to be utilized by the department for the exclusive purpose of acquiring real property, including all reasonable costs associated with these acquisitions, as a replacement for the property transferred to the state parks

and recreation commission, as directed by the legislature in order to maintain the land base of the affected trusts or under RCW 79.22.060. Proceeds from transfers of real property to the state parks and recreation commission or other proceeds identified from transfers of real property as directed by the legislature shall be deposited in this fund. Disbursement from the park land trust revolving fund to acquire replacement property shall be on the authorization of the department. In order to maintain an effective expenditure and revenue control, the park land trust revolving fund is subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund. [2003 c 334 § 106; 2000 c 148 § 4; 1995 c 211 § 5. Formerly RCW 43.30.115.]

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Intent—Effective date—Severability—1995 c 211: See notes following RCW 79A.05.070.

43.30.390 Recodified as RCW 79.10.340. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.400 Recodified as RCW 43.30.470. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.410 Recodified as RCW 43.30.480. See Supplementary Table of Disposition of Former RCW Sections, this volume.

PART 5 POWERS AND DUTIES—GENERAL

43.30.411 Department to exercise powers and duties—Indemnification of private parties. (1) The department shall exercise all of the powers, duties, and functions now vested in the commissioner of public lands and such powers, duties, and functions are hereby transferred to the department. However, nothing contained in this section shall effect the commissioner's ex officio membership on any committee provided by law.

(2)(a) Except as provided in (b) of this subsection, and subject to the limitations of RCW 4.24.115, the department, in the exercise of any of its powers, may include in any authorized contract a provision for indemnifying the other contracting party against loss or damages.

(b) When executing a right of way or easement contract over private land that involves forest management activities, the department shall indemnify the private landowner if the landowner does not receive a direct benefit from the contract. [2003 c 334 § 108; 2003 c 312 § 1; 1965 c 8 § 43.30.130. Prior: 1957 c 38 § 13. Formerly RCW 43.30.130.]

Reviser's note: This section was amended by 2003 c 312 § 1 and by 2003 c 334 § 108, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2003 c 334: See note following RCW 79.02.010.

43.30.420 Recodified as RCW 43.30.490. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.30.421 Administrator. The administrator shall have responsibility for performance of all the powers, duties, and functions of the department except those specifically assigned to the board. In the performance of these powers, duties, and functions, the administrator shall conform to policies established by the board, and may employ and fix the compensation of such personnel as may be required to perform the duties of this office. [2003 c 334 § 114; 1965 c 8 § 43.30.160. Prior: 1957 c 38 § 16. Formerly RCW 43.30.160.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.30.430 Supervisor. The supervisor shall:

- (1) Be charged with the direct supervision of the department's activities as delegated by the administrator;
- (2) Perform his or her duties in conformance with the policies established by the board;
- (3) Organize the department, with approval of the administrator, into such subordinate divisions as the supervisor deems appropriate for the conduct of its operations;
- (4) Employ and fix the compensation of such technical, clerical, and other personnel as may be required to carry on activities under his or her supervision;
- (5) Delegate by order any assigned powers, duties, and functions to one or more deputies or assistants, as desired;
- (6) Furnish before entering upon the duties of this position a surety bond payable to the state in such amount as may be determined by the board, conditioned for the faithful performance of duties and for accounting of all moneys and property of the state that may come into possession of or under the control of this position. [2003 c 334 § 115; 1965 c 8 § 43.30.170. Prior: 1957 c 38 § 17. Formerly RCW 43.30.170.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.30.440 Oaths may be administered by supervisor and deputies. The supervisor and duly authorized deputies may administer oaths. [2003 c 334 § 116; 1965 c 8 § 43.30.180. Prior: 1957 c 38 § 18. Formerly RCW 43.30.180.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.30.450 Right of entry in course of duty by representatives of department. Any authorized assistants, employees, agents, appointees, or representatives of the department may, in the course of their inspection and enforcement duties as provided for in chapters 76.04, 76.06, 76.09, and 76.36 RCW, enter upon any lands, real estate, waters, or premises except the dwelling house or appurtenant buildings in this state whether public or private and remain thereon while performing such duties. Similar entry by the department may be made for the purpose of making examinations, locations, surveys, and/or appraisals of all lands under the management and jurisdiction of the department; or for making examinations, appraisals and, after five days' written notice to the landowner, making surveys for the purpose of possible acquisition of property to provide public access to public lands. In no event other than an emergency such as fire fighting shall motor vehicles be used to cross a field customarily cultivated, without prior consent of the owner.

None of the entries herein provided for shall constitute trespass, but nothing contained herein shall limit or diminish any liability which would otherwise exist as a result of the acts or omissions of the department or its representatives. [2003 c 334 § 204; 2000 c 11 § 1; 1983 c 3 § 194; 1971 ex.s. c 49 § 1; 1963 c 100 § 1. Formerly RCW 76.01.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.30.460 Department to participate in and administer federal Safe Drinking Water Act in conjunction with other departments. See RCW 43.21A.445.

43.30.470 Senior environmental corps. (1) The department has the following powers and duties in carrying out its responsibilities for the senior environmental corps created under RCW 43.63A.247:

- (a) Appoint a representative to the coordinating council;
- (b) Develop project proposals;
- (c) Administer project activities within the agency;
- (d) Develop appropriate procedures for the use of volunteers;
- (e) Provide project orientation, technical training, safety training, equipment, and supplies to carry out project activities;
- (f) Maintain project records and provide project reports;
- (g) Apply for and accept grants or contributions for corps-approved projects; and
- (h) With the approval of the council, enter into memoranda of understanding and cooperative agreements with federal, state, and local agencies to carry out corps-approved projects.

(2) The department shall not use corps volunteers to displace currently employed workers. [2003 c 334 § 124; 1992 c 63 § 10. Formerly RCW 43.30.400.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—1992 c 63: See note following RCW 43.63A.240.

43.30.480 Watershed restoration projects—Permit processing. A permit required by the department for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. [1995 c 378 § 13. Formerly RCW 43.30.410.]

43.30.490 Cost-reimbursement agreements. (1) The department may enter into a written cost-reimbursement agreement with a permit or lease applicant to recover from the applicant the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit or lease processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement. An applicant for a lease issued under chapter 79.90 RCW may not enter into a cost-reimbursement agreement under this section for projects conducted under the lease.

(2) The written cost-reimbursement agreement shall be negotiated with the permit or lease applicant. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the department to contract with an

independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit or lease. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits or leases, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits or leases not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement.

(3) The department may not enter into any new cost-reimbursement agreements on or after July 1, 2007. The department may continue to administer any cost-reimbursement agreement that was entered into before July 1, 2007, until the project is completed. [2003 c 70 § 2; 2000 c 251 § 3. Formerly RCW 43.30.420.]

Intent—Captions not law—Effective date—2000 c 251: See notes following RCW 43.21A.690.

43.30.510 Administrator may designate substitute for member of board, commission, etc. When any officer, member, or employee of an agency abolished by provisions of this chapter is, under provisions of existing law, designated as a member ex officio of another board, commission, committee, or other agency, and no provision is made in this chapter with respect to a substitute, the administrator shall designate the officer or other person to serve hereafter in that capacity. [1965 c 8 § 43.30.210. Prior: 1957 c 38 § 21. Formerly RCW 43.30.210.]

43.30.520 Property transactions, restrictive conveyances, highway purpose—Existing law to continue. Nothing in this chapter shall be interpreted as changing existing law with respect to:

(1) Property given to a state agency on restrictive conveyance with provision for reversion to the grantor or for the vesting of title in another if and when such property is not used by the agency concerned for the stipulated purposes;

(2) Land or other property acquired by any state agency for highway purposes. [1965 c 8 § 43.30.250. Prior: 1957 c 38 § 25. Formerly RCW 43.30.250.]

43.30.530 Real property—Services and facilities available to other state agencies, cost. Upon request by any state agency vested by law with the authority to acquire or manage real property, the department shall make available to

such agency the facilities and services of the department with respect to such acquisition or management, upon condition that such agency reimburse the department for the costs of such services. [2003 c 334 § 117; 1965 c 8 § 43.30.260. Prior: 1957 c 38 § 26. Formerly RCW 43.30.260.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 6

DUTIES AND POWERS—MINING AND GEOLOGY

43.30.600 State geological survey. The department shall assume full charge and supervision of the state geological survey and perform such other duties as may be prescribed by law. [2003 c 334 § 107; 1988 c 127 § 3; 1965 c 8 § 43.21.050. Prior: 1921 c 7 § 69; RRS § 10827. Formerly RCW 43.30.125, 43.21.050.]

Intent—2003 c 334: See note following RCW 79.02.010.

Mining survey reports, forwarding to: RCW 78.06.030.

Provisions relating to geological survey: Chapter 43.92 RCW, RCW 43.27A.130.

43.30.610 Mining. The department shall:

(1) Collect, compile, publish, and disseminate statistics and information relating to mining, milling, and metallurgy;

(2) Make special studies of the mineral resources and industries of the state;

(3) Collect and assemble an exhibit of mineral specimens, both metallic and nonmetallic, especially those of economic and commercial importance; such collection to constitute the museum of mining and mineral development;

(4) Collect and assemble a library pertaining to mining, milling, and metallurgy of books, reports, drawings, tracings, and maps and other information relating to the mineral industry and the arts and sciences of mining and metallurgy;

(5) Make a collection of models, drawings, and descriptions of the mechanical appliances used in mining and metallurgical processes;

(6) Issue bulletins and reports with illustrations and maps with detailed description of the natural mineral resources of the state;

(7) Preserve and maintain such collections and library open to the public for reference and examination and maintain a bureau of general information concerning the mineral and mining industry of the state, and issue from time to time at cost of publication and distribution such bulletins as may be deemed advisable relating to the statistics and technology of minerals and the mining industry;

(8) Make determinative examinations of ores and minerals, and consider other scientific and economical problems relating to mining and metallurgy;

(9) Cooperate with all departments of the state government, state educational institutions, the United States geological survey, and the United States bureau of mines. All departments of the state government and educational institutions shall render full cooperation to the department in compiling useful and scientific information relating to the mineral industry within and without the state, without cost to the department. [2003 c 334 § 109; 1988 c 127 § 4; 1965 c 8 § 43.21.070. Prior: 1935 c 142 § 2; RRS § 8614-2. Formerly RCW 43.30.138, 43.21.070.]

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Intent—2003 c 334: See note following RCW 79.02.010.

Mining survey reports forwarded to: RCW 78.06.030.

43.30.620 Department of natural resources to exercise mining and geology powers and duties of department of conservation. See RCW 43.27A.120 and 43.27A.130.

43.30.630 Sealing of open holes and mine shafts. The department shall work with federal officials and private mine owners to ensure the prompt sealing of open holes and mine shafts that constitute a threat to safety. [2003 c 334 § 101; 1985 c 459 § 7. Formerly RCW 43.12.025.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—1985 c 459: See note following RCW 79.01.668.

43.30.640 Mine owners—Maps of property surface and underground workings—Filing. The owner of each mine shall make a map of the surface of the property. The owner of each active mine shall make a map of the underground workings. All maps shall be filed with the department. The department shall establish by rule the scale and contents required for the maps. [2003 c 334 § 102; 1985 c 459 § 8. Formerly RCW 43.12.035.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—1985 c 459: See note following RCW 79.01.668.

43.30.650 Gifts and bequests relating to mining. The department may receive on behalf of the state, for the benefit of mining and mineral development, gifts, bequests, devises, and legacies of real or personal property and use them in accordance with the wishes of the donors and manage, use, and dispose of them for the best interests of mining and mineral development. [2003 c 334 § 110; 1988 c 127 § 5; 1965 c 8 § 43.21.080. Prior: 1935 c 142 § 3; RRS § 8614-3. Formerly RCW 43.30.141, 43.21.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.30.660 Collection of minerals for exhibition. The department may, from time to time, prepare special collections of ores and minerals representative of the mineral industry of the state to be displayed or used at any world fair, exposition, mining congress, or state exhibition, in order to promote information relating to the mineral wealth of the state. [2003 c 334 § 111; 1988 c 127 § 6; 1965 c 8 § 43.21.090. Prior: 1935 c 142 § 4; RRS § 8614-4. Formerly RCW 43.30.145, 43.21.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

43.30.700 Powers of department—Forested lands.

(1) The department may:

(a) Inquire into the production, quality, and quantity of second growth timber to ascertain conditions for reforestation; and

(b) Publish information pertaining to forestry and forest products which it considers of benefit to the people of the state.

(2) The department shall:

(a) Collect information through investigation by its employees, on forest lands owned by the state, including:

(i) Condition of the lands;

- (ii) Forest fire damage;
- (iii) Illegal cutting, trespassing, or thefts; and
- (iv) The number of acres and the value of the timber that is cut and removed each year, to determine which state lands are valuable chiefly for growing timber;

(b) Prepare maps of each timbered county showing state land therein; and

(c) Protect state land as much as is practical and feasible from fire, trespass, theft, and the illegal cutting of timber.

(3) When the department considers it to be in the best interest of the state, it may cooperate with any agency of another state, the United States or any agency thereof, the Dominion of Canada or any agency or province thereof, and any county, town, corporation, individual, or Indian tribe within the state of Washington in:

- (a) Forest surveys;
- (b) Forest studies;
- (c) Forest products studies; and
- (d) Preparation of plans for the protection, management, and replacement of trees, wood lots, and timber tracts. [1986 c 100 § 50. Formerly RCW 43.30.135.]

Study—1989 c 424: "The department of natural resources shall conduct a study of state-owned hardwood forests. The study shall include, but is not limited to: A comprehensive inventory of state-owned hardwood forests and a qualitative assessment of those stands, research into reforestation of hardwoods on state lands, and an analysis of management policies for increasing the supply of commercially harvestable hardwoods on state lands." [1989 c 424 § 5.]

Report to legislature—1989 c 424: "If by October 1, 1989, the United States congress makes an appropriation to the United States forest service for a Washington state forest inventory and timber supply study, the department of natural resources shall conduct an inventory and prepare a report on the timber supply in Washington state. The report shall identify the quantity of timber present now and the quantity of timber that may be available from forest lands in the future using various assumptions of landowner management, including changes in the forest land base, amount of capital invested in timber management, and expected harvest age. This report shall categorize the results according to region of the state, land ownership, land productivity, and according to major timber species.

The report shall contain an estimate of the acreage and volume of old growth and other timber on lands restricted from commercial timber harvesting due to state or federal decisions, such as national parks, wilderness areas, national recreation areas, scenic river designations, natural areas, geologic areas, or other land allocations which restrict or limit timber harvesting activities. The department shall determine the definition of old growth for the purposes of this section.

State appropriations for these purposes in the 1989-91 budget may be expended if needed for project planning and design. The report shall be submitted to the appropriate committees of the senate and the house of representatives by June 1, 1991." [1989 c 424 § 8.]

43.30.710 Sale or exchange of tree seedling stock and tree seed—Provision of stock or seed to local governments or nonprofit organizations. The department is authorized to sell to or exchange with persons intending to restock forest areas, tree seedling stock and tree seed produced at the state nursery.

The department may provide at cost, stock or seed to local governments or nonprofit organizations for urban tree planting programs consistent with the community and urban forestry program. [1993 c 204 § 7; 1988 c 128 § 35; 1947 c 67 § 1; Rem. Supp. 1947 § 5823-40. Formerly RCW 76.12.160.]

Findings—1993 c 204: See note following RCW 35.92.390.

43.30.720 Use of proceeds specified. All receipts from the sale of stock or seed shall be deposited in a state forest nursery revolving fund to be maintained by the department, which is hereby authorized to use all money in said fund for the maintenance of the state tree nursery or the planting of denuded state owned lands.

During the 2003-2005 fiscal biennium, the legislature may transfer from the state forest nursery revolving fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2003 1st sp.s. c 25 § 938; 1988 c 128 § 36; 1947 c 67 § 2; RRS § 5823-41. Formerly RCW 76.12.170.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

43.30.800 Olympic natural resources center—Finding, intent. The legislature finds that conflicts over the use of natural resources essential to the state's residents, especially forest and ocean resources, have increased dramatically. There are growing demands that these resources be fully utilized for their commodity values, while simultaneously there are increased demands for protection and preservation of these same resources. While these competing demands are most often viewed as mutually exclusive, recent research has suggested that commodity production and ecological values can be integrated. It is the intent of the legislature to foster and support the research and education necessary to provide sound scientific information on which to base sustainable forest and marine industries, and at the same time sustain the ecological values demanded by much of the public. [1991 c 316 § 1. Formerly RCW 76.12.205.]

Severability—1991 c 316: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 316 § 6.]

43.30.810 Olympic natural resources center—Purpose, programs. The Olympic natural resources center is hereby created at the University of Washington in the college of forest resources and the college of ocean and fishery sciences. The center shall maintain facilities and programs in the western portion of the Olympic Peninsula. Its purpose shall be to demonstrate innovative management methods which successfully integrate environmental and economic interests into pragmatic management of forest and ocean resources. The center shall combine research and educational opportunities with experimental forestry, oceans management, and traditional management knowledge into an overall program which demonstrates that management based on sound economic principles is made superior when combined with new methods of management based on ecological principles. The programs developed by the center shall include the following:

(1) Research and education on a broad range of ocean resources problems and opportunities in the region, such as estuarine processes, ocean and coastal management, offshore development, fisheries and shellfish enhancement, and coastal business development, tourism, and recreation. In developing this component of the center's program, the center shall collaborate with coastal educational institutions such as

Grays Harbor community college and Peninsula community college;

(2) Research and education on forest resources management issues on the landscape, ecosystem, or regional level, including issues that cross legal and administrative boundaries;

(3) Research and education that broadly integrates marine and terrestrial issues, including interactions of marine, aquatic, and terrestrial ecosystems, and that identifies options and opportunities to integrate the production of commodities with the preservation of ecological values. Where appropriate, programs shall address issues and opportunities that cross legal and administrative boundaries;

(4) Research and education on natural resources and their social and economic implications, and on alternative economic and social bases for sustainable, healthy, resource-based communities;

(5) Educational opportunities such as workshops, short courses, and continuing education for resource professionals, policy forums, information exchanges including international exchanges where appropriate, conferences, student research, and public education; and

(6) Creation of a neutral forum where parties with diverse interests are encouraged to address and resolve their conflicts. [1991 c 316 § 2; 1989 c 424 § 4. Formerly RCW 76.12.210.]

Severability—1991 c 316: See note following RCW 76.12.205.

Effective date—1989 c 424: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 424 § 13.]

43.30.820 Olympic natural resources center—Administration. The Olympic natural resources center shall operate under the authority of the board of regents of the University of Washington. It shall be administered by a director appointed jointly by the deans of the college of forest resources and the college of ocean and fishery sciences. The director shall be a member of the faculty of one of those colleges. The director shall appoint and maintain a scientific or technical committee, and other committees as necessary, to advise the director on the efficiency, effectiveness, and quality of the center's activities.

A policy advisory board consisting of eleven members shall be appointed by the governor to advise the deans and the director on policies for the center that are consistent with the purposes of the center. Membership on the policy advisory board shall broadly represent the various interests concerned with the purposes of the center, including state and federal government, environmental organizations, local community, timber industry, and Indian tribes.

Service on boards and committees of the center shall be without compensation but actual travel expenses incurred in connection with service to the center may be reimbursed from appropriated funds in accordance with RCW 43.03.050 and 43.03.060. [1991 c 316 § 3. Formerly RCW 76.12.220.]

Severability—1991 c 316: See note following RCW 76.12.205.

43.30.830 Olympic natural resources center—Funding—Contracts. The center may solicit gifts, grants, conveyances, bequests, and devises, whether real or personal

property, or both, in trust or otherwise, to be directed to the center for carrying out the purposes of the center. The center may solicit contracts for work, financial and in-kind contributions, and support from private industries, interest groups, federal and state sources, and other sources. It may also use separately appropriated funds of the University of Washington for the center's activities. [1991 c 316 § 4. Formerly RCW 76.12.230.]

Severability—1991 c 316: See note following RCW 76.12.205.

Chapter 43.42 RCW

OFFICE OF REGULATORY ASSISTANCE

(Formerly: Office of permit assistance)

Sections

43.42.005	Findings—Purpose—Intent.
43.42.010	Office created—Duties.
43.42.030	Definitions.
43.42.040	Maintaining and furnishing information—Contact point—Call center—Web site.
43.42.050	Assisting project applicant—Project facilitator—Project scoping.
43.42.060	Coordinating permit agencies—Project coordinator—Cost reimbursement agreement.
43.42.070	Cost-reimbursement agreements.

43.42.005 Findings—Purpose—Intent. (1) The legislature finds that the health and safety of its citizens, natural resources, and the environment are vital interests of the state that must be protected to preserve the state's quality of life. The legislature also finds that the state's economic well-being is a vital interest that depends upon the development of fair, coordinated regulatory processes that ensure that the state not only protects public health and safety and natural resources but also encourages appropriate activities that stimulate growth and development. The legislature further finds that Washington's regulatory programs have established strict standards to protect public health and safety and the environment.

(2) The legislature also finds that, as the number of environmental and land use laws have grown in Washington, so have the number of permits required of business and government. The increasing number of individual permits and permit agencies has generated the potential for conflict, overlap, and duplication among various state, local, and federal permits. Lack of coordination in the processing of project applications may cause costly delays and frustration to applicants.

(3) The legislature further finds that not all project applicants require the same type of assistance. Applicants with small projects may merely need information about local and state permits and assistance in applying for those permits, while intermediate-sized projects may require a facilitated permit process, and large complex projects may need extensive coordination among local, state, and federal agencies and tribal governments.

(4) The legislature further finds that persons doing business in Washington state should have access to clear and appropriate information regarding state regulations, permit requirements, and agency rule-making processes.

(5) The legislature, therefore, finds that a range of assistance and coordination options should be available to project applicants from a state office independent of any local, state,

or federal permit agency. The legislature finds that citizens, businesses, and project applicants should be provided with:

(a) A reliable and consolidated source of information concerning federal, state, and local environmental and land use laws and procedures that may apply to any given project;

(b) Facilitated interagency forums for discussion of significant issues related to the multiple permitting processes if needed for some project applicants; and

(c) Active coordination of all applicable regulatory and land use permitting procedures if needed for some project applicants.

(6) The legislature declares that the purpose of this chapter is to transfer the existing permit assistance center in the department of ecology to a new office of permit assistance in the office of financial management to:

(a) Assure that citizens, businesses, and project applicants will continue to be provided with vital information regarding environmental and land use laws and with assistance in complying with environmental and land use laws to promote understanding of these laws and to protect public health and safety and the environment;

(b) Ensure that facilitation of project permit decisions by permit agencies promotes both process efficiency and environmental protection;

(c) Allow for coordination of permit processing for large projects upon project applicants' request and at project applicants' expense to promote efficiency, ensure certainty, and avoid conflicts among permit agencies; and

(d) Provide these services through an office independent of any permit agency to ensure that any potential or perceived conflicts of interest related to providing these services or making permit decisions can be avoided.

(7) The legislature also declares that the purpose of this chapter is to provide citizens of the state with access to information regarding state regulations, permit requirements, and agency rule-making processes in Washington state.

(8) The legislature intends that establishing an office of regulatory assistance will provide these services without abrogating or limiting the authority of any permit agency to make decisions on permits that it issues or any rule-making agency to make decisions on regulations. The legislature therefore declares that the office of regulatory assistance shall have authority to provide these services but shall not have any authority to make decisions on permits. [2003 c 71 § 1; 2002 c 153 § 1.]

Reviser's note—Sunset Act application: The office of regulatory assistance is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.401. RCW 43.42.005 through 43.42.070 and 43.42.900 through 43.42.905 are scheduled for future repeal under RCW 43.131.402.

Effective date—2003 c 71 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 18, 2003]." [2003 c 71 § 7.]

43.42.010 Office created—Duties. (1) The office of regulatory assistance is created in the office of financial management and shall be administered by the office of the governor to assist citizens, businesses, and project applicants.

(2) The office shall:

(a) Maintain and furnish information as provided in RCW 43.42.040;

(b) Furnish facilitation as provided in RCW 43.42.050;

(c) Furnish coordination as provided in RCW 43.42.060;

(d) Coordinate cost reimbursement as provided in RCW 43.42.070;

(e) Work with state agencies and local governments to continue to develop a range of permit assistance options for project applicants;

(f) Review initiatives developed by the transportation permit efficiency and accountability committee established in chapter 47.06C RCW and determine if any would be beneficial if implemented for other types of projects;

(g) Work to develop informal processes for dispute resolution between agencies and permit applicants;

(h) Conduct customer surveys to evaluate its effectiveness; and

(i) Provide the following biennial reports to the governor and the appropriate committees of the legislature:

(i) A performance report, based on the customer surveys required in (h) of this subsection;

(ii) A report on any statutory or regulatory conflicts identified by the office in the course of its duties that arise from differing legal authorities and roles of agencies and how these were resolved. The report may include recommendations to the legislature and to agencies; and

(iii) A report regarding use of outside independent consultants under RCW 43.42.070, including the nature and amount of work performed and implementation of requirements relating to costs.

(3) A director of the office shall be hired no later than June 1, 2003.

(4) The office shall give priority to furnishing assistance to small projects when expending general fund moneys allocated to it. [2003 c 71 § 2; 2002 c 153 § 2.]

Sunset Act application: See note following RCW 43.42.005.

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

(1) "Office" means the office of regulatory assistance in the office of financial management established in RCW 43.42.010.

(2) "Permit" means any permit, certificate, use authorization, or other form of governmental approval required in order to construct or operate a project in the state of Washington.

(3) "Permit agency" means any state or local agency authorized by law to issue permits.

(4) "Project" means any activity, the conduct of which requires a permit or permits from one or more permit agencies.

(5) "Project applicant" means a citizen, business, or any entity seeking a permit or permits in the state of Washington. [2003 c 71 § 3; 2002 c 153 § 4.]

Sunset Act application: See note following RCW 43.42.005.

43.42.040 Maintaining and furnishing information—Contact point—Call center—Web site. (1) The office shall assist citizens, businesses, and project applicants by maintaining and furnishing information, including, but not limited to:

(a) To the extent possible, compiling and periodically updating one or more handbooks containing lists and explanations of permit laws, including all relevant local, state, federal, and tribal laws. In providing this information, the office shall seek the cooperation of relevant local, state, and federal agencies and tribal governments;

(b) Establishing and providing notice of a point of contact for obtaining information;

(c) Working closely and cooperatively with the business license center in providing efficient and nonduplicative service;

(d) Collecting and making available information regarding federal, state, local, and tribal government programs that rely on private professional expertise to assist agencies in project permit review; and

(e) Developing a call center and a web site.

(2) The office shall coordinate among state agencies to develop an office web site that is linked through the office of the governor's web site and that contains information regarding regulatory requirements for businesses and citizens in Washington state. At a minimum, the web site shall provide information or links to information on:

(a) Federal, state, and local rule-making processes and permit requirements applicable to Washington businesses and citizens;

(b) Federal, state, and local licenses, permits, and approvals necessary to start and operate a business or develop real property in Washington;

(c) State and local building codes;

(d) Federal, state, and local economic development programs that may be available to businesses in Washington; and

(e) State and local agencies regulating or providing assistance to citizens and businesses operating a business or developing real property in Washington.

(3) This section does not create an independent cause of action, affect any existing cause of action, or create any new cause of action regarding the application of regulatory or permit requirements. [2003 c 71 § 4; 2002 c 153 § 5.]

Sunset Act application: See note following RCW 43.42.005.

43.42.050 Assisting project applicant—Project facilitator—Project scoping. At the request of a project applicant, the office shall assist the project applicant in determining what regulatory requirements, processes, and permits apply to the project, as provided in this section.

(1) The office shall assign a project facilitator who shall discuss applicable regulatory requirements, permits, and processes with the project applicant and explain the available options for obtaining required permits.

(2) If the project applicant and the project facilitator agree that the project would benefit from a project scoping, or if the project is an industrial project of statewide significance, as defined in RCW 43.157.010, the project facilitator shall conduct a project scoping by the project applicant and the relevant state and local permit agencies. The project facilitator shall invite the participation of the relevant federal permit agencies and tribal governments.

(a) The purpose of the project scoping is to identify the issues and information needs of the project applicant and the participating permit agencies regarding the project, share per-

spectives, and jointly develop a strategy for the processing of required permits by each participating permit agency.

(b) The scoping shall address:

(i) The permits that are required for the project;

(ii) The permit application forms and other application requirements of the participating permit agencies;

(iii) The specific information needs and issues of concern of each participant and their significance;

(iv) Any statutory or regulatory conflicts that might arise from the differing authorities and roles of the permit agencies;

(v) Any natural resources, including federal or state listed species, that might be adversely affected by the project and might cause an alteration of the project or require mitigation; and

(vi) The anticipated time required for permit decisions by each participating permit agency, including the time required to determine if the permit application is complete, to conduct environmental review, and to review and process the application. In determining the time required, full consideration must be given to achieving the greatest possible efficiencies through any concurrent studies and any consolidated applications, hearings, and comment periods.

(c) The outcome of the project scoping shall be documented in writing, furnished to the project applicant, and be made available to the public.

(d) The project scoping shall be completed within sixty days of the project applicant's request for a project scoping.

(e) Upon completion of the project scoping, the participating permit agencies shall proceed under their respective authority. The agencies are encouraged to remain in communication for purposes of coordination until their final permit decisions are made.

(3) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020. [2003 c 54 § 4; 2002 c 153 § 6.]

Sunset Act application: See note following RCW 43.42.005.

43.42.060 Coordinating permit agencies—Project coordinator—Cost reimbursement agreement. (1) The office may coordinate the processing by participating permit agencies of permits required for a project, at the request of the project applicant through a cost reimbursement agreement as provided in subsection (3) of this section or with the agreement of the project applicant as provided in subsection (4) of this section.

(2) The office shall assign a project coordinator to perform any or all of the following functions, as specified by the terms of a cost reimbursement agreement under subsection (3) of this section or an agreement under subsection (4) of this section:

(a) Serve as the main point of contact for the project applicant;

(b) Conduct a project scoping as provided in RCW 43.42.050(2);

(c) Verify that the project applicant has all the information needed to complete applications;

(d) Coordinate the permit processes of the permit agencies;

(e) Manage the applicable administrative procedures;

(f) Work to assure that timely permit decisions are made by the permit agencies and maintain contact with the project applicant and the permit agencies to ensure adherence to schedules;

(g) Assist in resolving any conflict or inconsistency among permit requirements and conditions; and

(h) Coordinate with relevant federal permit agencies and tribal governments to the extent possible.

(3) At the request of a project applicant and as provided in RCW 43.42.070, the project coordinator shall coordinate negotiations among the project applicant, the office, and participating permit agencies to enter into a cost reimbursement agreement and shall coordinate implementation of the agreement, which shall govern coordination of permit processing by the participating permit agencies.

(4) For industrial projects of statewide significance or if the office determines that it is in the public interest to coordinate the processing of permits for certain projects that are complex in scope, require multiple permits, involve multiple jurisdictions, or involve a significant number of affected parties, the office shall, upon the applicant's request, enter into an agreement with the project applicant and the participating permit agencies to coordinate the processing of permits for the project. The office may limit the number of such agreements according to the resources available to the office and the permit agencies at the time. [2003 c 54 § 5; 2002 c 153 § 7.]

Sunset Act application: See note following RCW 43.42.005.

43.42.070 Cost-reimbursement agreements. (1) The office may coordinate negotiation and implementation of a written agreement among the project applicant, the office, and participating permit agencies to recover from the project applicant the reasonable costs incurred by the office in carrying out the provisions of RCW 43.42.050(2) and 43.42.060(2) and by participating permit agencies in carrying out permit processing tasks specified in the agreement.

(2) The office may coordinate negotiation and implementation of a written agreement among the project applicant, the office, and participating permit agencies to recover from the project applicant the reasonable costs incurred by outside independent consultants selected by the office and participating permit agencies to perform permit processing tasks.

(3) Outside independent consultants may only bill for the costs of performing those permit processing tasks that are specified in a cost-reimbursement agreement under this section. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments.

(4) The office shall adopt a policy to coordinate cost-reimbursement agreements with outside independent consultants. Cost-reimbursement agreements coordinated by the office under this section must be based on competitive bids that are awarded for each agreement from a prequalified consultant roster.

(5) Independent consultants hired under a cost-reimbursement agreement shall report directly to the permit agency. The office shall assure that final decisions are made by the permit agency and not by the consultant.

(6) The office shall develop procedures for determining, collecting, and distributing cost reimbursement for carrying out the provisions of this chapter.

(7) For a cost-reimbursement agreement, the office and participating permit agencies shall negotiate a work plan and schedule for reimbursement. Prior to distributing scheduled reimbursement to the agencies, the office shall verify that the agencies have met the obligations contained in their work plan.

(8) Prior to commencing negotiations with the project applicant for a cost-reimbursement agreement, the office shall request work load analyses from each participating permitting agency. These analyses shall be available to the public. The work load of a participating permit agency may only be modified with the concurrence of the agency and if there is both good cause to do so and no significant impact on environmental review.

(9) The office shall develop guidance to ensure that, in developing cost-reimbursement agreements, conflicts of interest are eliminated.

(10) For project permit processes that it coordinates, the office shall coordinate the negotiation of all cost-reimbursement agreements executed under RCW 43.21A.690, *43.30.420, 43.70.630, 43.300.080, and 70.94.085. The office and the permit agencies shall be signatories to the agreements. Each permit agency shall manage performance of its portion of the agreement.

(11) If a permit agency or the project applicant foresees, at any time, that it will be unable to meet its obligations under the cost-reimbursement agreement, it shall notify the office and state the reasons. The office shall notify the participating permit agencies and the project applicant and, upon agreement of all parties, adjust the schedule, or, if necessary, coordinate revision of the work plan. [2003 c 70 § 7; 2002 c 153 § 8.]

***Reviser's note:** RCW 43.30.420 was recodified as RCW 43.30.490 pursuant to 2003 c 334 § 128.

Sunset Act application: See note following RCW 43.42.005.

Chapter 43.43 RCW

WASHINGTON STATE PATROL

Sections

43.43.271	Retirement allowances—Members commissioned on or after January 1, 2003—Court-approved property settlement.
43.43.295	Accumulated contributions—Payment upon death of member.
43.43.830	Background checks—Access to children or vulnerable persons—Definitions.
43.43.856	Divulging investigative information prohibited—Confidentiality—Security of records and files. (<i>Effective July 1, 2004.</i>)
43.43.934	State fire protection policy board—Duties—Fire training and education master plan—Fire protection master plan.
43.43.944	Fire service training account. "STATE FIRE SERVICE MOBILIZATION"
43.43.960	State fire service mobilization—Definitions.
43.43.961	State fire service mobilization—Legislative declaration and intent.
43.43.962	State fire service mobilization—State fire protection policy board—State fire services mobilization plan—State fire resources coordinator.
43.43.963	State fire service mobilization—Regional fire defense boards—Regional fire service plans—Regions established.
43.43.964	State fire service mobilization—Development of reimbursement procedures.
43.43.970	Law enforcement mobilization—Definitions.

- 43.43.971 Law enforcement mobilization—State law enforcement mobilization policy board—State law enforcement mobilization plan.
- 43.43.972 Law enforcement mobilization—Local law enforcement request for mobilization—State law enforcement resource coordinator—Mobilization response—Declaration of end of mobilization.
- 43.43.973 State law enforcement mobilization—State law enforcement coordinator—Duties.
- 43.43.974 State law enforcement mobilization—Regions established—Regional law enforcement mobilization committees—Regional law enforcement mobilization plans.
- 43.43.975 State law enforcement mobilization—Development of reimbursement procedures—Eligibility of nonhost law enforcement authority for reimbursement.

43.43.271 Retirement allowances—Members commissioned on or after January 1, 2003—Court-approved property settlement. (1) A member commissioned on or after January 1, 2003, upon retirement for service as prescribed in RCW 43.43.250 shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout the member's life. However, if the retiree dies before the total of the retirement allowance paid to the retiree equals the amount of the retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. This benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3) No later than January 1, 2003, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date of the postretirement marriage provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who has completed at least five years of service and the member's divorcing spouse be divided into two separate benefits payable over the life of each spouse.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried at the time of retirement remains subject to the spousal consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse shall be eligible to commence receiving their separate benefit upon reaching the ages provided in RCW 43.43.250(2) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse if the nonmember ex spouse was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (3) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2003 c 294 § 14; 2002 c 158 § 16; 2001 c 329 § 5.]

Effective date—2001 c 329: See note following RCW 43.43.120.

43.43.295 Accumulated contributions—Payment upon death of member. (1) For members commissioned on or after January 1, 2003, except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 43.43.260, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 43.43.278 and if the member was not eligible for normal retirement at the date of death a further reduction from age fifty-five or when the member could have attained twenty-five years of service, whichever is less; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated under this section making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b)(i) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670; or

(ii) If the member dies, one hundred fifty percent of the member's accumulated contributions, less any amount identi-

fied as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To an estate, a person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives. [2003 c 294 § 15; 2001 c 329 § 7.]

Effective date—2001 c 329: See note following RCW 43.43.120.

43.43.830 Background checks—Access to children or vulnerable persons—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.840.

(1) "Applicant" means:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization;

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults;

(c) Any prospective adoptive parent, as defined in RCW 26.33.020; or

(d) Any prospective custodian in a nonparental custody proceeding under chapter 26.10 RCW.

(2) "Business or organization" means a business or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, houses, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, including but not limited to public housing authorities, school districts, and educational service districts.

(3) "Civil adjudication" means a specific court finding of sexual abuse or exploitation or physical abuse in a dependency action under RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In the case of vulnerable adults, civil adjudication means a specific court finding of abuse or financial exploitation in a protection proceeding under chapter 74.34 RCW. It does not include administrative proceedings. The term "civil adjudication" is further limited to court findings that identify as the perpetrator of the abuse a named individual, over the age of eighteen years, who was a party to the dependency or dissolution proceeding or was a respon-

dent in a protection proceeding in which the finding was made and who contested the allegation of abuse or exploitation.

(4) "Conviction record" means "conviction record" information as defined in RCW 10.97.030(3) relating to a crime against children or other persons committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnapping; first, second, or third degree assault; first, second, or third degree assault of a child; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; endangerment with a controlled substance; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; first or second degree custodial sexual misconduct; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future.

(6) "Crimes relating to drugs" means a conviction of a crime to manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance.

(7) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.

(8) "Disciplinary board final decision" means any final decision issued by a disciplining authority under chapter 18.130 RCW or the secretary of the department of health for the following businesses or professions:

- (a) Chiropractic;
- (b) Dentistry;
- (c) Dental hygiene;
- (d) Massage;
- (e) Midwifery;
- (f) Naturopathy;
- (g) Osteopathic medicine and surgery;
- (h) Physical therapy;
- (i) Physicians;
- (j) Practical nursing;

(k) Registered nursing; and

(l) Psychology.

"Disciplinary board final decision," for real estate brokers and salespersons, means any final decision issued by the director of the department of licensing for real estate brokers and salespersons.

(9) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.

(10) "Vulnerable adult" means "vulnerable adult" as defined in chapter 74.34 RCW, except that for the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

(11) "Financial exploitation" means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.

(12) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults. [2003 c 105 § 5; 2002 c 229 § 3; 1999 c 45 § 5; 1998 c 10 § 1; 1996 c 178 § 12; 1995 c 250 § 1; 1994 c 108 § 1; 1992 c 145 § 16. Prior: 1990 c 146 § 8; 1990 c 3 § 1101; prior: 1989 c 334 § 1; 1989 c 90 § 1; 1987 c 486 § 1.]

Effective date—2002 c 229: See note following RCW 9A.42.100.

Effective date—1996 c 178: See note following RCW 18.35.110.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

At-risk children volunteer program: RCW 43.150.080.

Developmentally disabled persons: RCW 41.06.475.

State hospitals: RCW 72.23.035.

43.43.856 Divulging investigative information prohibited—Confidentiality—Security of records and files.

(Effective July 1, 2004.) (1)(a) On and after April 26, 1973, it shall be unlawful for any person to divulge specific investigative information pertaining to activities related to organized crime which he or she has obtained by reason of public employment with the state of Washington or its political subdivisions unless such person is authorized or required to do so by operation of state or federal law.

(b) Any person violating (a) of this subsection is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Except as provided in RCW 43.43.854, or pursuant to the rules of the supreme court of Washington, all of the information and data collected and processed by the organized crime intelligence unit shall be confidential and not subject to examination or publication pursuant to chapter 42.17 RCW (Initiative Measure No. 276).

(3) The chief of the Washington state patrol shall prescribe such standards and procedures relating to the security of the records and files of the organized crime intelligence unit, as he or she deems to be in the public interest with the

advice of the governor and the board. [2003 c 53 § 230; 1973 1st ex.s. c 202 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

43.43.934 State fire protection policy board—Duties—Fire training and education master plan—Fire protection master plan. Except for matters relating to the statutory duties of the chief of the Washington state patrol that are to be carried out through the director of fire protection, the board shall have the responsibility of developing a comprehensive state policy regarding fire protection services. In carrying out its duties, the board shall:

(1)(a) Adopt a state fire training and education master plan that allows to the maximum feasible extent for negotiated agreements: (i) With the state board for community and technical colleges to provide academic, vocational, and field training programs for the fire service and (ii) with the higher education coordinating board and the state colleges and universities to provide instructional programs requiring advanced training, especially in command and management skills;

(b) Adopt minimum standards for each level of responsibility among personnel with fire suppression, prevention, inspection, and investigation responsibilities that assure continuing assessment of skills and are flexible enough to meet emerging technologies. With particular respect to training for fire investigations, the master plan shall encourage cross training in appropriate law enforcement skills. To meet special local needs, fire agencies may adopt more stringent requirements than those adopted by the state;

(c) Cooperate with the common schools, technical and community colleges, institutions of higher education, and any department or division of the state, or of any county or municipal corporation in establishing and maintaining instruction in fire service training and education in accordance with any act of congress and legislation enacted by the legislature in pursuance thereof and in establishing, building, and operating training and education facilities.

Industrial fire departments and private fire investigators may participate in training and education programs under this chapter for a reasonable fee established by rule;

(d) Develop and adopt a master plan for constructing, equipping, maintaining, and operating necessary fire service training and education facilities subject to the provisions of chapter 43.19 RCW;

(e) Develop and adopt a master plan for the purchase, lease, or other acquisition of real estate necessary for fire service training and education facilities in a manner provided by law; and

(f) Develop and adopt a plan with a goal of providing fire fighter one and wildland training, as defined by the board, to all fire fighters in the state. Wildland training reimbursement will be provided if a fire protection district or a city fire department has and is fulfilling their interior attack policy or if they do not have an interior attack policy. The plan will include a reimbursement for fire protection districts and city fire departments of not less than three dollars for every hour of fire fighter one or wildland training. The Washington state patrol shall not provide reimbursement for more than two

hundred hours of fire fighter one or wildland training for each fire fighter trained.

(2) In addition to its responsibilities for fire service training, the board shall:

(a) Adopt a state fire protection master plan;

(b) Monitor fire protection in the state and develop objectives and priorities to improve fire protection for the state's citizens including: (i) The comprehensiveness of state and local inspections required by law for fire and life safety; (ii) the level of skills and training of inspectors, as well as needs for additional training; and (iii) the efforts of local, regional, and state inspection agencies to improve coordination and reduce duplication among inspection efforts;

(c) Establish and promote state arson control programs and ensure development of local arson control programs;

(d) Provide representation for local fire protection services to the governor in state-level fire protection planning matters such as, but not limited to, hazardous materials control;

(e) Recommend to the adjutant general rules on minimum information requirements of automatic location identification for the purposes of enhanced 911 emergency service;

(f) Seek and solicit grants, gifts, bequests, devises, and matching funds for use in furthering the objectives and duties of the board, and establish procedures for administering them;

(g) Promote mutual aid and disaster planning for fire services in this state;

(h) Assure the dissemination of information concerning the amount of fire damage including that damage caused by arson, and its causes and prevention; and

(i) Implement any legislation enacted by the legislature to meet the requirements of any acts of congress that apply to this section.

(3) In carrying out its statutory duties, the board shall give particular consideration to the appropriate roles to be played by the state and by local jurisdictions with fire protection responsibilities. Any determinations on the division of responsibility shall be made in consultation with local fire officials and their representatives.

To the extent possible, the board shall encourage development of regional units along compatible geographic, population, economic, and fire risk dimensions. Such regional units may serve to: (a) Reinforce coordination among state and local activities in fire service training, reporting, inspections, and investigations; (b) identify areas of special need, particularly in smaller jurisdictions with inadequate resources; (c) assist the state in its oversight responsibilities; (d) identify funding needs and options at both the state and local levels; and (e) provide models for building local capacity in fire protection programs. [2003 c 316 § 1. Prior: 1999 c 117 § 1; 1999 c 24 § 3; 1998 c 245 § 65; prior: 1995 c 369 § 16; 1995 c 243 § 11; 1993 c 280 § 69; 1986 c 266 § 56. Formerly RCW 43.63A.320.]

Findings—1999 c 24: See note following RCW 38.52.505.

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

Effective date—1995 c 243 § 11: "Section 11 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 243 § 13.]

Findings—Severability—1995 c 243: See notes following RCW 80.36.555.

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

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

43.43.944 Fire service training account. (1) The fire service training account is hereby established in the state treasury. The fund shall consist of:

(a) All fees received by the Washington state patrol for fire service training;

(b) All grants and bequests accepted by the Washington state patrol under RCW 43.43.940; and

(c) Twenty percent of all moneys received by the state on fire insurance premiums.

(2) Moneys in the account may be appropriated only for fire service training. During the 2003-2005 fiscal biennium, the legislature may appropriate funds from this account for school fire prevention activities within the Washington state patrol. [2003 1st sp.s. c 25 § 919; 1999 c 117 § 2; 1995 c 369 § 21; 1986 c 266 § 61. Formerly RCW 43.63A.370.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

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

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

"STATE FIRE SERVICE MOBILIZATION"

43.43.960 State fire service mobilization—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this subchapter.

(1) "Chief" means the chief of the Washington state patrol.

(2) "State fire marshal" means the director of fire protection in the Washington state patrol.

(3) "Fire chief" includes the chief officer of a statutorily authorized fire agency, or the fire chief's authorized representative. Also included are the department of natural resources fire control chief, and the department of natural resources regional managers.

(4) "Jurisdiction" means state, county, city, fire district, or port district fire fighting units, or other units covered by this chapter.

(5) "Mobilization" means that fire fighting resources beyond those available through existing agreements will be requested and, when available, sent in response to an emergency or disaster situation that has exceeded the capabilities of available local resources. During a large scale emergency, mobilization includes the redistribution of regional or state-wide fire fighting resources to either direct emergency incident assignments or to assignment in communities where fire fighting resources are needed.

When mobilization is declared and authorized as provided in this chapter, all fire fighting resources including those of the host fire protection authorities, i.e. incident jurisdiction, shall be deemed as mobilized under this chapter, including those that responded earlier under existing mutual aid or other agreement. All nonhost fire protection authorities providing fire fighting resources in response to a mobilization declaration shall be eligible for expense reimburse-

ment as provided by this chapter from the time of the mobilization declaration.

This chapter shall not reduce or suspend the authority or responsibility of the department of natural resources under chapter 76.04 RCW.

(6) "Mutual aid" means emergency interagency assistance provided without compensation under an agreement between jurisdictions under chapter 39.34 RCW. [2003 c 405 § 1; 1997 c 49 § 8. Prior: 1995 c 391 § 5; 1995 c 369 § 10; 1992 c 117 § 9. Formerly RCW 38.54.010.]

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

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

Findings—1992 c 117: See note following RCW 35.21.775.

43.43.961 State fire service mobilization—Legislative declaration and intent. Because of the possibility of the occurrence of disastrous fires or other disasters of unprecedented size and destructiveness, the need to insure that the state is adequately prepared to respond to such a fire or disaster, the need to establish a mechanism and a procedure to provide for reimbursement to state agencies and local fire fighting agencies that respond to help others in time of need or to a host fire district that experiences expenses beyond the resources of the fire district, and generally to protect the public peace, health, safety, lives, and property of the people of Washington, it is hereby declared necessary to:

(1) Provide the policy and organizational structure for large scale mobilization of fire fighting resources in the state through creation of the Washington state fire services mobilization plan;

(2) Confer upon the chief the powers provided herein;

(3) Provide a means for reimbursement to state agencies and local fire jurisdictions that incur expenses when mobilized by the chief under the Washington state fire services mobilization plan; and

(4) Provide for reimbursement of the host fire department or fire protection district when it has: (a) Exhausted all of its resources; and (b) invoked its local mutual aid network and exhausted those resources. Upon implementation of state fire mobilization, the host district resources shall become state fire mobilization resources consistent with the fire mobilization plan.

It is the intent of the legislature that mutual aid and other interlocal agreements providing for enhanced emergency response be encouraged as essential to the public peace, safety, health, and welfare, and for the protection of the lives and property of the people of the state of Washington. If possible, mutual aid agreements should be without stated limitations as to resources available, time, or area. Nothing in this chapter shall be construed or interpreted to limit the eligibility of any nonhost fire protection authority for reimbursement of expenses incurred in providing fire fighting resources for mobilization. [2003 c 405 § 2; 1997 c 49 § 9; 1995 c 391 § 6; 1992 c 117 § 10. Formerly RCW 38.54.020.]

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

Findings—1992 c 117: See note following RCW 35.21.775.

43.43.962 State fire service mobilization—State fire protection policy board—State fire services mobilization plan—State fire resources coordinator. The state fire pro-

tection policy board shall review and make recommendations to the chief on the refinement and maintenance of the Washington state fire services mobilization plan, which shall include the procedures to be used during fire and other emergencies for coordinating local, regional, and state fire jurisdiction resources. In carrying out this duty, the fire protection policy board shall consult with and solicit recommendations from representatives of state and local fire and emergency management organizations, regional fire defense boards, and the department of natural resources. The Washington state fire services mobilization plan shall be consistent with, and made part of, the Washington state comprehensive emergency management plan. The chief shall review the fire services mobilization plan as submitted by the fire protection policy board, recommend changes that may be necessary, and approve the fire services mobilization plan for inclusion within the state comprehensive emergency management plan.

It is the responsibility of the chief to mobilize jurisdictions under the Washington state fire services mobilization plan. The state fire marshal shall serve as the state fire resources coordinator when the Washington state fire services mobilization plan is mobilized. [2003 c 405 § 3; 1997 c 49 § 10; 1995 c 269 § 1101; 1992 c 117 § 11. Formerly RCW 38.54.030.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

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

Findings—1992 c 117: See note following RCW 35.21.775.

43.43.963 State fire service mobilization—Regional fire defense boards—Regional fire service plans—Regions established. Regions within the state are initially established as follows but may be adjusted as necessary by the state fire marshal:

- (1) Northwest region - Whatcom, Skagit, Snohomish, San Juan, and Island counties;
- (2) Northeast region - Okanogan, Ferry, Stevens, Pend Oreille, Spokane, and Lincoln counties;
- (3) Olympic region - Clallam and Jefferson counties;
- (4) South Puget Sound region - Kitsap, Mason, King, and Pierce counties;
- (5) Southeast region - Chelan, Douglas, Kittitas, Grant, Adams, Whitman, Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin counties;
- (6) Central region - Grays Harbor, Thurston, Pacific, and Lewis counties; and
- (7) Southwest region - Wahkiakum, Cowlitz, Clark, and Skamania counties.

Within each of these regions there is created a regional fire defense board. The regional fire defense boards shall consist of two members from each county in the region. One member from each county shall be appointed by the county fire chiefs' association or, in the event there is no such county association, by the county's legislative authority. Each county's office of emergency management or, in the event there is no such office, the county's legislative authority shall select the second representative to the regional board. The department of natural resources fire control chief shall appoint a representative from each department of natural resources region to serve as a member of the appropriate regional fire defense board. Members of each regional board

will select a chairperson and secretary as officers. Members serving on the regional boards do so in a voluntary capacity and are not eligible for reimbursement for meeting-related expenses from the state.

Regional defense boards shall develop regional fire service plans that include provisions for organized fire agencies to respond across municipal, county, or regional boundaries. Each regional plan shall be consistent with the incident command system, the Washington state fire services mobilization plan, and regional response plans already adopted and in use in the state. The regional boards shall work with the relevant local government entities to facilitate development of intergovernmental agreements if any such agreements are required to implement a regional fire service plan. Each regional plan shall be approved by the fire protection policy board before implementation. [1997 c 49 § 11; 1992 c 117 § 12. Formerly RCW 38.54.040.]

Findings—1992 c 117: See note following RCW 35.21.775.

43.43.964 State fire service mobilization—Development of reimbursement procedures. The Washington state patrol in consultation with the office of financial management and the Washington military department shall develop procedures to facilitate reimbursement to state agencies and jurisdictions from appropriate federal and state funds when state agencies and jurisdictions are mobilized by the chief under the Washington state fire services mobilization plan. The Washington state patrol shall ensure that these procedures provide reimbursement to the host district in as timely a manner as possible. [2003 c 405 § 4; 1997 c 49 § 12; 1995 c 391 § 7; 1992 c 117 § 13. Formerly RCW 38.54.050.]

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

Findings—1992 c 117: See note following RCW 35.21.775.

43.43.970 Law enforcement mobilization—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Agency" means any general purpose law enforcement agency as defined in RCW 10.93.020.
- (2) "Board" means the state law enforcement mobilization policy board.
- (3) "Chief" means the chief of the Washington state patrol.
- (4) "Chief law enforcement officer" means the chief of police or sheriff responsible for law enforcement services in the jurisdiction in which the emergency is occurring.
- (5) "General authority Washington peace officer" means a general authority Washington peace officer as defined in RCW 10.93.020.
- (6) "Host agency" means the law enforcement agency that requests statewide mobilization under RCW 43.43.970 through 43.43.975.
- (7) "Mobilization" means a redistribution of regional and statewide law enforcement resources in response to an emergency or disaster situation.
- (8) "Mutual aid" means emergency interagency assistance provided without compensation pursuant to an agreement under chapter 39.34 RCW.

(9) "Resource coordination" means the effort to locate and arrange for the delivery of resources needed by chief law enforcement officers.

(10) "State law enforcement resource coordinator" means a designated individual or agency selected by the chief to perform the responsibilities of that position. [2003 c 405 § 6.]

Legislative declaration and intent—2003 c 405: "(1) Because of the possibility of a disaster of unprecedented size and destruction, including acts of domestic terrorism and civil unrest, that requires law enforcement response for the protection of persons or property and preservation of the peace, the need exists to ensure that the state is adequately prepared to respond to such an incident. There is a need to (a) establish a mechanism and a procedure to provide for reimbursement to law enforcement agencies that respond to help others in time of need, and to host law enforcement agencies that experience expenses beyond the resources of the agencies; and (b) generally to protect the public safety, peace, health, lives, and property of the people of Washington.

(2) It is hereby declared necessary to:

(a) Provide the policy and organizational structure for large-scale mobilization of law enforcement resources in the state, using the incident command system, through creation of the Washington state law enforcement mobilization plan;

(b) Confer upon the chief of the Washington state patrol the powers provided in this chapter;

(c) Provide a means for reimbursement to law enforcement jurisdictions that incur expenses when mobilized by the chief under the Washington state law enforcement mobilization plan; and

(d) Provide for reimbursement of the host law enforcement agency when it has:

(i) Exhausted all of its resources; and

(ii) Invoked its local mutual aid network and exhausted those resources." [2003 c 405 § 5.]

43.43.971 Law enforcement mobilization—State law enforcement mobilization policy board—State law enforcement mobilization plan. (1) The state law enforcement mobilization policy board shall be established by the chief and shall have representatives from each of the regions established in RCW 43.43.974. In carrying out its duty, the board shall consult with and solicit recommendations from representatives of the state and local law enforcement and emergency management organizations, and regional law enforcement mobilization committees.

(2) The board shall establish and make recommendations to the chief on the refinement and maintenance of the Washington state law enforcement mobilization plan, including the procedures to be used during an emergency or disaster response requiring coordination of local, regional, and state law enforcement resources.

(3) The chief shall review the Washington state law enforcement mobilization plan, as submitted by the board, recommend changes as necessary, and may approve the plan. The plan shall be consistent with the Washington state comprehensive emergency management plan. The chief may recommend the plan for inclusion within the state comprehensive emergency management plan established under chapter 38.52 RCW. [2003 c 405 § 7.]

43.43.972 Law enforcement mobilization—Local law enforcement request for mobilization—State law enforcement resource coordinator—Mobilization response—Declaration of end of mobilization. (1) Local law enforcement may request mobilization only in response to an emergency or disaster exceeding the capabilities of available local

resources and those available through existing mutual aid agreements. Upon finding that the local jurisdiction has exhausted all available resources, it is the responsibility of the chief to determine whether mobilization is the appropriate response to the emergency or disaster and, if so, to mobilize jurisdictions under the Washington state law enforcement mobilization plan.

(2) Upon mobilization, the chief shall appoint a state law enforcement resource coordinator, and an alternate, who shall serve jointly with the chief law enforcement officer from the host agency to command the mobilization effort consistent with incident command system procedures.

(3) Upon mobilization, all law enforcement resources including those of the host agency and those that responded earlier under an existing mutual aid or other agreement shall be mobilized. Mobilization may include the redistribution of regional or statewide law enforcement resources to either direct emergency incident assignments or to assignments in communities where law enforcement resources are needed.

(4) For the duration of the mobilization:

(a) Host agency resources shall become state law enforcement mobilization resources, under the command of the state law enforcement resource coordinator and the chief law enforcement officer from the host agency, consistent with the state law enforcement mobilization plan and incident command system procedures; and

(b) All law enforcement authorities providing resources in response to a mobilization declaration shall be eligible for expense reimbursement as provided by this chapter.

(5) The chief, in consultation with the regional law enforcement resource coordinator, shall determine when mobilization is no longer required and shall then declare the end to the mobilization. [2003 c 405 § 8.]

43.43.973 State law enforcement mobilization—State law enforcement coordinator—Duties. (1) The state law enforcement resource coordinator, or alternate, shall serve in that capacity for the duration of the mobilization.

(2) The duties of the coordinator are to:

(a) Coordinate the mobilization of law enforcement and other support resources within a region;

(b) Be primarily responsible for the coordination of resources in conjunction with the regional law enforcement mobilization committees, in the case of incidents involving more than one region or when resources from more than one region must be mobilized; and

(c) Advise and consult with the chief regarding what resources are required in response to the emergency or disaster and in regard to when the mobilization should end. [2003 c 405 § 9.]

43.43.974 State law enforcement mobilization—Regions established—Regional law enforcement mobilization committees—Regional law enforcement mobilization plans. (1) Regions within the state are initially established as follows and may be adjusted as necessary by the state law enforcement policy board, but should remain consistent with the Washington state fire defense regions:

(a) Central region - Grays Harbor, Thurston, Pacific, and Lewis counties;

- (b) Lower Columbia region - Kittitas, Yakima, and Klickitat counties;
- (c) Mid-Columbia region - Chelan, Douglas, and Grant counties;
- (d) Northeast region - Okanogan, Ferry, Stevens, Pend Oreille, Spokane, Adams, and Lincoln counties;
- (e) Northwest region - Whatcom, Skagit, Snohomish, San Juan, and Island counties;
- (f) Olympic region - Clallam and Jefferson counties;
- (g) South Puget Sound region - Kitsap, Mason, King, and Pierce counties;
- (h) Southeast region - Benton, Franklin, Walla Walla, Columbia, Whitman, Garfield, and Asotin counties;
- (i) Southwest region - Wahkiakum, Cowlitz, Clark, and Skamania counties.

(2) Within each of the regions there is created a regional law enforcement mobilization committee. The committees shall consist of the sheriff of each county in the region, the district commander of the Washington state patrol from the region, a number of police chiefs within the region equivalent to the number of counties within the region plus one, and the director of the counties' emergency management office. The police chief members of each regional committee must include the chiefs of police of each city of ninety-five thousand or more population, and the number of members of the committee shall be increased if necessary to accommodate such chiefs. Members of each regional mobilization committee shall select a chair, who shall have authority to implement the regional plan, and a secretary as officers. Members serving on the regional mobilization committees shall not be eligible for reimbursement for meeting-related expenses from the state.

(3) The regional mobilization committees shall work with the relevant local government entities to facilitate development of intergovernmental agreements if any such agreements are required to implement a regional law enforcement mobilization plan.

(4) Regional mobilization committees shall develop regional law enforcement mobilization plans that include provisions for organized law enforcement agencies to respond across municipal, county, or regional boundaries. Each regional mobilization plan shall be consistent with the incident command system, the Washington state law enforcement mobilization plan, and regional response plans adopted prior to July 27, 2003.

(5) Each regional plan adopted under subsection (4) of this section shall be approved by the state law enforcement mobilization policy board before implementation. [2003 c 405 § 10.]

43.43.975 State law enforcement mobilization—Development of reimbursement procedures—Eligibility of nonhost law enforcement authority for reimbursement. The state patrol in consultation with the Washington association of sheriffs and police chiefs and the office of financial management shall develop procedures to facilitate reimbursement to jurisdictions from funds appropriated specifically for this purpose when jurisdictions are mobilized under the Washington state law enforcement mobilization plan.

Nothing in this chapter shall be construed or interpreted to limit the eligibility of any nonhost law enforcement

authority for reimbursement of expenses incurred in providing law enforcement resources for mobilization. [2003 c 405 § 11.]

**Chapter 43.52 RCW
OPERATING AGENCIES**

Sections

- 43.52.440 Effect of chapter on "Columbia River Sanctuary Act."
- 43.52.595 Contracts for electric power and energy.

43.52.440 Effect of chapter on "Columbia River Sanctuary Act." Nothing contained in this chapter shall be construed to amend, modify or repeal in any manner RCW 77.55.160, commonly known as the "Columbia River Sanctuary Act", and all matter herein contained shall be expressly subject to such act. [2003 c 39 § 26; 1983 1st ex.s. c 46 § 178; 1965 c 8 § 43.52.440. Prior: 1953 c 281 § 23.]

43.52.595 Contracts for electric power and energy. A city or district may contract to purchase from an operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the city or district must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the operating agency or a city or district under the contract or other instrument. [2003 c 138 § 1.]

**Chapter 43.63A RCW
DEPARTMENT OF COMMUNITY, TRADE, AND
ECONOMIC DEVELOPMENT**

(Formerly: Department of community development)

Sections

- 43.63A.135 Nonresidential youth services facilities—Competitive process—Recommendations to legislature for funding.
- 43.63A.760 Airport impact mitigation account—Creation—Report.

43.63A.135 Nonresidential youth services facilities—Competitive process—Recommendations to legislature for funding. (1) The department of community, trade, and economic development must establish a competitive process to solicit proposals for and prioritize projects whose primary objective is to assist nonprofit youth organizations in acquiring, constructing, or rehabilitating facilities used for the delivery of nonresidential services, excluding outdoor athletic fields.

(2) The department of community, trade, and economic development must establish a competitive process to prioritize applications for the assistance as follows:

(a) The department of community, trade, and economic development must conduct a statewide solicitation of project applications from local governments, nonprofit organizations, and other entities, as determined by the department of community, trade, and economic development. The department of community, trade, and economic development must evaluate and rank applications in consultation with a citizen advisory committee using objective criteria. Projects must have a major recreational component, and must have either an educational or social service component. At a minimum, applicants must demonstrate that the requested assistance will increase the efficiency or quality of the services it provides to youth. The evaluation and ranking process must also include an examination of existing assets that applicants may apply to projects. Grant assistance under this section may not exceed twenty-five percent of the total cost of the project. The nonstate portion of the total project cost may include cash, the value of real property when acquired solely for the purpose of the project, and in-kind contributions.

(b) The department of community, trade, and economic development must submit a prioritized list of recommended projects to the governor and the legislature in the department of community, trade, and economic development's biennial capital budget request beginning with the 2005-2007 biennium and thereafter. The list must include a description of each project, the amount of recommended state funding, and documentation of nonstate funds to be used for the project. The total amount of recommended state funding for projects on a biennial project list must not exceed two million dollars. The department of community, trade, and economic development may provide an additional alternate project list that must not exceed five hundred thousand dollars. The department of community, trade, and economic development may not sign contracts or otherwise financially obligate funds under this section until the legislature has approved a specific list of projects.

(c) In contracts for grants authorized under this section the department of community, trade, and economic development must include provisions that require that capital improvements be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities be used for the express purpose of the grant. If the grantee is found to be out of compliance with provisions of the contract, the grantee must repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant. [2003 1st sp.s. c 7 § 2.]

Findings—2003 1st sp.s. c 7: "The legislature finds that nonprofit youth organizations provide a variety of services for the youth of Washington state, including many services that enable young people, especially those facing challenging and disadvantaged circumstances, to realize their full potential as productive, responsible, and caring citizens. The legislature also finds that the efficiency and quality of these services may be enhanced by the provision of safe, reliable, and sound facilities, and that, in certain cases, it may be appropriate for the state to assist in the development of these facilities." [2003 1st sp.s. c 7 § 1.]

43.63A.760 Airport impact mitigation account—Creation—Report. (1) The airport impact mitigation account is created in the custody of the state treasury. Moneys deposited in the account, including moneys received from

the port of Seattle for purposes of this section, may be used only for airport mitigation purposes as provided in this section. Only the director of the department of community, trade, and economic development or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) The department of community, trade, and economic development shall establish a competitive process to prioritize applications for airport impact mitigation assistance through the account created in subsection (1) of this section. The department shall conduct a solicitation of project applications in the airport impact area as defined in subsection (4) of this section. Eligible applicants include public entities such as cities, counties, schools, parks, fire districts, and shall include organizations eligible to apply for grants under RCW 43.63A.125. The department of community, trade, and economic development shall evaluate and rank applications in conjunction with the airport impact mitigation advisory board established in subsection (3) of this section using objective criteria developed by the department in conjunction with the airport impact mitigation advisory board. At a minimum, the criteria must consider: The extent to which the applicant is impacted by the airport; and the other resources available to the applicant to mitigate the impact, including other mitigation funds. The director of the department of community, trade, and economic development shall award grants annually to the extent funds are available in the account created in subsection (1) of this section.

(3) The director of the department of community, trade, and economic development shall establish the airport impact mitigation advisory board comprised of persons in the airport impact area to assist the director in developing criteria and ranking applications under this section. The advisory board shall include representation of local governments, the public in general, businesses, schools, community services organizations, parks and recreational activities, and others at the discretion of the director. The advisory board shall be weighted toward those communities closest to the airport that are more adversely impacted by airport activities.

(4) The airport impact area includes the incorporated areas of Burien, Normandy Park, Des Moines, SeaTac, Tukwilla, Kent, and Federal Way, and the unincorporated portion of west King county.

(5) The department of community, trade, and economic development shall report on its activities related to the account created in this section by January 1, 2004, and each January 1st thereafter. [2003 1st sp.s. c 26 § 928.]

Severability—Effective dates—2003 1st sp.s. c 26: See notes following RCW 43.135.045.

Chapter 43.70 RCW

DEPARTMENT OF HEALTH

Sections

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| 43.70.185 | Inspection of property where marine species located—Prohibitions on harvest or landing—Penalties. (<i>Effective July 1, 2004.</i>) |
| 43.70.630 | Cost-reimbursement agreements. |
| 43.70.670 | Human immunodeficiency virus insurance program. |
| 43.70.680 | Volunteers for emergency or disaster assistance. |

43.70.185 Inspection of property where marine species located—Prohibitions on harvest or landing—Penalties. (*Effective July 1, 2004.*) (1) The department may enter and inspect any property, lands, or waters, of this state in or on which any marine species are located or from which such species are harvested, whether recreationally or for sale or barter, and any land or water of this state which may cause or contribute to the pollution of areas in or on which such species are harvested or processed. The department may take any reasonably necessary samples to determine whether such species or any lot, batch, or quantity of such species is safe for human consumption.

(2) If the department determines that any species or any lot, batch, or other quantity of such species is unsafe for human consumption because consumption is likely to cause actual harm or because consumption presents a potential risk of substantial harm, the department may, by order under chapter 34.05 RCW, prohibit or restrict the commercial or recreational harvest or landing of any marine species except the recreational harvest of shellfish as defined in chapter 69.30 RCW if taken from privately owned tidelands.

(3) It is unlawful to harvest any marine species in violation of a departmental order prohibiting or restricting such harvest under this section or to possess or sell any marine species so harvested.

(4)(a) Any person who sells any marine species taken in violation of this section is guilty of a gross misdemeanor and subject to the penalties provided in RCW 69.30.140 and 69.30.150.

(b) Any person who harvests or possesses marine species taken in violation of this section is guilty of a civil infraction and is subject to the penalties provided in RCW 69.30.150.

(c) Notwithstanding this section, any person who harvests, possesses, sells, offers to sell, culls, shucks, or packs shellfish is subject to the penalty provisions of chapter 69.30 RCW.

(d) Charges shall not be brought against a person under both chapter 69.30 RCW and this section in connection with this same action, incident, or event.

(5) The criminal provisions of this section are subject to enforcement by fish and wildlife officers or ex officio fish and wildlife officers as defined in RCW 77.08.010.

(6) As used in this section, marine species include all fish, invertebrate or plant species which are found during any portion of the life cycle of those species in the marine environment. [2003 c 53 § 231; 2001 c 253 § 2; 1995 c 147 § 7.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

43.70.630 Cost-reimbursement agreements. (1) The department may enter into a written cost-reimbursement agreement with a permit applicant to recover from the applicant the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement.

(2) The written cost-reimbursement agreement shall be negotiated with the permit applicant. Under the provisions of

a cost-reimbursement agreement, funds from the applicant shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement.

(3) The department may not enter into any new cost-reimbursement agreements on or after July 1, 2007. The department may continue to administer any cost-reimbursement agreement that was entered into before July 1, 2007, until the project is completed. [2003 c 70 § 3; 2000 c 251 § 4.]

Intent—Captions not law—Effective date—2000 c 251: See notes following RCW 43.21A.690.

43.70.670 Human immunodeficiency virus insurance program. (1) "Human immunodeficiency virus insurance program," as used in this section, means a program that provides health insurance coverage for individuals with human immunodeficiency virus, as defined in RCW 70.24.017(7), who are not eligible for medical assistance programs from the department of social and health services as defined in RCW 74.09.010(8) and meet eligibility requirements established by the department of health.

(2) The department of health may pay for health insurance coverage on behalf of persons with human immunodeficiency virus, who meet department eligibility requirements, and who are eligible for "continuation coverage" as provided by the federal consolidated omnibus budget reconciliation act of 1985, group health insurance policies, or individual policies. The number of insurance policies supported by this program in the Washington state health insurance pool as defined in RCW 48.41.030(18) shall not grow beyond the July 1, 2003, level. [2003 c 274 § 2.]

Rules—2003 c 274: "The department of health shall adopt rules to implement this act." [2003 c 274 § 3.]

Effective date—2003 c 274: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 274 § 4.]

43.70.680 Volunteers for emergency or disaster assistance. (1) The department is authorized to contact persons issued credentials under this title for the purpose of requesting permission to collect his or her name, profession, and contact information as a possible volunteer in the event of a bioterrorism incident, natural disaster, public health emergency, or other emergency or disaster, as defined in RCW 38.52.010, that requires the services of health care providers.

(2) The department shall maintain a record of all volunteers who provide information under subsection (1) of this section. Upon request, the department shall provide the record of volunteers to:

- (a) Local health departments;
- (b) State agencies engaged in public health emergency planning and response, including the state military department;
- (c) Agencies of other states responsible for public health emergency planning and response; and
- (d) The centers for disease control and prevention. [2003 c 384 § 1.]

Chapter 43.72 RCW

HEALTH SYSTEM REFORM—HEALTH SERVICES COMMISSION

Sections

43.72.900 Health services account.

43.72.900 Health services account. (1) The health services account is created in the state treasury. Moneys in the account may be spent only after appropriation. Subject to the transfers described in subsection (3) of this section, moneys in the account may be expended only for maintaining and expanding health services access for low-income residents, maintaining and expanding the public health system, maintaining and improving the capacity of the health care system, containing health care costs, and the regulation, planning, and administering of the health care system.

(2) Funds deposited into the health services account under RCW 82.24.028 and 82.26.028 shall be used solely as follows:

(a) Five million dollars for the state fiscal year beginning July 1, 2002, and five million dollars for the state fiscal year beginning July 1, 2003, shall be appropriated by the legislature for programs that effectively improve the health of low-income persons, including efforts to reduce diseases and illnesses that harm low-income persons. The department of health shall submit a report to the legislature on March 1, 2002, evaluating the cost-effectiveness of programs that improve the health of low-income persons and address diseases and illnesses that disproportionately affect low-income persons, and making recommendations to the legislature on which of these programs could most effectively utilize the funds appropriated under this subsection.

(b) Ten percent of the funds deposited into the health services account under RCW 82.24.028 and 82.26.028 remaining after the appropriation under (a) of this subsection shall be transferred no less frequently than annually by the treasurer to the tobacco prevention and control account established by RCW 43.79.480. The funds transferred shall be used exclusively for implementation of the Washington state

tobacco prevention and control plan and shall be used only to supplement, and not supplant, funds in the tobacco prevention and control account as of January 1, 2001, however, these funds may be used to replace funds appropriated by the legislature for further implementation of the Washington state tobacco prevention and control plan for the biennium beginning July 1, 2001. For each state fiscal year beginning on and after July 1, 2002, the legislature shall appropriate no less than twenty-six million two hundred forty thousand dollars from the tobacco prevention and control account for implementation of the Washington state tobacco prevention and control plan.

(c) Because of its demonstrated effectiveness in improving the health of low-income persons and addressing illnesses and diseases that harm low-income persons, the remainder of the funds deposited into the health services account under RCW 82.24.028 and 82.26.028 shall be appropriated solely for Washington basic health plan enrollment as provided in chapter 70.47 RCW. Funds appropriated under this subsection may be used to support outreach and enrollment activities only to the extent necessary to achieve the enrollment goals described in this section.

(3) Prior to expenditure for the purposes described in subsection (2) of this section, funds deposited into the health services account under RCW 82.24.028 and 82.26.028 shall first be transferred to the following accounts to ensure the continued availability of previously dedicated revenues for certain existing programs:

(a) To the violence reduction and drug enforcement account under RCW 69.50.520, two million two hundred forty-nine thousand five hundred dollars for the state fiscal year beginning July 1, 2001, four million two hundred forty-eight thousand dollars for the state fiscal year beginning July 1, 2002, seven million seven hundred eighty-nine thousand dollars for the biennium beginning July 1, 2003, six million nine hundred thirty-two thousand dollars for the biennium beginning July 1, 2005, and six million nine hundred thirty-two thousand dollars for each biennium thereafter, as required by RCW 82.24.020(2);

(b) To the health services account under this section, nine million seventy-seven thousand dollars for the state fiscal year beginning July 1, 2001, seventeen million one hundred eighty-eight thousand dollars for the state fiscal year beginning July 1, 2002, thirty-one million seven hundred fifty-five thousand dollars for the biennium beginning July 1, 2003, twenty-eight million six hundred twenty-two thousand dollars for the biennium beginning July 1, 2005, and twenty-eight million six hundred twenty-two thousand dollars for each biennium thereafter, as required by RCW 82.24.020(3); and

(c) To the water quality account under RCW 70.146.030, two million two hundred three thousand five hundred dollars for the state fiscal year beginning July 1, 2001, four million two hundred forty-four thousand dollars for the state fiscal year beginning July 1, 2002, eight million one hundred eighty-two thousand dollars for the biennium beginning July 1, 2003, seven million eight hundred eighty-five thousand dollars for the biennium beginning July 1, 2005, and seven million eight hundred eighty-five thousand dollars for each biennium thereafter, as required by RCW 82.24.027(2)(a).

During the 2001-2003 fiscal biennium, the legislature may transfer from the health services account such amounts as reflect the excess fund balance of the account. [2003 c 259 § 1; 2002 c 371 § 909; 2002 c 2 § 2 (Initiative Measure No. 773, approved November 6, 2001); 1993 c 492 § 469.]

Retroactive application—2003 c 259: "This act is intended to apply retroactively to January 1, 2002." [2003 c 259 § 2.]

Effective date—2003 c 259: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 259 § 3.]

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Intent—2002 c 2 (Initiative Measure No. 773): See RCW 70.47.002.

Chapter 43.79 RCW STATE FUNDS

Sections

43.79.470 State patrol nonappropriated airplane revolving account.

43.79.470 State patrol nonappropriated airplane revolving account. The state patrol nonappropriated airplane revolving account is created in the custody of the state treasurer. All receipts from aircraft user fees paid by other agencies and private users as reimbursement for the use of the patrol's aircraft that are primarily for purposes other than highway patrol must be deposited into the account. Expenditures from the account may be used only for expenses related to these aircraft. Only the chief of the Washington state patrol or the chief's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2003 c 360 § 1501.]

Severability—2003 c 360: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 360 § 1502.]

Effective date—2003 c 360: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2003]." [2003 c 360 § 1503.]

Chapter 43.79A RCW TREASURER'S TRUST FUND

Sections

43.79A.040 Management—Income—Investment income account—Distribution.

43.79A.040 Management—Income—Investment income account—Distribution. (1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository,

safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the students with dependents grant account, the basic health plan self-insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust fund, the energy account, the fair fund, the fruit and vegetable inspection account, the game farm alternative account, the grain inspection revolving fund, the juvenile accountability incentive account, the law enforcement officers' and fire fighters' plan 2 expense fund, the local tourism promotion account, the produce railcar pool account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the sulfur dioxide abatement account, the children's trust fund, and the *investing in innovation account. However, the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(c) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right of way revolving fund, the advanced environmental mitigation revolving account, the city and county advance right-of-way revolving fund, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2003 c 403 § 9; 2003 c 313 § 10; 2003 c 191 § 7; 2003 c 148 § 15; 2003 c 92 § 8; 2003 c 19 § 12. Prior: 2002 c 322 § 5; 2002 c 204 § 7; 2002 c 61 § 6; prior: 2001 c 201 § 4; 2001 c 184 § 4; 2000 c 79 § 45; prior: 1999 c 384 § 8; 1999 c 182 § 2; 1998 c 268 § 1; prior: 1997 c 368 § 8; 1997 c 289 § 13; 1997 c 220 § 221 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 140 § 6; 1997 c 94 § 3; 1996 c 253 § 409; prior: 1995 c 394 § 2; 1995 c 365 § 1; prior: 1993 sp.s. c 8 § 2; 1993 c 500 § 5; 1991 sp.s. c 13 § 82; 1973 1st ex.s. c 15 § 4.]

Reviser's note: *(1) The section creating the investing in innovation account, 2003 c 403 § 3, was vetoed by the governor.

(2) This section was amended by 2003 c 19 § 12, 2003 c 92 § 8, 2003 c 148 § 15, 2003 c 191 § 7, 2003 c 313 § 10, and by 2003 c 403 § 9, each without reference to the other. All amendments are incorporated in the publica-

tion of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2003 c 403: See RCW 70.210.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Severability—Effective date—2003 c 92: See RCW 41.26.905 and 41.26.906.

Finding—Intent—Short title—Captions not law—2003 c 19: See RCW 28B.133.005, 28B.133.900, and 28B.133.901.

Effective date—2002 c 322: See note following RCW 15.17.240.

Effective date—2002 c 204: See RCW 28B.119.900.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Intent—Captions not law—1999 c 384: See notes following RCW 43.330.200.

Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368: See notes following RCW 82.08.810.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Intent—1997 c 140: See note following RCW 47.12.330.

Effective date—1997 c 94: See note following RCW 47.04.210.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

Effective date—1995 c 394: See note following RCW 43.84.092.

Effective date—1995 c 365: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1995." [1995 c 365 § 2.]

Effective date—Application—1993 sp.s. c 8: See note following RCW 43.84.092.

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

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

Chapter 43.84 RCW

INVESTMENTS AND INTERFUND LOANS

Sections

- 43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (*Effective until July 1, 2005.*)
- 43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (*Effective July 1, 2005.*)
- 43.84.180 Public works assistance account earnings—Share to public facilities construction loan revolving account. (*Effective July 1, 2005.*)

43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (*Effective until July 1, 2005.*) (1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash man-

agement improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the election account, the emergency reserve fund, The Evergreen State College capital projects account, the federal forest revolving account, the health services account, the public health services account, the health system capacity account, the personal health services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3

account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the Puyallup tribal settlement account, the regional transportation investment district account, the resource management cost account, the site closure account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation infrastructure account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, and the urban arterial trust account.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this sec-

tion. [2003 c 361 § 602; 2003 c 324 § 1; 2003 c 48 § 2. Prior: 2002 c 242 § 2; 2002 c 114 § 24; 2002 c 56 § 402; prior: 2001 2nd sp.s. c 14 § 608; (2001 2nd sp.s. c 14 § 607 expired March 1, 2002); 2001 c 273 § 6; (2001 c 273 § 5 expired March 1, 2002); 2001 c 141 § 3; (2001 c 141 § 2 expired March 1, 2002); 2001 c 80 § 5; (2001 c 80 § 4 expired March 1, 2002); 2000 2nd sp.s. c 4 § 6; prior: 2000 2nd sp.s. c 4 § 5; (2000 2nd sp.s. c 4 §§ 3, 4 expired September 1, 2000); 2000 c 247 § 702; 2000 c 79 § 39; (2000 c 79 §§ 37, 38 expired September 1, 2000); prior: 1999 c 380 § 9; 1999 c 380 § 8; 1999 c 309 § 929; (1999 c 309 § 928 expired September 1, 2000); 1999 c 268 § 5; (1999 c 268 § 4 expired September 1, 2000); 1999 c 94 § 4; (1999 c 94 §§ 2, 3 expired September 1, 2000); 1998 c 341 § 708; 1997 c 218 § 5; 1996 c 262 § 4; prior: 1995 c 394 § 1; 1995 c 122 § 12; prior: 1994 c 2 § 6 (Initiative Measure No. 601, approved November 2, 1993); 1993 sp.s. c 25 § 511; 1993 sp.s. c 8 § 1; 1993 c 500 § 6; 1993 c 492 § 473; 1993 c 445 § 4; 1993 c 329 § 2; 1993 c 4 § 9; 1992 c 235 § 4; 1991 sp.s. c 13 § 57; 1990 2nd ex.s. c 1 § 204; 1989 c 419 § 12; 1985 c 57 § 51.]

Reviser's note: This section was amended by 2003 c 48 § 2, 2003 c 324 § 1, and by 2003 c 361 § 602, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—2003 c 48: See note following RCW 29.04.260.

Findings—Intent—2002 c 242: See note following RCW 43.160.085.

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

Effective date—2001 2nd sp.s. c 14 § 608: "Section 608 of this act takes effect March 1, 2002." [2001 2nd sp.s. c 14 § 611.]

Expiration date—2001 2nd sp.s. c 14 § 607: "Section 607 of this act expires March 1, 2002." [2001 2nd sp.s. c 14 § 610.]

Severability—Effective date—2001 2nd sp.s. c 14: See notes following RCW 47.04.210.

Effective date—2001 c 273 § 6: "Section 6 of this act takes effect March 1, 2002." [2001 c 273 § 8.]

Expiration date—2001 c 273 § 5: "Section 5 of this act expires March 1, 2002." [2001 c 273 § 7.]

Effective date—2001 c 141 § 3: "Section 3 of this act takes effect March 1, 2002." [2001 c 141 § 6.]

Expiration date—2001 c 141 § 2: "Section 2 of this act expires March 1, 2002." [2001 c 141 § 5.]

Purpose—2001 c 141: "This act is needed to comply with federal law, which is the source of funds in the drinking water assistance account, used to fund the Washington state drinking water loan program as part of the federal safe drinking water act." [2001 c 141 § 1.]

Effective date—2001 c 80 § 5: "Section 5 of this act takes effect March 1, 2002." [2001 c 80 § 7.]

Expiration date—2001 c 80 § 4: "Section 4 of this act expires March 1, 2002." [2001 c 80 § 6.]

Findings—Intent—2001 c 80: See note following RCW 43.70.040.

Expiration date—2000 2nd sp.s. c 4 §§ 3 and 4: "Sections 3 and 4 of this act expire September 1, 2000." [2000 2nd sp.s. c 4 § 37.]

Effective date—2000 2nd sp.s. c 4 §§ 1-3 and 20: See note following RCW 82.08.020.

Effective dates—2000 2nd sp.s. c 4 §§ 4-10: See note following RCW 43.89.010.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Expiration date—2000 c 79 §§ 37 and 38: "Sections 37 and 38 of this act expire September 1, 2000." [2000 c 79 § 49.]

Effective dates—2000 c 79 §§ 26, 38, and 39: See note following RCW 48.43.041.

Severability—2000 c 79: See note following RCW 48.04.010.

Severability—Effective date—1999 c 380: See RCW 43.99P.900 and 43.99P.901.

Expiration date—1999 c 309 § 928: "Section 928 of this act expires September 1, 2000." [1999 c 309 § 930.]

Effective dates—1999 c 309 §§ 927-929, 931, and 1101-1902: See note following RCW 43.79.480.

Severability—1999 c 309: See note following RCW 41.06.152.

Effective date—1999 c 268 § 5: "Section 5 of this act takes effect September 1, 2000." [1999 c 268 § 7.]

Expiration date—1999 c 268 § 4: "Section 4 of this act expires September 1, 2000." [1999 c 268 § 6.]

Expiration date—1999 c 94 §§ 2 and 3: "Sections 2 and 3 of this act expire September 1, 2000." [1999 c 94 § 36.]

Legislative finding—1999 c 94: "The legislature finds that a periodic review of the accounts and their uses is necessary. While creating new accounts may facilitate the implementation of legislative intent, the creation of too many accounts limits the effectiveness of performance-based budgeting. Too many accounts also limit the flexibility of the legislature to address emerging and changing issues in addition to creating administrative burdens for the responsible agencies. Accounts created for specific purposes may no longer be valid or needed. Accordingly, this act eliminates accounts that are not in use or are unneeded and consolidates accounts that are similar in nature." [1999 c 94 § 1.]

Effective dates—1999 c 94: "(1) Sections 1, 2, 5 through 24, 29 through 31, and 33 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1999.

(2) Section 4 of this act takes effect September 1, 2000.

(3) Sections 32 and 37 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 30, 1999.

(4) Sections 3, 25 through 28, and 34 of this act take effect July 1, 2000." [1999 c 94 § 35.]

Effective date—1998 c 341: See RCW 41.35.901.

Findings—Effective date—1997 c 218: See notes following RCW 70.119.030.

Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262: See RCW 82.44.195.

Effective date—1996 c 262: See note following RCW 82.44.190.

Effective date—1995 c 394: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 1995." [1995 c 394 § 3.]

Declaration—Intent—Purpose—1995 c 122: See RCW 59.21.006.

Severability—Effective date—1995 c 122: See RCW 59.21.904 and 59.21.905.

Severability—Effective dates—1994 c 2 (Initiative Measure No. 601): See RCW 43.135.903 and 43.135.904.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Effective date—Application—1993 sp.s. c 8: "This act shall take effect July 1, 1993, but shall not be effective for earnings on balances prior to July 1, 1993." [1993 sp.s. c 8 § 3.]

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective date—1993 c 329: See note following RCW 90.50A.020.

Legislative declaration—Effective date—1993 c 4: See notes following RCW 47.56.770.

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

Applicability—1990 2nd ex.s. c 1: See note following RCW 82.14.050.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

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

43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (Effective July 1, 2005.) (1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization

account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the election account, the emergency reserve fund, The Evergreen State College capital projects account, the federal forest revolving account, the health services account, the public health services account, the health system capacity account, the personal health services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puyallup tribal settlement account, the regional transportation investment district account, the resource management cost account, the site closure account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation infrastructure account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent

fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, and the urban arterial trust account.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2003 c 361 § 602; 2003 c 324 § 1; 2003 c 150 § 2; 2003 c 48 § 2. Prior: 2002 c 242 § 2; 2002 c 114 § 24; 2002 c 56 § 402; prior: 2001 2nd sp.s. c 14 § 608; (2001 2nd sp.s. c 14 § 607 expired March 1, 2002); 2001 c 273 § 6; (2001 c 273 § 5 expired March 1, 2002); 2001 c 141 § 3; (2001 c 141 § 2 expired March 1, 2002); 2001 c 80 § 5; (2001 c 80 § 4 expired March 1, 2002); 2000 2nd sp.s. c 4 § 6; prior: 2000 2nd sp.s. c 4 § 5; (2000 2nd sp.s. c 4 §§ 3, 4 expired September 1, 2000); 2000 c 247 § 702; 2000 c 79 § 39; (2000 c 79 §§ 37, 38 expired September 1, 2000); prior: 1999 c 380 § 9; 1999 c 380 § 8; 1999 c 309 § 929; (1999 c 309 § 928 expired September 1, 2000); 1999 c 268 § 5; (1999 c 268 § 4 expired September 1, 2000); 1999 c 94 § 4; (1999 c 94 §§ 2, 3 expired September 1, 2000); 1998 c 341 § 708; 1997 c 218 § 5; 1996 c 262 § 4; prior: 1995 c 394 § 1; 1995 c 122 § 12; prior: 1994 c 2 § 6 (Initiative Measure No. 601, approved November 2, 1993); 1993 sp.s. c 25 § 511; 1993 sp.s. c 8 § 1; 1993 c 500 § 6; 1993 c 492 § 473; 1993 c 445 § 4; 1993 c 329 § 2; 1993 c 4 § 9; 1992 c 235 § 4; 1991 sp.s. c 13 § 57; 1990 2nd ex.s. c 1 § 204; 1989 c 419 § 12; 1985 c 57 § 51.]

Reviser's note: This section was amended by 2003 c 48 § 2, 2003 c 150 § 2, 2003 c 324 § 1, and by 2003 c 361 § 602, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—2003 c 150 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2005." [2003 c 150 § 4.]

Effective date—2003 c 48: See note following RCW 29.04.260.

Findings—Intent—2003 c 150; 2002 c 242: See note following RCW 43.160.085.

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

Effective date—2001 2nd sp.s. c 14 § 608: "Section 608 of this act takes effect March 1, 2002." [2001 2nd sp.s. c 14 § 611.]

Expiration date—2001 2nd sp.s. c 14 § 607: "Section 607 of this act expires March 1, 2002." [2001 2nd sp.s. c 14 § 610.]

Severability—Effective date—2001 2nd sp.s. c 14: See notes following RCW 47.04.210.

Effective date—2001 c 273 § 6: "Section 6 of this act takes effect March 1, 2002." [2001 c 273 § 8.]

Expiration date—2001 c 273 § 5: "Section 5 of this act expires March 1, 2002." [2001 c 273 § 7.]

Effective date—2001 c 141 § 3: "Section 3 of this act takes effect March 1, 2002." [2001 c 141 § 6.]

Expiration date—2001 c 141 § 2: "Section 2 of this act expires March 1, 2002." [2001 c 141 § 5.]

Purpose—2001 c 141: "This act is needed to comply with federal law, which is the source of funds in the drinking water assistance account, used to fund the Washington state drinking water loan program as part of the federal safe drinking water act." [2001 c 141 § 1.]

Effective date—2001 c 80 § 5: "Section 5 of this act takes effect March 1, 2002." [2001 c 80 § 7.]

Expiration date—2001 c 80 § 4: "Section 4 of this act expires March 1, 2002." [2001 c 80 § 6.]

Findings—Intent—2001 c 80: See note following RCW 43.70.040.

Expiration date—2000 2nd sp.s. c 4 §§ 3 and 4: "Sections 3 and 4 of this act expire September 1, 2000." [2000 2nd sp.s. c 4 § 37.]

Effective date—2000 2nd sp.s. c 4 §§ 1-3 and 20: See note following RCW 82.08.020.

Effective dates—2000 2nd sp.s. c 4 §§ 4-10: See note following RCW 43.89.010.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Expiration date—2000 c 79 §§ 37 and 38: "Sections 37 and 38 of this act expire September 1, 2000." [2000 c 79 § 49.]

Effective dates—2000 c 79 §§ 26, 38, and 39: See note following RCW 48.43.041.

Severability—2000 c 79: See note following RCW 48.04.010.

Severability—Effective date—1999 c 380: See RCW 43.99P.900 and 43.99P.901.

Expiration date—1999 c 309 § 928: "Section 928 of this act expires September 1, 2000." [1999 c 309 § 930.]

Effective dates—1999 c 309 §§ 927-929, 931, and 1101-1902: See note following RCW 43.79.480.

Severability—1999 c 309: See note following RCW 41.06.152.

Effective date—1999 c 268 § 5: "Section 5 of this act takes effect September 1, 2000." [1999 c 268 § 7.]

Expiration date—1999 c 268 § 4: "Section 4 of this act expires September 1, 2000." [1999 c 268 § 6.]

Expiration date—1999 c 94 §§ 2 and 3: "Sections 2 and 3 of this act expire September 1, 2000." [1999 c 94 § 36.]

Legislative finding—1999 c 94: "The legislature finds that a periodic review of the accounts and their uses is necessary. While creating new accounts may facilitate the implementation of legislative intent, the creation of too many accounts limits the effectiveness of performance-based budgeting. Too many accounts also limit the flexibility of the legislature to address emerging and changing issues in addition to creating administrative burdens for the responsible agencies. Accounts created for specific purposes may no longer be valid or needed. Accordingly, this act eliminates accounts that are not in use or are unneeded and consolidates accounts that are similar in nature." [1999 c 94 § 1.]

Effective dates—1999 c 94: "(1) Sections 1, 2, 5 through 24, 29 through 31, and 33 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1999.

(2) Section 4 of this act takes effect September 1, 2000.

(3) Sections 32 and 37 of this act are necessary for the immediate pres-

ervation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 30, 1999.

(4) Sections 3, 25 through 28, and 34 of this act take effect July 1, 2000." [1999 c 94 § 35.]

Effective date—1998 c 341: See RCW 41.35.901.

Findings—Effective date—1997 c 218: See notes following RCW 70.119.030.

Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262: See RCW 82.44.195.

Effective date—1996 c 262: See note following RCW 82.44.190.

Effective date—1995 c 394: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 1995." [1995 c 394 § 3.]

Declaration—Intent—Purpose—1995 c 122: See RCW 59.21.006.

Severability—Effective date—1995 c 122: See RCW 59.21.904 and 59.21.905.

Severability—Effective dates—1994 c 2 (Initiative Measure No. 601): See RCW 43.135.903 and 43.135.904.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Effective date—Application—1993 sp.s. c 8: "This act shall take effect July 1, 1993, but shall not be effective for earnings on balances prior to July 1, 1993." [1993 sp.s. c 8 § 3.]

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective date—1993 c 329: See note following RCW 90.50A.020.

Legislative declaration—Effective date—1993 c 4: See notes following RCW 47.56.770.

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

Applicability—1990 2nd ex.s. c 1: See note following RCW 82.14.050.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

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

43.84.180 Public works assistance account earnings—Share to public facilities construction loan revolving account. (Effective July 1, 2005.) The proportionate share of earnings based on the average daily balance in the public works assistance account shall be placed in the public facilities construction loan revolving fund. [2003 c 150 § 3.]

Effective date—2003 c 150 §§ 2 and 3: See note following RCW 43.84.092.

Findings—Intent—2003 c 150; 2002 c 242: See note following RCW 43.160.085.

Chapter 43.85 RCW STATE DEPOSITARIES

Sections

43.85.130 Recodified as RCW 43.30.325.

43.85.130 Recodified as RCW 43.30.325. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.88 RCW

STATE BUDGETING, ACCOUNTING, AND REPORTING SYSTEM

(Formerly: Budget and accounting)

Sections

- 43.88.032 Maintenance costs, operating budget—Debt-financed pass-through money, budget document. (*Expires June 30, 2005.*)
- 43.88.110 Expenditure programs—Maintenance summary reports—Allotments—Reserves—Monitor capital appropriations—Predesign review for major capital construction.

43.88.032 Maintenance costs, operating budget—Debt-financed pass-through money, budget document. (*Expires June 30, 2005.*) (1) Normal maintenance costs, except for funds appropriated for facility preservation of state institutions of higher education, shall be programmed in the operating budget rather than in the capital budget.

(2) All debt-financed pass-through money to local governments shall be programmed and separately identified in the budget document. [2003 1st sp.s. c 26 § 921; 1997 c 96 § 5; 1994 c 219 § 4; 1989 c 311 § 1.]

Expiration date—Severability—Effective dates—2003 1st sp.s. c 26: See notes following RCW 43.135.045.

Findings—Purpose—1997 c 96: See note following RCW 43.82.150.

Finding—1994 c 219: See note following RCW 43.88.030.

43.88.110 Expenditure programs—Maintenance summary reports—Allotments—Reserves—Monitor capital appropriations—Predesign review for major capital construction. This section sets forth the expenditure programs and the allotment and reserve procedures to be followed by the executive branch for public funds.

(1) Allotments of an appropriation for any fiscal period shall conform to the terms, limits, or conditions of the appropriation.

(2) The director of financial management shall provide all agencies with a complete set of operating and capital instructions for preparing a statement of proposed expenditures at least thirty days before the beginning of a fiscal period. The set of instructions need not include specific appropriation amounts for the agency.

(3) Within forty-five days after the beginning of the fiscal period or within forty-five days after the governor signs the omnibus biennial appropriations act, whichever is later, all agencies shall submit to the governor a statement of proposed expenditures at such times and in such form as may be required by the governor.

(4) The office of financial management shall develop a method for monitoring capital appropriations and expenditures that will capture at least the following elements:

- (a) Appropriations made for capital projects including transportation projects;
- (b) Estimates of total project costs including past, current, ensuing, and future biennial costs;
- (c) Comparisons of actual costs to estimated costs;
- (d) Comparisons of estimated construction start and completion dates with actual dates;
- (e) Documentation of fund shifts between projects.

This data may be incorporated into the existing accounting system or into a separate project management system, as deemed appropriate by the office of financial management.

(5) The office of financial management shall publish agency annual maintenance summary reports beginning in October 1997. State agencies shall submit a separate report for each major campus or site, as defined by the office of financial management. Reports shall be prepared in a format prescribed by the office of financial management and shall include, but not be limited to: Information describing the number, size, and condition of state-owned facilities; facility maintenance, repair, and operating expenses paid from the state operating and capital budgets, including maintenance staffing levels; the condition of major infrastructure systems; and maintenance management initiatives undertaken by the agency over the prior year. Agencies shall submit their annual maintenance summary reports to the office of financial management by September 1 each year.

(6) The office of financial management, prior to approving allotments for major capital construction projects valued over five million dollars, shall institute procedures for reviewing such projects at the predesign stage that will reduce long-term costs and increase facility efficiency. The procedures shall include, but not be limited to, the following elements:

(a) Evaluation of facility program requirements and consistency with long-range plans;

(b) Utilization of a system of cost, quality, and performance standards to compare major capital construction projects; and

(c) A requirement to incorporate value-engineering analysis and constructability review into the project schedule.

(7) No expenditure may be incurred or obligation entered into for such major capital construction projects including, without exception, land acquisition, site development, predesign, design, construction, and equipment acquisition and installation, until the allotment of the funds to be expended has been approved by the office of financial management. This limitation does not prohibit the continuation of expenditures and obligations into the succeeding biennium for projects for which allotments have been approved in the immediate prior biennium.

(8) If at any time during the fiscal period the governor projects a cash deficit in a particular fund or account as defined by RCW 43.88.050, the governor shall make across-the-board reductions in allotments for that particular fund or account so as to prevent a cash deficit, unless the legislature has directed the liquidation of the cash deficit over one or more fiscal periods. Except for the legislative and judicial branches and other agencies headed by elective officials, the governor shall review the statement of proposed operating expenditures for reasonableness and conformance with legislative intent. The governor may request corrections of proposed allotments submitted by the legislative and judicial branches and agencies headed by elective officials if those proposed allotments contain significant technical errors. Once the governor approves the proposed allotments, further revisions may at the request of the office of financial management or upon the agency's initiative be made on a quarterly basis and must be accompanied by an explanation of the reasons for significant changes. However, changes in appropriation level authorized by the legislature, changes required by across-the-board reductions mandated by the governor, changes caused by executive increases to spending authority,

and changes caused by executive decreases to spending authority for failure to comply with the provisions of chapter 36.70A RCW may require additional revisions. Revisions shall not be made retroactively. However, the governor may assign to a reserve status any portion of an agency appropriation withheld as part of across-the-board reductions made by the governor and any portion of an agency appropriation conditioned on a contingent event by the appropriations act. The governor may remove these amounts from reserve status if the across-the-board reductions are subsequently modified or if the contingent event occurs. The director of financial management shall enter approved statements of proposed expenditures into the state budgeting, accounting, and reporting system within forty-five days after receipt of the proposed statements from the agencies. If an agency or the director of financial management is unable to meet these requirements, the director of financial management shall provide a timely explanation in writing to the legislative fiscal committees.

(9) It is expressly provided that all agencies shall be required to maintain accounting records and to report thereon in the manner prescribed in this chapter and under the regulations issued pursuant to this chapter. Within ninety days of the end of the fiscal year, all agencies shall submit to the director of financial management their final adjustments to close their books for the fiscal year. Prior to submitting fiscal data, written or oral, to committees of the legislature, it is the responsibility of the agency submitting the data to reconcile it with the budget and accounting data reported by the agency to the director of financial management.

(10) The director of financial management may exempt certain public funds from the allotment controls established under this chapter if it is not practical or necessary to allot the funds. Allotment control exemptions expire at the end of the fiscal biennium for which they are granted. The director of financial management shall report any exemptions granted under this subsection to the legislative fiscal committees. [2003 c 206 § 1; 1997 c 96 § 6; 1994 c 219 § 5. Prior: 1991 sp.s. c 32 § 27; 1991 c 358 § 2; 1987 c 502 § 5; 1986 c 215 § 4; 1984 c 138 § 8; 1983 1st ex.s. c 47 § 1; 1982 2nd ex.s. c 15 § 1; 1981 c 270 § 5; 1979 c 151 § 138; 1975 1st ex.s. c 293 § 6; 1965 c 8 § 43.88.110; prior: 1959 c 328 § 11.]

Effective date—2003 c 206: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 206 § 2.]

Findings—Purpose—1997 c 96: See note following RCW 43.82.150.

Finding—1994 c 219: See note following RCW 43.88.030.

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Effective date—1991 c 358: See note following RCW 43.88.030.

Severability—1982 2nd ex.s. c 15: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 2nd ex.s. c 15 § 5.]

Effective date—Severability—1981 c 270: See notes following RCW 43.88.010.

Exception: RCW 43.88.265.

Chapter 43.99R RCW

FINANCING FOR APPROPRIATIONS— 2003-2005 BIENNIUM

Sections

[2003 RCW Supp—page 580]

- 43.99R.010 General obligation bonds for capital and operating appropriations act.
- 43.99R.020 Conditions and limitations.
- 43.99R.030 Retirement of bonds—Reimbursement of general fund from debt-limit general fund bond retirement account.
- 43.99R.040 Pledge and promise—Remedies.
- 43.99R.050 Payment of principal and interest—Additional means for raising money authorized.
- 43.99R.900 Severability—2003 1st sp.s. c 3.
- 43.99R.901 Effective date—2003 1st sp.s. c 3.

43.99R.010 General obligation bonds for capital and operating appropriations act. For the purpose of providing funds to finance the projects described and authorized by the legislature in the capital and operating appropriation acts for the 2003-2005 fiscal biennium, and all costs incidental thereto, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one billion two hundred twelve million dollars, or as much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. [2003 1st sp.s. c 3 § 1.]

43.99R.020 Conditions and limitations. The proceeds from the sale of the bonds authorized in RCW 43.99R.010 shall be deposited in the state building construction account created by RCW 43.83.020. The proceeds shall be transferred as follows:

(1) One billion fifty-one million dollars to remain in the state building construction account created by RCW 43.83.020;

(2) Twenty-two million five hundred thousand dollars to the outdoor recreation account created by RCW 79A.25.060;

(3) Twenty-two million five hundred thousand dollars to the habitat conservation account created by RCW 79A.15.020;

(4) Eighty million dollars to the state taxable building construction account. All receipts from taxable bond issues are to be deposited into the account. If the state finance committee deems it necessary to issue more than the amount specified in this subsection (4) as taxable bonds in order to comply with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds, the proceeds of such additional taxable bonds shall be transferred to the state taxable building construction account in lieu of any transfer otherwise provided by this section. The state treasurer shall submit written notice to the director of financial management if it is determined that any such additional transfer to the state taxable building construction account is necessary. Moneys in the account may be spent only after appropriation.

These proceeds shall be used exclusively for the purposes specified in this section and for the payment of expenses incurred in the issuance and sale of the bonds issued for the purposes of this section, and shall be administered by the office of financial management subject to legislative appropriation. [2003 1st sp.s. c 3 § 2.]

43.99R.030 Retirement of bonds—Reimbursement of general fund from debt-limit general fund bond retire-

ment account. (1) The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 43.99R.020 (1), (2), (3), and (4).

(2) The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in RCW 43.99R.020 (1), (2), (3), and (4).

(3) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99R.020 (1), (2), (3), and (4) the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date. [2003 1st sp.s. c 3 § 3.]

43.99R.040 Pledge and promise—Remedies. (1) Bonds issued under RCW 43.99R.010 through 43.99R.030 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

(2) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2003 1st sp.s. c 3 § 4.]

43.99R.050 Payment of principal and interest—Additional means for raising money authorized. The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 43.99R.010, and RCW 43.99R.020 and 43.99R.030 shall not be deemed to provide an exclusive method for the payment. [2003 1st sp.s. c 3 § 5.]

43.99R.900 Severability—2003 1st sp.s. c 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2003 1st sp.s. c 3 § 7.]

43.99R.901 Effective date—2003 1st sp.s. c 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 20, 2003]. [2003 1st sp.s. c 3 § 8.]

Chapter 43.101 RCW

CRIMINAL JUSTICE TRAINING COMMISSION— EDUCATION AND TRAINING STANDARDS BOARDS

Sections

43.101.010	Definitions.
43.101.225	Training on vehicular pursuits.
43.101.226	Vehicular pursuits—Model policy.
43.101.227	Training for interaction with persons with a developmental disability or mental illness.

43.101.010 Definitions. When used in this chapter:

(1) The term "commission" means the Washington state criminal justice training commission.

(2) The term "boards" means the education and training standards boards, the establishment of which are authorized by this chapter.

(3) The term "criminal justice personnel" means any person who serves in a county, city, state, or port commission agency engaged in crime prevention, crime reduction, or enforcement of the criminal law.

(4) The term "law enforcement personnel" means any public employee or volunteer having as a primary function the enforcement of criminal laws in general or any employee or volunteer of, or any individual commissioned by, any municipal, county, state, or combination thereof, agency having as its primary function the enforcement of criminal laws in general as distinguished from an agency possessing peace officer powers, the primary function of which is the implementation of specialized subject matter areas. For the purposes of this subsection "primary function" means that function to which the greater allocation of resources is made.

(5) The term "correctional personnel" means any employee or volunteer who by state, county, municipal, or combination thereof, statute has the responsibility for the confinement, care, management, training, treatment, education, supervision, or counseling of those individuals whose civil rights have been limited in some way by legal sanction.

(6) A peace officer is "convicted" at the time a plea of guilty has been accepted, or a verdict of guilty or finding of guilt has been filed, notwithstanding the pendency of any future proceedings, including but not limited to sentencing, posttrial or postfact-finding motions and appeals. "Conviction" includes a deferral of sentence and also includes the equivalent disposition by a court in a jurisdiction other than the state of Washington.

(7) "Discharged for disqualifying misconduct" means terminated from employment for: (a) Conviction of (i) any crime committed under color of authority as a peace officer, (ii) any crime involving dishonesty or false statement within the meaning of Evidence Rule 609(a), (iii) the unlawful use or possession of a controlled substance, or (iv) any other crime the conviction of which disqualifies a Washington citizen from the legal right to possess a firearm under state or federal law; (b) conduct that would constitute any of the crimes addressed in (a) of this subsection; or (c) knowingly making materially false statements during disciplinary investigations, where the false statements are the sole basis for the termination.

(8) A peace officer is "discharged for disqualifying misconduct" within the meaning of subsection (7) of this section under the ordinary meaning of the term and when the totality of the circumstances support a finding that the officer resigned in anticipation of discipline, whether or not the misconduct was discovered at the time of resignation, and when such discipline, if carried forward, would more likely than not have led to discharge for disqualifying misconduct within the meaning of subsection (7) of this section.

(9) When used in context of proceedings referred to in this chapter, "final" means that the peace officer has exhausted all available civil service appeals, collective bargaining remedies, and all other such direct administrative

appeals, and the officer has not been reinstated as the result of the action. Finality is not affected by the pendency or availability of state or federal administrative or court actions for discrimination, or by the pendency or availability of any remedies other than direct civil service and collective bargaining remedies.

(10) "Peace officer" means any law enforcement personnel subject to the basic law enforcement training requirement of RCW 43.101.200 and any other requirements of that section, notwithstanding any waiver or exemption granted by the commission, and notwithstanding the statutory exemption based on date of initial hire under RCW 43.101.200. Commissioned officers of the Washington state patrol, whether they have been or may be exempted by rule of the commission from the basic training requirement of RCW 43.101.200, are included as peace officers for purposes of this chapter. Fish and wildlife officers with enforcement powers for all criminal laws under RCW 77.15.075 are peace officers for purposes of this chapter. [2003 c 39 § 27; 2001 c 167 § 1; 1981 c 132 § 2; 1977 ex.s. c 212 § 1; 1974 ex.s. c 94 § 1.]

Civil rights

loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.

restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

43.101.225 Training on vehicular pursuits. (1) By June 30, 2006, every new full-time law enforcement officer employed, after July 27, 2003, by a state, county, or municipal law enforcement agency shall be trained on vehicular pursuits.

(2) Beginning July 1, 2006, every new full-time law enforcement officer employed by a state, county, or municipal law enforcement agency shall be trained on vehicular pursuits, within six months of employment.

(3) Nothing in chapter 37, Laws of 2003 requires training on vehicular pursuit of any law enforcement officer who is employed in a state, county, or city law enforcement agency on July 27, 2003, beyond that which he or she has received prior to July 27, 2003. [2003 c 37 § 3.]

Intent—2003 c 37: "The legislature intends to improve the safety of law enforcement officers and the public by providing consistent education and training for officers in the matter of vehicle pursuit. The legislature recognizes there are a multitude of factors which enter into the determination of pursuit and intends that the criminal justice training commission be given the responsibility of identifying those factors and developing appropriate standards for training of law enforcement officers in this area." [2003 c 37 § 1.]

43.101.226 Vehicular pursuits—Model policy. (1) By December 1, 2003, the Washington state criminal justice training commission, the Washington state patrol, the Washington association of sheriffs and police chiefs, and organizations representing state and local law enforcement officers shall develop a written model policy on vehicular pursuits.

(2) The model policy must meet all of the following minimum standards:

(a) Provide for supervisory control, if available, of the pursuit;

(b) Provide procedures for designating the primary pursuit vehicle and for determining the total number of vehicles to be permitted to participate at one time in the pursuit;

(c) Provide procedures for coordinating operations with other jurisdictions; and

(d) Provide guidelines for determining when the interests of public safety and effective law enforcement justify a vehicular pursuit and when a vehicular pursuit should not be initiated or should be terminated.

(3) By June 1, 2004, every state, county, and municipal law enforcement agency shall adopt and implement a written vehicular pursuit policy. The policy adopted may, but need not, be the model policy developed under subsections (1) and (2) of this section. However, any policy adopted must address the minimum requirements specified in subsection (2) of this section. [2003 c 37 § 2.]

Intent—2003 c 37: See note following RCW 43.101.225.

43.101.227 Training for interaction with persons with a developmental disability or mental illness.

(1) The commission must offer a training session on law enforcement interaction with persons with a developmental disability or mental illness. The training must be developed by the commission in consultation with appropriate self advocate and family advocate groups and with appropriate community, local, and state organizations and agencies that have expertise in the area of working with persons with a developmental disability or mental illness. In developing the course, the commission must also examine existing courses certified by the commission that relate to persons with a developmental disability or mental illness.

(2) The training must consist of classroom instruction or internet instruction and shall replicate likely field situations to the maximum extent possible. The training should include, at a minimum, core instruction in all of the following:

(a) The cause and nature of mental illnesses and developmental disabilities;

(b) How to identify indicators of mental illness and developmental disability and how to respond appropriately in a variety of common situations;

(c) Conflict resolution and de-escalation techniques for potentially dangerous situations involving persons with a developmental disability or mental illness;

(d) Appropriate language usage when interacting with persons with a developmental disability or mental illness;

(e) Alternatives to lethal force when interacting with potentially dangerous persons with a developmental disability or mental illness; and

(f) Community and state resources available to serve persons with a developmental disability or mental illness and how these resources can be best used by law enforcement to benefit persons with a developmental disability or mental illness in their communities.

(3) The training shall be made available to law enforcement agencies, through electronic means, for use at their convenience and determined by the internal training needs and resources of each agency.

(4) The commission shall make all reasonable efforts to secure private and nonstate public funds to implement this section. [2003 c 270 § 1.]

Chapter 43.105 RCW

DEPARTMENT OF INFORMATION SERVICES

(Formerly: Data processing and communications systems)

Sections

- 43.105.020 Definitions.
 43.105.041 Powers and duties of board.
 43.105.330 State interoperability executive committee.

43.105.020 Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions shall apply:

- (1) "Department" means the department of information services;
- (2) "Board" means the information services board;
- (3) "Committee" means the state interoperability executive committee;
- (4) "Local governments" includes all municipal and quasi municipal corporations and political subdivisions, and all agencies of such corporations and subdivisions authorized to contract separately;
- (5) "Director" means the director of the department;
- (6) "Purchased services" means services provided by a vendor to accomplish routine, continuing, and necessary functions. This term includes, but is not limited to, services acquired for equipment maintenance and repair, operation of a physical plant, security, computer hardware and software installation and maintenance, telecommunications installation and maintenance, data entry, keypunch services, programming services, and computer time-sharing;
- (7) "Backbone network" means the shared high-density portions of the state's telecommunications transmission facilities. It includes specially conditioned high-speed communications carrier lines, multiplexors, switches associated with such communications lines, and any equipment and software components necessary for management and control of the backbone network;
- (8) "Telecommunications" means the transmission of information by wire, radio, optical cable, electromagnetic, or other means;
- (9) "Information" includes, but is not limited to, data, text, voice, and video;
- (10) "Information processing" means the electronic capture, collection, storage, manipulation, transmission, retrieval, and presentation of information in the form of data, text, voice, or image and includes telecommunications and office automation functions;
- (11) "Information services" means data processing, telecommunications, office automation, and computerized information systems;
- (12) "Equipment" means the machines, devices, and transmission facilities used in information processing, such as computers, word processors, terminals, telephones, wireless communications system facilities, cables, and any physical facility necessary for the operation of such equipment;
- (13) "Information technology portfolio" or "portfolio" means a strategic management process documenting relationships between agency missions and information technology and telecommunications investments;

(14) "Oversight" means a process of comprehensive risk analysis and management designed to ensure optimum use of information technology resources and telecommunications;

(15) "Proprietary software" means that software offered for sale or license;

(16) "Video telecommunications" means the electronic interconnection of two or more sites for the purpose of transmitting and/or receiving visual and associated audio information. Video telecommunications shall not include existing public television broadcast stations as currently designated by the department of community, trade, and economic development under chapter 43.330 RCW;

(17) "K-20 educational network board" or "K-20 board" means the K-20 educational network board created in RCW 43.105.800;

(18) "K-20 network technical steering committee" or "committee" means the K-20 network technical steering committee created in RCW 43.105.810;

(19) "K-20 network" means the network established in RCW 43.105.820;

(20) "Educational sectors" means those institutions of higher education, school districts, and educational service districts that use the network for distance education, data transmission, and other uses permitted by the K-20 board. [2003 c 18 § 2. Prior: 1999 c 285 § 1; 1999 c 80 § 1; 1993 c 280 § 78; 1990 c 208 § 3; 1987 c 504 § 3; 1973 1st ex.s. c 219 § 3; 1967 ex.s. c 115 § 2.]

Intent—Finding—2003 c 18: "It is the intent of the legislature to ensure that the state's considerable investment in radio communications facilities, and the radio spectrum that is licensed to government entities in the state, are managed in a way that promotes to the maximum extent the health and safety of the state's citizens and the economic efficiencies of coordinated planning, development, management, maintenance, accountability, and performance. The legislature finds that such coordination is essential for disaster preparedness, emergency management, and public safety, and that such coordination will result in more cost-effective use of state resources and improved government services." [2003 c 18 § 1.]

Effective date—2003 c 18: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 18 § 6.]

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

Effective date—1967 ex.s. c 115: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1967." [1967 ex.s. c 115 § 8.]

43.105.041 Powers and duties of board. (1) The board shall have the following powers and duties related to information services:

(a) To develop standards and procedures governing the acquisition and disposition of equipment, proprietary software and purchased services, licensing of the radio spectrum by or on behalf of state agencies, and confidentiality of computerized data;

(b) To purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services: PROVIDED, That, agencies and institutions of state government are expressly prohibited from

acquiring or disposing of equipment, proprietary software, and purchased services without such delegation of authority. The acquisition and disposition of equipment, proprietary software, and purchased services is exempt from RCW 43.19.1919 and, as provided in RCW 43.19.1901, from the provisions of RCW 43.19.190 through 43.19.200. This subsection (1)(b) does not apply to the legislative branch;

(c) To develop statewide or interagency technical policies, standards, and procedures;

(d) To review and approve standards and common specifications for new or expanded telecommunications networks proposed by agencies, public postsecondary education institutions, educational service districts, or statewide or regional providers of K-12 information technology services, and to assure the cost-effective development and incremental implementation of a statewide video telecommunications system to serve: Public schools; educational service districts; vocational-technical institutes; community colleges; colleges and universities; state and local government; and the general public through public affairs programming;

(e) To provide direction concerning strategic planning goals and objectives for the state. The board shall seek input from the legislature and the judiciary;

(f) To develop and implement a process for the resolution of appeals by:

(i) Vendors concerning the conduct of an acquisition process by an agency or the department; or

(ii) A customer agency concerning the provision of services by the department or by other state agency providers;

(g) To establish policies for the periodic review by the department of agency performance which may include but are not limited to analysis of:

(i) Planning, management, control, and use of information services;

(ii) Training and education; and

(iii) Project management;

(h) To set its meeting schedules and convene at scheduled times, or meet at the request of a majority of its members, the chair, or the director; and

(i) To review and approve that portion of the department's budget requests that provides for support to the board.

(2) Statewide technical standards to promote and facilitate electronic information sharing and access are an essential component of acceptable and reliable public access service and complement content-related standards designed to meet those goals. The board shall:

(a) Establish technical standards to facilitate electronic access to government information and interoperability of information systems, including wireless communications systems. Local governments are strongly encouraged to follow the standards established by the board; and

(b) Require agencies to consider electronic public access needs when planning new information systems or major upgrades of systems.

In developing these standards, the board is encouraged to include the state library, state archives, and appropriate representatives of state and local government.

(3)(a) The board, in consultation with the K-20 board, has the duty to govern, operate, and oversee the technical design, implementation, and operation of the K-20 network including, but not limited to, the following duties: Establish-

ment and implementation of K-20 network technical policy, including technical standards and conditions of use; review and approval of network design; procurement of shared network services and equipment; and resolving user/provider disputes concerning technical matters. The board shall delegate general operational and technical oversight to the K-20 network technical steering committee as appropriate.

(b) The board has the authority to adopt rules under chapter 34.05 RCW to implement the provisions regarding the technical operations and conditions of use of the K-20 network. [2003 c 18 § 3; 1999 c 285 § 5. Prior: 1996 c 171 § 8; 1996 c 137 § 12; (1996 c 171 § 7, 1996 c 137 § 11, and 1995 2nd sp.s. c 14 § 512 expired June 30, 1997); 1990 c 208 § 6; 1987 c 504 § 5; 1983 c 3 § 115; 1973 1st ex.s. c 219 § 6.]

Intent—Finding—Effective date—2003 c 18: See notes following RCW 43.105.020.

Captions not law—Effective dates—1996 c 171: See notes following RCW 43.105.250.

Expiration date—1996 c 171 § 7: "Section 7 of this act expires June 30, 1997." [1996 c 171 § 20.]

Effective date—1996 c 137 § 12: "Section 12 of this act shall take effect June 30, 1997." [1996 c 137 § 18.]

Expiration date—1996 c 137 § 11: "Section 11 of this act expires June 30, 1997." [1996 c 137 § 17.]

Application—1996 c 137: See note following RCW 43.105.830.

43.105.330 State interoperability executive committee. (1) The board shall appoint a state interoperability executive committee, the membership of which must include, but not be limited to, representatives of the military department, the Washington state patrol, the department of transportation, the department of information services, the department of natural resources, city and county governments, state and local fire chiefs, police chiefs, and sheriffs, and state and local emergency management directors. The chair and legislative members of the board will serve as nonvoting ex officio members of the committee. Voting membership may not exceed fifteen members.

(2) The chair of the board shall appoint the chair of the committee from among the voting members of the committee.

(3) The strategic [state] interoperability executive committee has the following responsibilities:

(a) Develop policies and make recommendations to the board for technical standards for state wireless radio communications systems, including emergency communications systems. The standards must address, among other things, the interoperability of systems, taking into account both existing and future systems and technologies;

(b) Coordinate and manage on behalf of the board the licensing and use of state-designated and state-licensed radio frequencies, including the spectrum used for public safety and emergency communications, and serve as the point of contact with the federal communications commission on matters relating to allocation, use, and licensing of radio spectrum;

(c) Seek support, including possible federal or other funding, for state-sponsored wireless communications systems;

(d) Develop recommendations for legislation that may be required to promote interoperability of state wireless communications systems;

(e) Foster cooperation and coordination among public safety and emergency response organizations;

(f) Work with wireless communications groups and associations to ensure interoperability among all public safety and emergency response wireless communications systems; and

(g) Perform such other duties as may be assigned by the board to promote interoperability of wireless communications systems. [2003 c 18 § 4.]

Inventory—Statewide public safety communications plan—2003 c 18: "(1) The state interoperability executive committee shall take inventory of and evaluate all state and local government-owned public safety communications systems, and prepare a statewide public safety communications plan. The plan must set forth recommendations for executive and legislative action to insure that public safety communications systems can communicate with one another and conform to federal law and regulations governing emergency communications systems and spectrum allocation. The plan must include specific goals for improving interoperability of public safety communications systems and identifiable benchmarks for achieving those goals.

(2) The committee shall present the inventory and plan required in subsection (1) of this section to the board and appropriate legislative committees as follows:

(a) By December 31, 2003, an inventory of state government-operated public safety communications systems;

(b) By July 31, 2004, an inventory of all public safety communications systems in the state;

(c) By March 31, 2004, an interim statewide public safety communications plan; and

(d) By December 31, 2004, a final statewide public safety communications plan.

(3) The committee shall consult regularly with the joint legislative audit and review committee and the legislative evaluation and accounting program committee while developing the inventory and plan under this section." [2003 c 18 § 5.]

Intent—Finding—Effective date—2003 c 18: See notes following RCW 43.105.020.

Chapter 43.131 RCW

WASHINGTON SUNSET ACT OF 1977

Sections

- 43.131.401 Office of regulatory assistance—Termination.
 43.131.402 Office of regulatory assistance—Repeal.
 43.131.403 Prescription drug discount program—Termination.
 43.131.404 Prescription drug discount program—Repeal.

43.131.401 Office of regulatory assistance—Termination. The office of regulatory assistance established in RCW 43.42.010 and its powers and duties shall be terminated June 30, 2007, as provided in RCW 43.131.402. [2003 c 71 § 5; 2002 c 153 § 13.]

Review within existing resources—2002 c 153: "The joint legislative and audit review committee shall work within its existing resources in conducting the sunset review for the office of permit [regulatory] assistance." [2002 c 153 § 15.]

43.131.402 Office of regulatory assistance—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2008:

- (1) RCW 43.42.005 and 2003 c 71 § 1 & 2002 c 153 § 1;
 (2) RCW 43.42.010 and 2003 c 71 § 2 & 2002 c 153 § 2;
 (3) RCW 43.42.020 and 2002 c 153 § 3;
 (4) RCW 43.42.030 and 2003 c 71 § 3 & 2002 c 153 § 4;

- (5) RCW 43.42.040 and 2003 c 71 § 4 & 2002 c 153 § 5;
 (6) RCW 43.42.050 and 2002 c 153 § 6;
 (7) RCW 43.42.060 and 2002 c 153 § 7;
 (8) RCW 43.42.070 and 2002 c 153 § 8;
 (9) RCW 43.42.905 and 2002 c 153 § 10;
 (10) RCW 43.42.900 and 2002 c 153 § 11; and
 (11) RCW 43.42.901 and 2002 c 153 § 12. [2003 c 71 § 6; 2002 c 153 § 14.]

43.131.403 Prescription drug discount program—Termination. The discount program under RCW 41.05.500 shall be terminated June 30, 2010, as provided in RCW 43.131.404. [2003 1st sp.s. c 29 § 12.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

43.131.404 Prescription drug discount program—Repeal. RCW 41.05.500, as now existing or hereafter amended, is repealed effective June 30, 2011. [2003 1st sp.s. c 29 § 13.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

Chapter 43.135 RCW

STATE EXPENDITURES LIMITATIONS

(Formerly: Tax revenue limitations)

Sections

- 43.135.045 Emergency reserve fund—Excess balance to education construction fund—Appropriation conditions—Transfer of earnings to multimodal transportation account. (*Expires June 30, 2005.*)
 43.135.045 Emergency reserve fund—Excess balance to education construction fund—Appropriation conditions—Transfer of earnings to multimodal transportation account. (*Effective June 30, 2005.*)

43.135.045 Emergency reserve fund—Excess balance to education construction fund—Appropriation conditions—Transfer of earnings to multimodal transportation account. (*Expires June 30, 2005.*) (1) The emergency reserve fund is established in the state treasury. During each fiscal year, the state treasurer shall deposit in the emergency reserve fund all general fund—state revenues in excess of the state expenditure limit for that fiscal year. Deposits shall be made at the end of each fiscal quarter based on projections of state revenues and the state expenditure limit. The treasurer shall make transfers between these accounts as necessary to reconcile actual annual revenues and the expenditure limit for fiscal year 2000 and thereafter.

(2) The legislature may appropriate moneys from the emergency reserve fund only with approval of at least two-thirds of the members of each house of the legislature, and then only if the appropriation does not cause total expenditures to exceed the state expenditure limit under this chapter.

(3) The emergency reserve fund balance shall not exceed five percent of annual general fund—state revenues as projected by the official state revenue forecast. Any balance in excess of five percent shall be transferred on a quarterly basis by the state treasurer as follows: Seventy-five percent to the student achievement fund hereby created in the state treasury

and twenty-five percent to the general fund balance. The treasurer shall make transfers between these accounts as necessary to reconcile actual annual revenues for fiscal year 2000 and thereafter. When per-student state funding for the maintenance and operation of K-12 education meets a level of no less than ninety percent of the national average of total funding from all sources per student as determined by the most recent published data from the national center for education statistics of the United States department of education, as calculated by the office of financial management, further deposits to the student achievement fund shall be required only to the extent necessary to maintain the ninety-percent level. Remaining funds are part of the general fund balance and these funds are subject to the expenditure limits of this chapter.

(4) The education construction fund is hereby created in the state treasury.

(a) Funds may be appropriated from the education construction fund exclusively for common school construction or higher education construction. During the fiscal years beginning July 1, 2003, and ending June 30, 2005, funds may also be used for higher education facilities preservation and maintenance.

(b) Funds may be appropriated for any other purpose only if approved by a two-thirds vote of each house of the legislature and if approved by a vote of the people at the next general election. An appropriation approved by the people under this subsection shall result in an adjustment to the state expenditure limit only for the fiscal period for which the appropriation is made and shall not affect any subsequent fiscal period.

(5) Funds from the student achievement fund shall be appropriated to the superintendent of public instruction strictly for distribution to school districts to meet the provisions set out in the student achievement act. Allocations shall be made on an equal per full-time equivalent student basis to each school district.

(6) Earnings of the emergency reserve fund under RCW 43.84.092(4)(a) shall be transferred quarterly to the multimodal transportation account, except for those earnings that are in excess of thirty-five million dollars each fiscal year. Within thirty days following any fiscal year in which earnings transferred to the multimodal transportation account under this subsection did not total thirty-five million dollars, the state treasurer shall transfer from the emergency reserve fund an amount necessary to bring the total deposited in the multimodal transportation account under this subsection to thirty-five million dollars. The revenues to the multimodal transportation account reflected in this subsection provide ongoing support for the transportation programs of the state. However, it is the intent of the legislature that any new long-term financial support that may be subsequently provided for transportation programs will be used to replace and supplant the revenues reflected in this subsection, thereby allowing those revenues to be returned to the purposes to which they were previously dedicated. No transfers from the emergency reserve fund to the multimodal fund shall be made during the 2003-05 fiscal biennium. [2003 1st sp.s. c 26 § 919; 2003 1st sp.s. c 25 § 920. Prior: 2003 1st sp.s. c 26 § 918; (2002 c 33 § 2 expired June 30, 2003); prior: 2001 c 3 § 9 (Initiative Measure No. 728, approved November 7, 2000); 2000 2nd

sp.s. c 5 § 1; 2000 2nd sp.s. c 2 § 3; 1994 c 2 § 3 (Initiative Measure No. 601, approved November 2, 1993).]

Reviser's note: This section was amended by 2003 1st sp.s. c 25 § 920 and by 2003 1st sp.s. c 26 § 919, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2003 1st sp.s. c 26: "Sections 918 through 921, 926, and 929 of this act expire June 30, 2005." [2003 1st sp.s. c 26 § 927.]

Severability—2003 1st sp.s. c 26: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 26 § 930.]

Effective dates—2003 1st sp.s. c 26: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2003], except for section 919 of this act which takes effect June 30, 2003." [2003 1st sp.s. c 26 § 931.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Expiration date—Effective date—2002 c 33: See notes following RCW 43.135.035.

Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728): See notes following RCW 28A.505.210.

Effective date—2000 2nd sp.s. c 2: See note following RCW 43.135.025.

43.135.045 Emergency reserve fund—Excess balance to education construction fund—Appropriation conditions—Transfer of earnings to multimodal transportation account. (Effective June 30, 2005.) (1) The emergency reserve fund is established in the state treasury. During each fiscal year, the state treasurer shall deposit in the emergency reserve fund all general fund—state revenues in excess of the state expenditure limit for that fiscal year. Deposits shall be made at the end of each fiscal quarter based on projections of state revenues and the state expenditure limit. The treasurer shall make transfers between these accounts as necessary to reconcile actual annual revenues and the expenditure limit for fiscal year 2000 and thereafter.

(2) The legislature may appropriate moneys from the emergency reserve fund only with approval of at least two-thirds of the members of each house of the legislature, and then only if the appropriation does not cause total expenditures to exceed the state expenditure limit under this chapter.

(3) The emergency reserve fund balance shall not exceed five percent of annual general fund—state revenues as projected by the official state revenue forecast. Any balance in excess of five percent shall be transferred on a quarterly basis by the state treasurer as follows: Seventy-five percent to the student achievement fund hereby created in the state treasury and twenty-five percent to the general fund balance. The treasurer shall make transfers between these accounts as necessary to reconcile actual annual revenues for fiscal year 2000 and thereafter. When per-student state funding for the maintenance and operation of K-12 education meets a level of no less than ninety percent of the national average of total funding from all sources per student as determined by the most recent published data from the national center for education statistics of the United States department of education, as calculated by the office of financial management, further deposits to the student achievement fund shall be required only to the extent necessary to maintain the ninety-percent

level. Remaining funds are part of the general fund balance and these funds are subject to the expenditure limits of this chapter.

(4) The education construction fund is hereby created in the state treasury.

(a) Funds may be appropriated from the education construction fund exclusively for common school construction or higher education construction.

(b) Funds may be appropriated for any other purpose only if approved by a two-thirds vote of each house of the legislature and if approved by a vote of the people at the next general election. An appropriation approved by the people under this subsection shall result in an adjustment to the state expenditure limit only for the fiscal period for which the appropriation is made and shall not affect any subsequent fiscal period.

(5) Funds from the student achievement fund shall be appropriated to the superintendent of public instruction strictly for distribution to school districts to meet the provisions set out in the student achievement act. Allocations shall be made on an equal per full-time equivalent student basis to each school district.

(6) Earnings of the emergency reserve fund under RCW 43.84.092(4)(a) shall be transferred quarterly to the multimodal transportation account, except for those earnings that are in excess of thirty-five million dollars each fiscal year. Within thirty days following any fiscal year in which earnings transferred to the multimodal transportation account under this subsection did not total thirty-five million dollars, the state treasurer shall transfer from the emergency reserve fund an amount necessary to bring the total deposited in the multimodal transportation account under this subsection to thirty-five million dollars. The revenues to the multimodal transportation account reflected in this subsection provide ongoing support for the transportation programs of the state. However, it is the intent of the legislature that any new long-term financial support that may be subsequently provided for transportation programs will be used to replace and supplant the revenues reflected in this subsection, thereby allowing those revenues to be returned to the purposes to which they were previously dedicated. No transfers from the emergency reserve fund to the multimodal fund shall be made during the 2003-05 fiscal biennium. [2003 1st sp.s. c 25 § 920. Prior: 2003 1st sp.s. c 26 § 918; (2002 c 33 § 2 expired June 30, 2003); prior: 2001 c 3 § 9 (Initiative Measure No. 728, approved November 7, 2000); 2000 2nd sp.s. c 5 § 1; 2000 2nd sp.s. c 2 § 3; 1994 c 2 § 3 (Initiative Measure No. 601, approved November 2, 1993).]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Expiration date—Effective date—2002 c 33: See notes following RCW 43.135.035.

Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728): See notes following RCW 28A.505.210.

Effective date—2000 2nd sp.s. c 2: See note following RCW 43.135.025.

Chapter 43.155 RCW PUBLIC WORKS PROJECTS

Sections

43.155.055 Water storage projects and water systems facilities subaccount.

43.155.055 Water storage projects and water systems facilities subaccount. (1) A subaccount is created in the public works assistance account to receive money to fund the following projects: (a) Water storage projects; and (b) water systems facilities.

(2) The projects listed in subsection (1) of this section must comply with the competitive bid requirements of RCW 43.155.060.

(3) The subaccount created in subsection (1) of this section shall receive amounts appropriated to it for purposes of distributing these moneys as grants for water storage projects and water systems facilities projects as provided in the appropriation and this section. This subaccount shall be administered by the board and shall be separate from the other programs managed by the board under this chapter.

(4) The subaccount created in this section shall be known as the water storage projects and water systems facilities subaccount of the public works assistance account. [2003 c 330 § 1.]

Chapter 43.157 RCW

INDUSTRIAL PROJECTS OF STATEWIDE SIGNIFICANCE

Sections

43.157.010 Definitions.

43.157.020 Expediting completion of industrial projects of statewide significance—Requirements of agreements.

43.157.030 Application for designation—Project facilitator or coordinator.

43.157.010 Definitions. (1) For purposes of this chapter and RCW 28A.525.166, 28B.80.330, 28C.18.080, 43.21A.350, 47.06.030, and 90.58.100 and an industrial project of statewide significance is a border crossing project that involves both private and public investments carried out in conjunction with adjacent states or provinces or a private industrial development with private capital investment in manufacturing or research and development. To qualify as an industrial project of statewide significance: (a) The project must be completed after January 1, 1997; (b) the applicant must submit an application for designation as an industrial project of statewide significance to the department of community, trade, and economic development; and (c) the project must have:

(i) In counties with a population of less than or equal to twenty thousand, a capital investment of twenty million dollars;

(ii) In counties with a population of greater than twenty thousand but no more than fifty thousand, a capital investment of fifty million dollars;

(iii) In counties with a population of greater than fifty thousand but no more than one hundred thousand, a capital investment of one hundred million dollars;

(iv) In counties with a population of greater than one hundred thousand but no more than two hundred thousand, a capital investment of two hundred million dollars;

(v) In counties with a population of greater than two hundred thousand but no more than four hundred thousand, a capital investment of four hundred million dollars;

(vi) In counties with a population of greater than four hundred thousand but no more than one million, a capital investment of six hundred million dollars;

(vii) In counties with a population of greater than one million, a capital investment of one billion dollars;

(viii) In counties with fewer than one hundred persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th, projected full-time employment positions after completion of construction of fifty or greater;

(ix) In counties with one hundred or more persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th, projected full-time employment positions after completion of construction of one hundred or greater; or

(x) Been designated by the director of community, trade, and economic development as an industrial project of statewide significance either: (A) Because the county in which the project is to be located is a distressed county and the economic circumstances of the county merit the additional assistance such designation will bring; or (B) because the impact on a region due to the size and complexity of the project merits such designation.

(2) The term manufacturing shall have the meaning assigned it in RCW 82.61.010.

(3) The term research and development shall have the meaning assigned it in RCW 82.61.010.

(4) The term applicant means a person applying to the department of community, trade, and economic development for designation of a development project as an industrial project of statewide significance. [2003 c 54 § 1; 1997 c 369 § 2.]

43.157.020 Expediting completion of industrial projects of statewide significance—Requirements of agreements. Counties and cities with projects designated as industrial projects of statewide significance within their jurisdictions shall enter into an agreement with the office of permit assistance and the project managers of industrial projects of statewide significance for expediting the completion of industrial projects of statewide significance. The agreement shall require:

(1) Expedited permit processing for the design and construction of the project;

(2) Expedited environmental review processing;

(3) Expedited processing of requests for street, right of way, or easement vacations necessary for the construction of the project; and

(4) Such other items as are deemed necessary by the office of permit assistance for the design and construction of the project. [2003 c 54 § 2; 1997 c 369 § 3.]

43.157.030 Application for designation—Project facilitator or coordinator. (1) The department of community, trade, and economic development shall:

(a) Develop an application for designation of development projects as industrial projects of statewide significance. The application must be accompanied by a letter of approval from the legislative authority of any jurisdiction that will have the proposed industrial project of statewide significance within its boundaries. No designation of a project as an industrial project of statewide significance shall be made without such letter of approval. The letter of approval must state that the jurisdiction joins in the request for the designation of the project as one of statewide significance and has or will hire the professional staff that will be required to expedite the processes necessary to the completion of an industrial project of statewide significance. The application shall contain information regarding the location of the project, the applicant's average employment in the state for the prior year, estimated new employment related to the project, estimated wages of employees related to the project, estimated time schedules for completion and operation, and other information required by the department; and

(b) Certify that the project meets or will meet the requirements of RCW 43.157.010 regarding designation as an industrial project of statewide significance.

(2) The office of permit assistance shall assign a project facilitator or coordinator to each industrial project of statewide significance to: (a) Assist in the scoping and coordinating functions provided for in chapter 43.42 RCW; (b) assemble a team of state and local government and private officials to help meet the planning, permitting, and development needs of each project, which team shall include those responsible for planning, permitting and licensing, infrastructure development, work force development services including higher education, transportation services, and the provision of utilities; and (c) work with each team member to expedite their actions in furtherance of the project. [2003 c 54 § 3; 1997 c 369 § 4.]

Chapter 43.160 RCW

ECONOMIC DEVELOPMENT—PUBLIC FACILITIES LOANS AND GRANTS

Sections

- 43.160.030 Community economic revitalization board—Members—Terms—Chair, vice-chair—Management services—Travel expenses—Vacancies—Removal.
- 43.160.035 Designees for board members.
- 43.160.085 Annual transfer of funds from public works assistance account to public facilities construction loan revolving account. (*Expires June 30, 2007.*)

43.160.030 Community economic revitalization board—Members—Terms—Chair, vice-chair—Management services—Travel expenses—Vacancies—Removal.

(1) The community economic revitalization board is hereby created to exercise the powers granted under this chapter.

(2) The board shall consist of one member from each of the two major caucuses of the house of representatives to be appointed by the speaker of the house and one member from each of the two major caucuses of the senate to be appointed by the president of the senate. The board shall also consist of the following members appointed by the governor: A recognized private or public sector economist; one port district official; one county official; one city official; one representative of the public; one representative of small businesses each

from: (a) The area west of Puget Sound, (b) the area east of Puget Sound and west of the Cascade range, (c) the area east of the Cascade range and west of the Columbia river, and (d) the area east of the Columbia river; one executive from large businesses each from the area west of the Cascades and the area east of the Cascades. The appointive members shall initially be appointed to terms as follows: Three members for one-year terms, three members for two-year terms, and three members for three-year terms which shall include the chair. Thereafter each succeeding term shall be for three years. The chair of the board shall be selected by the governor. The members of the board shall elect one of their members to serve as vice-chair. The director of community, trade, and economic development, the director of revenue, the commissioner of employment security, and the secretary of transportation shall serve as nonvoting advisory members of the board.

(3) Management services, including fiscal and contract services, shall be provided by the department to assist the board in implementing this chapter and the allocation of private activity bonds.

(4) Members of the board shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) If a vacancy occurs by death, resignation, or otherwise of appointive members of the board, the governor shall fill the same for the unexpired term. Members of the board may be removed for malfeasance or misfeasance in office, upon specific written charges by the governor, under chapter 34.05 RCW.

(6) A member appointed by the governor may not be absent from more than fifty percent of the regularly scheduled meetings in any one calendar year. Any member who exceeds this absence limitation is deemed to have withdrawn from the office and may be replaced by the governor. [2003 c 151 § 1; 1996 c 51 § 3; 1995 c 399 § 86; 1993 c 320 § 2. Prior: 1987 c 422 § 2; 1987 c 195 § 11; prior: 1985 c 446 § 2; 1985 c 6 § 13; prior: 1985 c 446 § 1; 1984 c 287 § 89; 1983 1st ex.s. c 60 § 2; 1982 1st ex.s. c 40 § 3.]

Severability—Effective dates—1996 c 51: See notes following RCW 43.160.010.

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

43.160.035 Designees for board members. Each member of the house of representatives who is appointed to the community economic revitalization board under RCW 43.160.030 may designate another member from the house of representatives to take his or her place on the board for meetings at which the member will be absent, as long as the designated member belongs to the same caucus. The designee shall have all powers to vote and participate in board deliberations as have the other board members. Each member of the senate who is appointed to the community economic revitalization board under RCW 43.160.030 may designate another member from the senate to take his or her place on the board for meetings at which the member will be absent, as long as the designated member belongs to the same caucus. The designee shall have all powers to vote and participate in board deliberations as have the other board members. Each agency head of an executive agency who is appointed to serve as a nonvoting advisory member of the community economic

revitalization board under RCW 43.160.030 may designate an agency employee to take his or her place on the board for meetings at which the agency head will be absent. The designee will have all powers to participate in board deliberations as have the other board members but shall not have voting powers. [2003 c 151 § 2; 1993 c 320 § 3; 1987 c 422 § 3; 1985 c 446 § 4.]

43.160.085 Annual transfer of funds from public works assistance account to public facilities construction loan revolving account. (Expires June 30, 2007.)

Findings—Intent—2003 c 150; 2002 c 242: "The legislature finds that the community economic revitalization board plays a valuable and unique role in stimulating and diversifying local economies, attracting private investment, creating new jobs, and generating additional state and local tax revenues by investing in public facilities projects that result in new or expanded economic development. The legislature also finds that it is in the best interest of the state and local communities to secure a stable and dedicated source of funds for the community economic revitalization board. It is the intent of the legislature to establish an ongoing funding source for the community economic revitalization board that will be used exclusively to advance economic development infrastructure. This act provides a partial funding solution by directing that beginning July 1, 2005, the interest earnings generated by the public works assistance account shall be used to fund the community economic revitalization board's financial assistance programs. These funds are not for use other than for the stated purpose and goals of the community economic revitalization board." [2003 c 150 § 1; 2002 c 242 § 1.]

Chapter 43.162 RCW

ECONOMIC DEVELOPMENT COMMISSION

Sections

- 43.162.005 Findings—Intent.
- 43.162.010 Washington state economic development commission—Membership—Rules.
- 43.162.020 Duties—Biennial report.
- 43.162.030 Staff support.

43.162.005 Findings—Intent. The legislature finds that Washington's innovation and trade-driven economy has provided tremendous opportunities for citizens of the state, but that there is no guarantee that globally competitive firms will continue to grow and locate in the state. The legislature also finds that developing an effective economic development strategy for the state and operating effective economic development programs, including work force training, small business assistance, technology transfer, and export assistance, are vital to the state's efforts to encourage employment growth, increase state revenues, and generate economic well-being. In addition, the legislature finds that there is a need for responsive and consistent involvement of the private sector in the state's economic development efforts. It is the intent of the legislature to create an economic development commission that will develop and update the state's economic development strategy and performance measures and provide advice to and oversight of the department of community, trade, and economic development. [2003 c 235 § 1.]

43.162.010 Washington state economic development commission—Membership—Rules. (1) The Washington state economic development commission is established to oversee the economic development strategies and policies of the department of community, trade, and economic development.

(2)(a) The Washington state economic development commission shall consist of at least seven and no more than nine members appointed by the governor.

(b) In making the appointments, the governor shall consult with organizations that have an interest in economic development, including, but not limited to, industry associations, labor organizations, minority business associations, economic development councils, chambers of commerce, port associations, tribes, and the chairs of the legislative committees with jurisdiction over economic development.

(c) The members shall be representative of the geographic regions of the state, including eastern and central Washington, as well as represent the ethnic diversity of the state. Representation shall derive primarily from the private sector, including, but not limited to, existing and emerging industries, small businesses, women-owned businesses, and minority-owned businesses, but other sectors of the economy that have experience in economic development, including labor organizations and nonprofit organizations, shall be represented as well. A minimum of seventy-five percent of the members shall represent the private sector. Members of the commission shall serve statewide interests while preserving their diverse perspectives, and shall be recognized leaders in their fields with demonstrated experience in disciplines related to economic development.

(3) Members appointed by the governor shall serve at the pleasure of the governor for three-year terms, except that through June 30, 2004, members currently serving on the economic development commission created by executive order may continue to serve at the pleasure of the governor. Of the initial members appointed to serve after June 30, 2004, two members shall serve one-year terms, three members shall serve two-year terms, and the remainder of the commission members shall serve three-year terms.

(4) The commission chair shall be selected from among the appointed members by the majority vote of the members.

(5) The commission may establish committees as it desires, and may invite nonmembers of the commission to serve as committee members.

(6) The commission may adopt rules for its own governance. [2003 c 235 § 2.]

43.162.020 Duties—Biennial report. The Washington state economic development commission shall perform the following duties:

(1) Review and periodically update the state's economic development strategy, including implementation steps, and performance measures, and perform an annual evaluation of the strategy and the effectiveness of the state's laws, policies, and programs which target economic development;

(2) Provide policy, strategic, and programmatic direction to the department of community, trade, and economic development regarding strategies to:

(a) Promote business retention, expansion, and creation within the state;

(b) Promote the business climate of the state and stimulate increased national and international investment in the state;

(c) Promote products and services of the state;

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(d) Enhance relationships and cooperation between local governments, economic development councils, federal agencies, state agencies, and the legislature;

(e) Integrate economic development programs, including work force training, technology transfer, and export assistance; and

(f) Make the funds available for economic development purposes more flexible to meet emergent needs and maximize opportunities;

(3) Identify policies and programs to assist Washington's small businesses;

(4) Assist the department of community, trade, and economic development with procurement and deployment of private funds for business development, retention, expansion, and recruitment as well as other economic development efforts;

(5) Meet with the chairs and ranking minority members of the legislative committees from both the house of representatives and the senate overseeing economic development policies; and

(6) Make a biennial report to the appropriate committees of the legislature regarding the commission's review of the state's economic development policy, the commission's recommendations, and steps taken by the department of community, trade, and economic development to implement the recommendations. The first report is due by December 31, 2004. [2003 c 235 § 3.]

43.162.030 Staff support. (1) The Washington state economic development commission shall receive the necessary staff support from the staff resources of the governor, the department of community, trade, and economic development, and other state agencies as appropriate, and within existing resources and operations.

(2) Creation of the Washington state economic development commission shall not be construed to modify any authority or budgetary responsibility of the governor or the department of community, trade, and economic development. [2003 c 235 § 4.]

Chapter 43.175 RCW

GOVERNOR'S SMALL BUSINESS IMPROVEMENT COUNCIL

Sections

43.175.010 Repealed.

43.175.020 Repealed.

43.175.901 Repealed.

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

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

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

Chapter 43.185B RCW

WASHINGTON HOUSING POLICY ACT

Sections

43.185B.020 Affordable housing advisory board—Generally.

43.185B.020 Affordable housing advisory board—Generally. (1) The department shall establish the affordable housing advisory board to consist of twenty-two members.

(a) The following nineteen members shall be appointed by the governor:

(i) Two representatives of the residential construction industry;

(ii) Two representatives of the home mortgage lending profession;

(iii) One representative of the real estate sales profession;

(iv) One representative of the apartment management and operation industry;

(v) One representative of the for-profit housing development industry;

(vi) One representative of for-profit rental housing owners;

(vii) One representative of the nonprofit housing development industry;

(viii) One representative of homeless shelter operators;

(ix) One representative of lower-income persons;

(x) One representative of special needs populations;

(xi) One representative of public housing authorities as created under chapter 35.82 RCW;

(xii) Two representatives of the Washington association of counties, one representative shall be from a county that is located east of the crest of the Cascade mountains;

(xiii) Two representatives of the association of Washington cities, one representative shall be from a city that is located east of the crest of the Cascade mountains;

(xiv) One representative to serve as chair of the affordable housing advisory board;

(xv) One representative at large.

(b) The following three members shall serve as ex officio, nonvoting members:

(i) The director or the director's designee;

(ii) The executive director of the Washington state housing finance commission or the executive director's designee; and

(iii) The secretary of social and health services or the secretary's designee.

(2)(a) The members of the affordable housing advisory board appointed by the governor shall be appointed for four-year terms, except that the chair shall be appointed to serve a two-year term. The terms of five of the initial appointees shall be for two years from the date of appointment and the terms of six of the initial appointees shall be for three years from the date of appointment. The governor shall designate the appointees who will serve the two-year and three-year terms. The members of the advisory board shall serve without compensation, but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(b) The governor, when making appointments to the affordable housing advisory board, shall make appointments that reflect the cultural diversity of the state of Washington.

(3) The affordable housing advisory board shall serve as the department's principal advisory body on housing and housing-related issues, and replaces the department's existing boards and task forces on housing and housing-related issues.

(4) The affordable housing advisory board shall meet regularly and may appoint technical advisory committees, which may include members of the affordable housing advisory board, as needed to address specific issues and concerns.

(5) The department, in conjunction with the Washington state housing finance commission and the department of social and health services, shall supply such information and assistance as are deemed necessary for the advisory board to carry out its duties under this section.

(6) The department shall provide administrative and clerical assistance to the affordable housing advisory board. [2003 c 40 § 1; 1993 c 478 § 5.]

Chapter 43.200 RCW

RADIOACTIVE WASTE ACT

Sections

43.200.080 Additional powers and duties of director—Site closure account—Perpetual surveillance and maintenance account.

43.200.080 Additional powers and duties of director—Site closure account—Perpetual surveillance and maintenance account. The director of ecology shall, in addition to the powers and duties otherwise imposed by law, have the following special powers and duties:

(1) To fulfill the responsibilities of the state under the lease between the state of Washington and the federal government executed September 10, 1964, covering one thousand acres of land lying within the Hanford reservation near Richland, Washington. The department of ecology may sublease to private or public entities all or a portion of the land for specific purposes or activities which are determined, after public hearing, to be in agreement with the terms of the lease and in the best interests of the citizens of the state consistent with any criteria that may be developed as a requirement by the legislature;

(2) To assume the responsibilities of the state under the perpetual care agreement between the state of Washington and the federal government executed July 29, 1965 and the sublease between the state of Washington and the site operator of the Hanford low-level radioactive waste disposal facility. In order to finance perpetual surveillance and maintenance under the agreement and ensure site closure under the sublease, the department of ecology shall impose and collect fees from parties holding radioactive materials for waste management purposes. The fees shall be established by rule adopted under chapter 34.05 RCW and shall be an amount determined by the department of ecology to be necessary to defray the estimated liability of the state. Such fees shall reflect equity between the disposal facilities of this and other states. A site closure account and a perpetual surveillance and maintenance account is hereby created in the state treasury. The site closure account shall be exclusively available to reimburse, to the extent that moneys are available in the account, the site operator for its costs plus a reasonable profit as agreed by the operator and the state, or to reimburse the state licensing agency and any agencies under contract to the state licensing agency for their costs in final closure and decommissioning of the Hanford low-level radioactive waste disposal facility. If a balance remains in the account after satisfactory performance of closure and decommissioning, this

balance shall be transferred to the perpetual surveillance and maintenance account. The perpetual surveillance and maintenance account shall be used exclusively by the state to meet post-closure surveillance and maintenance costs, or for otherwise satisfying surveillance and maintenance obligations. Appropriations are required to permit expenditures and payment of obligations from the site closure account and the perpetual surveillance and maintenance account. All moneys, including earnings from the investment of balances in the site closure and the perpetual surveillance and maintenance account, less the allocation to the state treasurer's service fund, pursuant to RCW 43.08.190 accruing under the authority of this section shall be directed to the site closure account until December 31, 1992. Thereafter receipts including earnings from the investment of balances in the site closure and the perpetual surveillance and maintenance account, less the allocation to the state treasurer's service fund, pursuant to RCW 43.08.190 shall be directed to the site closure account and the perpetual surveillance and maintenance account as specified by the department. Additional moneys specifically appropriated by the legislature or received from any public or private source may be placed in the site closure account and the perpetual surveillance and maintenance account. During the 2003-2005 fiscal biennium, the legislature may transfer up to thirteen million eight hundred thousand dollars from the site closure account to the general fund;

(3)(a) Subject to the conditions in (b) of this subsection, on July 1, 2008, and each July 1st thereafter, the treasurer shall transfer from the perpetual surveillance and maintenance account to the site closure account the sum of nine hundred sixty-six thousand dollars. The nine hundred sixty-six thousand dollars transferred on July 1, 2009, and thereafter shall be adjusted to a level equal to the percentage increase in the United States implicit price deflator for personal consumption. The last transfer under this section shall occur on July 1, 2033.

(b) The transfer in (a) of this subsection shall occur only if written agreement is reached between the state department of ecology and the United States department of energy pursuant to section 6 of the perpetual care agreement dated July 29, 1965, between the United States atomic energy commission and the state of Washington. If agreement cannot be reached between the state department of ecology and the United States department of energy by June 1, 2008, the treasurer shall transfer the funds from the general fund to the site closure account according to the schedule in (a) of this subsection.

(c) If for any reason the Hanford low level radioactive waste disposal facility is closed to further disposal operations during or after the 2003-2005 biennium and before 2033, then the amount remaining to be repaid from the 2003-2005 transfer of thirteen million eight hundred thousand dollars from the site closure account shall be transferred by the treasurer from the general fund to the site closure account to fund the closure and decommissioning of the facility. The treasurer shall transfer to the site closure account in full the amount remaining to be repaid upon written notice from the secretary of health that the department of health has authorized closure or that disposal operations have ceased. The treasurer shall complete the transfer within sixty days of written notice from the secretary of health.

(d) To the extent that money in the site closure account together with the amount of money identified for repayment to the site closure account, pursuant to (a) through (c) of this subsection, equals or exceeds the cost estimate approved by the department of health for closure and decommissioning of the facility, the money in the site closure account together with the amount of money identified for repayment to the site closure account shall constitute adequate financial assurance for purposes of the department of health financial assurance requirements;

(4) To assure maintenance of such insurance coverage by state licensees, lessees, or sublessees as will adequately, in the opinion of the director, protect the citizens of the state against nuclear accidents or incidents that may occur on privately or state-controlled nuclear facilities;

(5) To institute a user permit system and issue site use permits, consistent with regulatory practices, for generators, packagers, or brokers using the Hanford low-level radioactive waste disposal facility. The costs of administering the user permit system shall be borne by the applicants for site use permits. The site use permit fee shall be set at a level that is sufficient to fund completely the executive and legislative participation in activities related to the Northwest Interstate Compact on Low-Level Radioactive Waste Management;

(6) To make application for or otherwise pursue any federal funds to which the state may be eligible, through the federal resource conservation and recovery act or any other federal programs, for the management, treatment or disposal, and any remedial actions, of wastes that are both radioactive and hazardous at all Hanford low-level radioactive waste disposal facilities; and

(7) To develop contingency plans for duties and options for the department and other state agencies related to the Hanford low-level radioactive waste disposal facility based on various projections of annual levels of waste disposal. These plans shall include an analysis of expected revenue to the state in various taxes and funds related to low-level radioactive waste disposal and the resulting implications that any increase or decrease in revenue may have on state agency duties or responsibilities. The plans shall be updated annually. [2003 1st sp.s. c 21 § 1; 1999 c 372 § 12; 1991 sp.s. c 13 § 60; 1990 c 21 § 6; 1989 c 418 § 2; 1986 c 2 § 1; 1983 1st ex.s. c 19 § 8.]

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

Suspension and reinstatement of site use permits: RCW 70.98.085.

Chapter 43.211 RCW 211 INFORMATION SYSTEM

Sections

43.211.005	Findings.
43.211.010	211 system.
43.211.020	Definitions.
43.211.030	New information services.
43.211.040	211 services.
43.211.050	211 account.
43.211.060	Use of 211 account moneys.
43.211.070	Reports to the legislature.
43.211.900	Captions not law.
43.211.901	Severability—2003 c 135.
43.211.902	Effective date—2003 c 135.

43.211.005 Findings. The legislature finds that the implementation of a single easy to use telephone number, 211, for public access to information and referral for health and human services and information about access to services after a natural or nonnatural disaster will benefit the citizens of the state of Washington by providing easier access to available health and human services, by reducing inefficiencies in connecting people with the desired service providers, and by reducing duplication of efforts. The legislature further finds in a time of reduced resources for providing health and human services that establishing a cost-effective means to continue to provide information to the public about available services is important. The legislature further finds that an integrated statewide system of local information and referral service providers will build upon an already existing network of experienced service providers without the necessity of creating a new agency, department, or system to provide 211 services. The legislature further finds that no funds should be appropriated by the legislature to a 211 system under chapter 135, Laws of 2003 without receiving documentation that a 211 system will provide savings to the state. [2003 c 135 § 1.]

43.211.010 211 system. 211 is created as the official state dialing code for public access to information and referral for health and human services and information about access to services after a natural or nonnatural disaster. [2003 c 135 § 2.]

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

(1) "Department" means the department of social and health services.

(2) "WIN 211" means the Washington information network 211, a 501(c)(3) corporation incorporated in the state of Washington.

(3) "Approved 211 service provider" means a public or nonprofit agency or organization designated by WIN 211 to provide 211 services.

(4) "211 service area" means an area of the state of Washington identified by WIN 211 as an area in which an approved 211 service provider will provide 211 services.

(5) "211" means the abbreviated dialing code assigned by the federal communications commission on July 21, 2000, for consumer access to community information and referral services. [2003 c 135 § 3.]

43.211.030 New information services. Before a state agency or department that provides health and human services establishes a new public information telephone line or hotline, the state agency or department shall consult with WIN 211 about using the 211 system to provide public access to the information. [2003 c 135 § 4.]

43.211.040 211 services. Only a service provider approved by WIN 211 may provide 211 telephone services. WIN 211 shall approve 211 service providers, after considering the following:

(1) The ability of the proposed 211 service provider to meet the national 211 standards recommended by the alliance

of information and referral systems and adopted by the national 211 collaborative on May 5, 2000;

(2) The financial stability and health of the proposed 211 service provider;

(3) The community support for the proposed 211 service provider;

(4) The relationships with other information and referral services; and

(5) Such other criteria as WIN 211 deems appropriate. [2003 c 135 § 5.]

43.211.050 211 account. The 211 account is created in the state treasury. Moneys in the account may be spent only after appropriation. The 211 account shall include any funding for this purpose appropriated by the legislature, private contributions, and all other sources. Expenditures from the 211 account shall be used only for the implementation and support of the 211 system. [2003 c 135 § 6.]

43.211.060 Use of 211 account moneys. (1) WIN 211 shall study, design, implement, and support a statewide 211 system.

(2) Activities eligible for assistance from the 211 account include, but are not limited to:

(a) Creating a structure for a statewide 211 resources data base that will meet the alliance for information and referral systems standards for information and referral systems data bases and that will be integrated with local resources data bases maintained by approved 211 service providers;

(b) Developing a statewide resources data base for the 211 system;

(c) Maintaining public information available from state agencies, departments, and programs that provide health and human services for access by 211 service providers;

(d) Providing grants to approved 211 service providers for the design, development, and implementation of 211 for its 211 service area;

(e) Providing grants to approved 211 service providers to enable 211 service providers to provide 211 service on an ongoing basis; and

(f) Providing grants to approved 211 service providers to enable the provision of 211 services on a twenty-four-hour per day seven-day a week basis. [2003 c 135 § 7.]

43.211.070 Reports to the legislature. WIN 211 shall provide an annual report to the legislature and the department beginning July 1, 2004. [2003 c 135 § 8.]

43.211.900 Captions not law. Captions used in this chapter are not part of the law. [2003 c 135 § 9.]

43.211.901 Severability—2003 c 135. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2003 c 135 § 10.]

43.211.902 Effective date—2003 c 135. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its

existing public institutions, and takes effect July 1, 2003. [2003 c 135 § 11.]

Chapter 43.300 RCW

DEPARTMENT OF FISH AND WILDLIFE

Sections

43.300.080 Cost-reimbursement agreements.

43.300.080 Cost-reimbursement agreements. (1) The department may enter into a written cost-reimbursement agreement with a permit applicant to recover from the applicant the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement.

(2) The written cost-reimbursement agreement shall be negotiated with the permit applicant. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement.

(3) The department may not enter into any new cost-reimbursement agreements on or after July 1, 2007. The department may continue to administer any cost-reimbursement agreement that was entered into before July 1, 2007, until the project is completed. [2003 c 70 § 4; 2000 c 251 § 5.]

Intent—Captions not law—Effective date—2000 c 251: See notes following RCW 43.21A.690.

Chapter 43.320 RCW

DEPARTMENT OF FINANCIAL INSTITUTIONS

Sections

[2003 RCW Supp—page 594]

- 43.320.110 Financial services regulation fund (*as amended by 2003 c 288*).
- 43.320.110 Financial services regulation fund (*as amended by 2003 1st sp.s. c 25*).
- 43.320.115 Securities prosecution fund.
- 43.320.140 Mortgage lending fraud prosecution account—Created. (*Expires June 30, 2006.*)
- 43.320.140 Mortgage lending fraud prosecution account—Report to legislature. (*Expires June 30, 2006.*)

43.320.110 Financial services regulation fund (*as amended by 2003 c 288*). There is created a local fund known as the "financial services regulation fund" which shall consist of all moneys received by the divisions of the department of financial institutions, except for the division of securities which shall deposit thirteen percent of all moneys received, except as provided in RCW 43.320.115, and which shall be used for the purchase of supplies and necessary equipment; the payment of salaries, wages, and utilities; the establishment of reserves; and other incidental costs required for the proper regulation of individuals and entities subject to regulation by the department. The state treasurer shall be the custodian of the fund. Disbursements from the fund shall be on authorization of the director of financial institutions or the director's designee. In order to maintain an effective expenditure and revenue control, the fund shall be subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund.

~~((Between July 1, 2001, and December 31, 2001, the legislature may transfer up to two million dollars from the financial services regulation fund to the digital government revolving account. During the 2001-2003 fiscal biennium, the legislature may transfer from the financial services regulation fund to the state general fund such amounts as reflect the excess fund balance of the fund and appropriations reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings.))~~ [2003 c 288 § 1; 2002 c 371 § 912; 2001 2nd sp.s. c 7 § 911; 2001 c 177 § 2; 1995 c 238 § 9; 1993 c 472 § 25; 1981 c 241 § 1. Formerly RCW 43.19.095.]

43.320.110 Financial services regulation fund (*as amended by 2003 1st sp.s. c 25*). There is created a local fund known as the "financial services regulation fund" which shall consist of all moneys received by the divisions of the department of financial institutions, except for the division of securities which shall deposit thirteen percent of all moneys received, and which shall be used for the purchase of supplies and necessary equipment; the payment of salaries, wages, and utilities; the establishment of reserves; and other incidental costs required for the proper regulation of individuals and entities subject to regulation by the department. The state treasurer shall be the custodian of the fund. Disbursements from the fund shall be on authorization of the director of financial institutions or the director's designee. In order to maintain an effective expenditure and revenue control, the fund shall be subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund.

~~((Between July 1, 2001, and December 31, 2001, the legislature may transfer up to two million dollars from the financial services regulation fund to the digital government revolving account.))~~ During the ((2001-)) 2003-2005 fiscal biennium, the legislature may transfer from the financial services regulation fund to the state general fund such amounts as reflect the excess fund balance of the fund ((and appropriations reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings)). [2003 1st sp.s. c 25 § 921; 2002 c 371 § 912; 2001 2nd sp.s. c 7 § 911; 2001 c 177 § 2; 1995 c 238 § 9; 1993 c 472 § 25; 1981 c 241 § 1. Formerly RCW 43.19.095.]

Reviser's note: RCW 43.320.110 was amended twice during the 2003 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Severability—2001 2nd sp.s. c 7: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 2nd sp.s. c 7 § 923.]

Effective date—2001 2nd sp.s. c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect

immediately [June 26, 2001], except for section 911 of this act which takes effect July 1, 2001." [2001 2nd sp.s. c 7 § 924.]

Effective date—2001 c 177: See note following RCW 43.320.080.

Effective date—1995 c 238: See note following RCW 18.44.011.

Effective date—1981 c 241: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 241 § 4.]

43.320.115 Securities prosecution fund. (1) The securities prosecution fund is created in the custody of the state treasurer and shall consist of all fines received by the division of securities under RCW 21.20.400(2), 21.20.110, and 21.20.395 and all undistributed funds from orders of disgorgement and restitution under RCW 21.20.110(8) and 21.20.390(6). No appropriation is required to permit expenditures from this fund, but the account is subject to allotment procedures under chapter 43.88 RCW.

(2) Expenditures from this fund may be used solely for administering the fund and for payment of costs, expenses, and charges incurred in the preparation, initiation, and prosecution of criminal charges for violations of chapters 21.20, 21.30, 19.100, and 19.110 RCW. Only the director or the director's designee may authorize expenditures from the fund.

(3) Applications for fund expenditures must be submitted by the attorney general or the proper prosecuting attorney to the director. The application must clearly identify the alleged criminal violations identified in subsection (2) of this section and indicate the purpose for which the funds will be used. The application must also certify that any funds received will be expended only for the purpose requested. Funding requests must be approved by the director prior to any expenditure being incurred by the requesting attorney general or prosecuting attorney. At the conclusion of the prosecution, the attorney general or prosecuting attorney shall provide the director with an accounting of fund expenditures, a summary of the case, and certify his or her compliance with any rules adopted by the director relating to the administration of the fund.

(4) If the balance of the securities prosecution fund reaches three hundred fifty thousand dollars, all fines received by the division of securities under RCW 21.20.400(2), 21.20.110, and 21.20.395 and all undistributed funds from orders of disgorgement and restitution under RCW 21.20.110(8) and 21.20.390(6) shall be deposited in the financial services regulation fund until such time as the balance in the fund falls below three hundred fifty thousand dollars, at which time the fines received by the division of securities under RCW 21.20.400(2), 21.20.110, and 21.20.395 and all undistributed funds from orders of disgorgement and restitution under RCW 21.20.110(8) and 21.20.390(6) shall be deposited to the securities prosecution fund until balance in the fund once again reaches three hundred fifty thousand dollars. [2003 c 288 § 2.]

43.320.140 Mortgage lending fraud prosecution account—Created. (*Expires June 30, 2006.*) (1) The mortgage lending fraud prosecution account is created in the custody of the state treasurer. All receipts from the surcharge imposed in RCW 36.22.181, except those retained by the

county auditor for administration, must be deposited into the account. Except as otherwise provided in this section, expenditures from the account may be used only for criminal prosecution of fraudulent activities related to mortgage lending fraud crimes. Only the director of the department of financial institutions or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) This section expires June 30, 2006. [2003 c 289 § 2.]

43.320.1401 Mortgage lending fraud prosecution account—Report to legislature. (*Expires June 30, 2006.*)

(1) Before December 31st of every year, the department of financial institutions shall provide the senate and house of representatives committees that address matters related to financial institutions with a written report outlining the activity of the mortgage lending fraud prosecution account.

(2) This section expires June 30, 2006. [2003 c 289 § 3.]

Chapter 43.330 RCW

DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

Sections

- 43.330.090 Economic diversification strategies—Targeted sectors—Tourism expansion.
43.330.094 Tourism development and promotion account—Promotion of tourism industry.

43.330.090 Economic diversification strategies—Targeted sectors—Tourism expansion. (1) The department shall work with private sector organizations, local governments, local associate development organizations, and higher education and training institutions to assist in the development of strategies to diversify the economy, facilitate technology transfer and diffusion, and increase value-added production by focusing on targeted sectors. The targeted sectors may include, but are not limited to, software, forest products, biotechnology, environmental industries, recycling markets and waste reduction, aerospace, food processing, tourism, film and video, microelectronics, new materials, robotics, and machine tools. The department shall, on a continuing basis, evaluate the potential return to the state from devoting additional resources to a targeted sector's approach to economic development and including additional sectors in its efforts. The department shall use information gathered in each service delivery region in formulating its sectoral strategies and in designating new targeted sectors.

(2) The department shall pursue a coordinated program to expand the tourism industry throughout the state in cooperation with the public and private tourism development organizations. The department, in operating its tourism program, shall:

(a) Promote Washington as a tourism destination to national and international markets to include nature-based and wildlife viewing tourism;

(b) Provide information to businesses and local communities on tourism opportunities that could expand local revenues;

(c) Assist local communities to strengthen their tourism partnerships, including their relationships with state and local agencies;

(d) Provide leadership training and assistance to local communities to facilitate the development and implementation of local tourism plans;

(e) Coordinate the development of a statewide tourism and marketing plan. The department's tourism planning efforts shall be carried out in conjunction with public and private tourism development organizations including the department of fish and wildlife and other appropriate agencies. The plan shall specifically address mechanisms for: (i) Funding national and international marketing and nature-based tourism efforts; (ii) interagency cooperation; and (iii) integrating the state plan with local tourism plans.

(3) The department may, in carrying out its efforts to expand the tourism industry in the state:

(a) Solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local or other governmental entities, as well as private sources, and may expend the same or any income therefrom for tourism purposes. All revenue received for tourism purposes shall be deposited into the tourism development and promotion account created in RCW 43.330.094;

(b) Host conferences and strategic planning workshops relating to the promotion of nature-based and wildlife viewing tourism;

(c) Conduct or contract for tourism-related studies;

(d) Contract with individuals, businesses, or public entities to carry out its tourism-related activities under this section;

(e) Provide tourism-related organizations with marketing and other technical assistance;

(f) Evaluate and make recommendations on proposed tourism-related policies.

(4) The department shall promote, market, and encourage growth in the production of films and videos, as well as television commercials within the state; to this end the department is directed to assist in the location of a film and video production studio within the state.

(5) In assisting in the development of a targeted sector, the department's activities may include, but are not limited to:

(a) Conducting focus group discussions, facilitating meetings, and conducting studies to identify members of the sector, appraise the current state of the sector, and identify issues of common concern within the sector;

(b) Supporting the formation of industry associations, publications of association directories, and related efforts to create or expand the activities or industry associations;

(c) Assisting in the formation of flexible networks by providing (i) agency employees or private sector consultants trained to act as flexible network brokers and (ii) funding for potential flexible network participants for the purpose of organizing or implementing a flexible network;

(d) Helping establish research consortia;

(e) Facilitating joint training and education programs;

(f) Promoting cooperative market development activities;

(g) Analyzing the need, feasibility, and cost of establishing product certification and testing facilities and services; and

(h) Providing for methods of electronic communication and information dissemination among firms and groups of firms to facilitate network activity. [2003 c 153 § 2; 1998 c 245 § 85; 1994 c 144 § 1; 1993 c 280 § 12.]

Findings—2003 c 153: "The legislature finds that tourism is a growing sector of the Washington economy. Washington has a diverse geography, geology, climate, and natural resources, and offers abundant opportunities for wildlife viewing. Nature-based tourism is the fastest growing outdoor activity and segment of the travel industry and the state can take advantage of this by marketing Washington's natural assets to international as well as national tourist markets. Expanding tourism efforts can provide Washington residents with jobs and local communities with needed revenues.

The legislature also finds that current efforts to promote Washington's natural resources and nature-based tourism to national and international markets are too diffuse and limited by funding and that a collaborative effort among state and local governments, tribes, and private enterprises can serve to leverage the investments in nature-based tourism made by each." [2003 c 153 § 1.]

Effective date—1994 c 144: "This act shall take effect July 1, 1994." [1994 c 144 § 3.]

43.330.094 Tourism development and promotion account—Promotion of tourism industry. The tourism development and promotion account is created in the state treasury. All receipts from RCW 36.102.060(10) and 43.330.090(3)(a) must be deposited into the account. Moneys in the account received under RCW 36.102.060(10) may be spent only after appropriation. No appropriation is required for expenditures from moneys received under RCW 43.330.090(3)(a). Expenditures from the account may be used by the department of community, trade, and economic development only for the purposes of expanding and promoting the tourism industry in the state of Washington. [2003 c 153 § 4; 1997 c 220 § 223 (Referendum Bill No. 48, approved June 17, 1997).]

Findings—2003 c 153: See note following RCW 43.330.090.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Chapter 43.332 RCW

OFFICE OF THE WASHINGTON STATE TRADE REPRESENTATIVE

Sections

43.332.005	Findings—Purpose.
43.332.010	Office created—Duties.
43.332.020	Gifts, grants—Bank account.

43.332.005 Findings—Purpose. (1) The legislature finds that:

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

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

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

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

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

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

(2) The legislature declares that the purpose of the office of the Washington state trade representative is to:

(a) Strengthen and expand the state's activities in marketing its goods and services overseas;

(b) Review and analyze proposed international trade agreements to assess their impact on goods and services produced by Washington businesses; and

(c) Inform the legislature about ongoing trade negotiations, trade development, and the possible impacts on Washington's economy. [2003 c 346 § 1; 1995 c 350 § 1.]

43.332.010 Office created—Duties. (1) The office of the Washington state trade representative is created in the office of the governor. The office shall serve as the state's official liaison with foreign governments on trade matters.

(2) The office shall:

(a) Work with the department of community, trade, and economic development, the department of agriculture, and other appropriate state agencies, and within the agencies' existing resources, review and analyze proposed and enacted international trade agreements and provide an assessment of the impact of the proposed or enacted agreement on Washington's businesses and firms;

(b) Provide input to the office of the United States trade representative in the development of international trade, commodity, and direct investment policies that reflect the concerns of the state of Washington;

(c) Serve as liaison to the legislature on matters of trade policy oversight including, but not limited to, updates to the legislature regarding the status of trade negotiations, trade litigation, and the impacts of trade policy on Washington state businesses;

(d) Work with the international trade division of the department of community, trade, and economic development and the international marketing program of the Washington state department of agriculture to develop a statewide strategy designed to increase the export of Washington goods and services, particularly goods and services from small and medium-sized businesses; and

(e) Conduct other activities the governor deems necessary to promote international trade and foreign investment within the state. [2003 c 346 § 2; 1995 c 350 § 2.]

Reviser's note: Subsection (3) of this section was vetoed by the governor. The vetoed language is as follows:

"(3) The office shall prepare and submit an annual report on its activities under subsection (2) of this section to the governor and appropriate committees of the legislature."

43.332.020 Gifts, grants—Bank account. The office of the Washington state trade representative may accept or request grants or gifts from citizens and other private sources to be used to defray the costs of appropriate hosting of foreign dignitaries, including appropriate gift-giving and recip-

rocal gift-giving, or other activities of the office. The office shall open and maintain a bank account into which it shall deposit all money received under this section. Such money and the interest accruing thereon shall not constitute public funds, shall be kept segregated and apart from funds of the state, and shall not be subject to appropriation or allotment by the state or subject to chapter 43.88 RCW. [2003 c 346 § 3.]

Title 44

STATE GOVERNMENT—LEGISLATIVE

Chapters

44.04 General provisions.

44.28 Joint legislative audit and review committee.

44.40 Legislative transportation committee—Senate and house transportation committees.

44.44 Office of state actuary—Joint committee on pension policy.

44.52 Legislative committee on economic development.

44.55 Joint legislative oversight committee on trade policy.

44.75 Transportation performance audit board.

Chapter 44.04 RCW

GENERAL PROVISIONS

Sections

44.04.260 Legislative committees—Oversight.

44.04.270 Legislative international trade account.

44.04.260 Legislative committees—Oversight. The joint legislative audit and review committee, the legislative transportation committee, the select committee on pension policy, the legislative evaluation and accountability program committee, and the joint legislative systems committee are subject to such operational policies, procedures, and oversight as are deemed necessary by the facilities and operations committee of the senate and the executive rules committee of the house of representatives to ensure operational adequacy of the agencies of the legislative branch. As used in this section, "operational policies, procedures, and oversight" includes the development process of biennial budgets, contracting procedures, personnel policies, and compensation plans, selection of a chief administrator, facilities, and expenditures. This section does not grant oversight authority to the facilities and operations committee of the senate over any standing committee of the house of representatives or oversight authority to the executive rules committee of the house of representatives over any standing committee of the senate. [2003 c 295 § 12; 2001 c 259 § 1.]

44.04.270 Legislative international trade account. The legislative international trade account is created in the custody of the state treasurer. All moneys received by the president of the senate and the secretary of state from gifts, grants, and endowments for international trade hosting, international relations, and international missions activities must be deposited in the account. Only private, nonpublic gifts, grants, and endowments may be deposited in the account. A person, as defined in RCW 42.52.010, may not donate, gift, grant, or endow more than five thousand dollars per calendar

year to the legislative international trade account. Expenditures from the account may be used only for the purposes of international trade hosting, international relations, and international trade mission activities, excluding travel and lodging, in which the president and members of the senate, members of the house of representatives, and the secretary of state participate in an official capacity. An appropriation is not required for expenditures. All requests by individual legislators for use of funds from this account must be first approved by the secretary of the senate for members of the senate or the chief clerk of the house of representatives for members of the house of representatives. All expenditures from the account shall be authorized by the final signed approval of the chief clerk of the house of representatives, the secretary of the senate, and the president of the senate. [2003 c 265 § 1.]

Chapter 44.28 RCW

JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE

(Formerly: Legislative budget committee)

Sections

- 44.28.088 Performance audit reports—Preliminary, final.
44.28.161 Legislative transportation committee-directed audits.

44.28.088 Performance audit reports—Preliminary, final. (1) When the legislative auditor has completed a performance audit authorized in the performance audit work plan, the legislative auditor shall transmit the preliminary performance audit report to the affected state agency or local government and the office of financial management for comment. The agency or local government and the office of financial management shall provide any response to the legislative auditor within thirty days after receipt of the preliminary performance audit report unless a different time period is approved by the joint committee. The legislative auditor shall incorporate the response of the agency or local government and the office of financial management into the final performance audit report.

(2) Except as provided in subsection (3) of this section, before releasing the results of a performance audit to the legislature or the public, the legislative auditor shall submit the preliminary performance audit report to the joint committee for its review, comments, and final recommendations. Any comments by the joint committee must be included as a separate addendum to the final performance audit report. Upon consideration and incorporation of the review, comments, and recommendations of the joint committee, the legislative auditor shall transmit the final performance audit report to the affected agency or local government, the director of financial management, the leadership of the senate and the house of representatives, and the appropriate standing committees of the house of representatives and the senate and shall publish the results and make the report available to the public. For purposes of this section, "leadership of the senate and the house of representatives" means the speaker of the house, the majority leaders of the senate and the house of representatives, the minority leaders of the senate and the house of representatives, the caucus chairs of both major political parties of the senate and the house of representatives, and the floor

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leaders of both major political parties of the senate and the house of representatives.

(3) Before releasing the results of a performance audit originally requested by the executive committee of the legislative transportation committee to the legislature or the public, the legislative auditor shall submit the preliminary performance audit report to the executive committee of the joint committee and the executive committee of the legislative transportation committee for review and comments solely on the management of the audit. Any comments by the executive committee of the joint committee and executive committee of the legislative transportation committee must be included as a separate addendum to the final performance audit report. Upon consideration and incorporation of the review and comments of the executive committee of the joint committee and executive committee of the legislative transportation committee, the legislative auditor shall transmit the final performance audit report to the affected agency or local government, the director of financial management, the leadership of the senate and the house of representatives, and the appropriate standing committees of the house of representatives and the senate and shall publish the results and make the report available to the public. [2003 c 362 § 14; 1996 c 288 § 13.]

Effective date—2003 c 362: See RCW 44.75.901.

44.28.161 Legislative transportation committee-directed audits. In addition to any other audits developed or included in the audit work plan under this chapter, the legislative auditor shall manage audits directed by the executive committee of the legislative transportation committee under RCW 44.75.080. If directed to perform or contract for audit services under RCW 44.75.080, the legislative auditor or joint legislative audit and review committee will receive from the legislative transportation committee an interagency reimbursement equal to the cost of the contract or audit services. [2003 c 362 § 13.]

Effective date—2003 c 362: See RCW 44.75.901.

Chapter 44.40 RCW

LEGISLATIVE TRANSPORTATION COMMITTEE—SENATE AND HOUSE TRANSPORTATION COMMITTEES

Sections

- 44.40.161 Audit review of transportation-related agencies.

44.40.161 Audit review of transportation-related agencies. The executive committee of the legislative transportation committee or its successor may work with the joint legislative audit and review committee to review and audit transportation-related agencies, as directed in chapter 44.75 RCW. [2003 c 362 § 16.]

Effective date—2003 c 362: See RCW 44.75.901.

Chapter 44.44 RCW

OFFICE OF STATE ACTUARY—JOINT COMMITTEE ON PENSION POLICY

Sections

- 44.44.013 State actuary appointment committee—Creation—Membership—Powers.
 44.44.015 Repealed.
 44.44.030 Personnel—Member of American academy of actuaries.
 44.44.040 Powers and duties—Actuarial fiscal notes.
 44.44.050 Repealed.
 44.44.060 Repealed.

44.44.013 State actuary appointment committee—Creation—Membership—Powers. (1) The state actuary appointment committee is created. The committee shall consist of: (a) The chair and ranking minority member of the house of representatives appropriations committee and the chair and ranking minority member of the senate ways and means committee; and (b) four members of the select committee on pension policy appointed jointly by the chair and vice-chair of the select committee, at least one member representing state retirement systems active or retired members, and one member representing state retirement system employers.

(2) The state actuary appointment committee shall be jointly chaired by the chair of the house of representatives appropriations committee and the chair of the senate ways and means committee.

(3) The state actuary appointment committee shall appoint or remove the state actuary by a two-thirds vote of the committee. When considering the appointment or removal of the state actuary, the appointment committee shall consult with the director of the department of retirement systems, the director of the office of financial management, and other interested parties.

(4) The state actuary appointment committee shall be convened by the chairs of the house of representatives appropriations committee and the senate ways and means committee (a) whenever the position of state actuary becomes vacant, or (b) upon the written request of any four members of the appointment committee. [2003 c 295 § 13.]

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

44.44.030 Personnel—Member of American academy of actuaries. (1) Subject to RCW 44.04.260, the state actuary shall have the authority to select and employ such research, technical, clerical personnel, and consultants as the actuary deems necessary, whose salaries shall be fixed by the actuary and approved by the state actuary appointment committee, and who shall be exempt from the provisions of the state civil service law, chapter 41.06 RCW.

(2) All actuarial valuations and experience studies performed by the office of the state actuary shall be signed by a member of the American academy of actuaries. If the state actuary is not such a member, the state actuary, after approval by the select committee, shall contract for a period not to exceed two years with a member of the American academy of actuaries to assist in developing actuarial valuations and experience studies. [2003 c 295 § 14; 2001 c 259 § 11; 1987 c 25 § 2; 1975-'76 2nd ex.s. c 105 § 21.]

44.44.040 Powers and duties—Actuarial fiscal notes. The office of the state actuary shall have the following powers and duties:

(1) Perform all actuarial services for the department of retirement systems, including all studies required by law.

(2) Advise the legislature and the governor regarding pension benefit provisions, and funding policies and investment policies of the state investment board.

(3) Consult with the legislature and the governor concerning determination of actuarial assumptions used by the department of retirement systems.

(4) Prepare a report, to be known as the actuarial fiscal note, on each pension bill introduced in the legislature which briefly explains the financial impact of the bill. The actuarial fiscal note shall include: (a) The statutorily required contribution for the biennium and the following twenty-five years; (b) the biennial cost of the increased benefits if these exceed the required contribution; and (c) any change in the present value of the unfunded accrued benefits. An actuarial fiscal note shall also be prepared for all amendments which are offered in committee or on the floor of the house of representatives or the senate to any pension bill. However, a majority of the members present may suspend the requirement for an actuarial fiscal note for amendments offered on the floor of the house of representatives or the senate.

(5) Provide such actuarial services to the legislature as may be requested from time to time.

(6) Provide staff and assistance to the committee established under RCW 41.04.276.

(7) Provide actuarial assistance to the law enforcement officers' and fire fighters' plan 2 retirement board as provided in chapter 2, Laws of 2003. Reimbursement for services shall be made to the state actuary under RCW 39.34.130 and section 5(5), chapter 2, Laws of 2003. [2003 c 295 § 4; 2003 c 92 § 2; 1987 c 25 § 3; 1986 c 317 § 6; 1975-'76 2nd ex.s. c 105 § 22.]

Reviser's note: This section was amended by 2003 c 92 § 2 and by 2003 c 295 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2003 c 92: See RCW 41.26.905 and 41.26.906.

Legislative findings—Intent—Severability—1986 c 317: See notes following RCW 41.40.150.

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

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

Chapter 44.52 RCW

LEGISLATIVE COMMITTEE ON ECONOMIC DEVELOPMENT

Sections

- 44.52.010 Purpose—Legislative committee on economic development and international relations created—Membership.

44.52.010 Purpose—Legislative committee on economic development and international relations created—Membership. (1) Economic development and in particular international trade, tourism, and investment have become increasingly important to Washington, affecting the state's employment, revenues, and general economic well-being.

Additionally, economic trends are rapidly changing and the international marketplace has become increasingly competitive as states and countries seek to improve and safeguard their own economic well-being. The purpose of the legislative committee on economic development and international relations is to provide responsive and consistent involvement by the legislature in economic development to maintain a healthy state economy and to provide employment opportunities to Washington residents.

(2) There is created a legislative committee on economic development and international relations which shall consist of six senators and six representatives from the legislature and the lieutenant governor who shall serve as chairperson. The senate members of the committee shall be appointed by the president of the senate and the house members of the committee shall be appointed by the speaker of the house. Not more than three members from each house shall be from the same political party. A list of appointees shall be submitted before the close of each regular legislative session during an odd-numbered year or any successive special session convened by the governor or the legislature prior to the close of such regular session or successive special session(s) for confirmation of senate members, by the senate, and house members, by the house. Vacancies occurring shall be filled by the appointing authority. [2003 c 347 § 1; 1985 c 467 § 17.]

Chapter 44.55 RCW

JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON TRADE POLICY

Sections

44.55.010	Findings—Intent.
44.55.020	Committee membership.
44.55.030	Chair—Officers—Rules.
44.55.040	Powers, duties.
44.55.050	Staff support.
44.55.060	Compensation.

44.55.010 Findings—Intent. The legislature finds that international trade is an important part of Washington's economy with Washington as the fifth largest exporting state in the nation. The legislature further finds that World Trade Organization agreements and the North American Free Trade Agreement have implications for Washington state laws governing agriculture, services, environmental regulation, and economic subsidies. The legislature further finds that future trade agreements such as the proposed Free Trade Area of the Americas may also impact Washington state. Therefore, it is the intent of the legislature to create a joint legislative oversight committee on trade policy to monitor the impact of these trade agreements on Washington state laws, and to provide a mechanism for legislators and citizens to voice their opinions and concerns about the potential impacts of these trade agreements to state and federal government officials. [2003 c 404 § 1.]

44.55.020 Committee membership. A joint legislative oversight committee on trade policy is created, to consist of four senators and four representatives from the legislature and three ex officio members. The president of the senate shall appoint the senate members of the committee, and the speaker of the house shall appoint the house members of the

committee. No more than two members from each house may be from the same political party. A list of appointees must be submitted by July 1, 2003, and before the close of each regular session during an even-numbered year. Vacancies on the committee will be filled by appointment and must be filled from the same political party and from the same house as the member whose seat was vacated.* [2003 c 404 § 2.]

***Reviser's note:** This section was partially vetoed by the governor. The vetoed language is as follows: "The ex officio members shall be appointed by the speaker of the house and the president of the senate, and include a representative from the department of agriculture, the state trade representative, and a representative from the office of the attorney general."

Effective date—2003 c 404 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 2003]." [2003 c 404 § 8.]

44.55.030 Chair—Officers—Rules. The committee shall appoint its own chair and other officers and make rules for orderly procedure. [2003 c 404 § 3.]

44.55.040 Powers, duties. The committee has the following powers and duties:

(1) At least once a year, hear public testimony on the actual and potential impacts of international trade agreements and negotiations on Washington state and submit an annual report to the state trade representative's office and to the legislature regarding the public testimony;

(2) Maintain active communication with the state trade representative's office, the United States trade representative's office, Washington's congressional delegation, the national conference of state legislatures, and any other bodies the committee deems appropriate regarding ongoing developments in international trade agreements and policy;

(3) Conduct an annual assessment of the impacts of international trade agreements upon Washington law and submit the report to the legislature;

(4) Examine any aspects of international trade, international economic integration, and trade agreements that the members deem appropriate. [2003 c 404 § 4.]

44.55.050 Staff support. The committee will receive the necessary staff support from both the senate committee services and the house office of program research. [2003 c 404 § 5.]

44.55.060 Compensation. The members of the committee shall serve without additional compensation, but are entitled to receive per diem, mileage, and incidental expense allowances at the rates provided in chapter 44.04 RCW. [2003 c 404 § 6.]

Chapter 44.75 RCW

TRANSPORTATION PERFORMANCE AUDIT BOARD

Sections

44.75.010	Intent.
44.75.020	Definitions.
44.75.030	Board created—Membership.
44.75.040	Procedures, compensation, support.
44.75.050	Reviews of transportation-related agencies.

44.75.060	Review methodology.
44.75.070	Scope of reviews.
44.75.080	Performance audits—Determination of necessity.
44.75.090	Professional experts—Reimbursement—Transportation committee approval of methodology.
44.75.100	Presentation and publication of performance audits.
44.75.110	Scope of performance audit.
44.75.120	Contents of audit report.
44.75.800	Department of transportation audit.
44.75.900	Captions—2003 c 362.
44.75.901	Effective date—2003 c 362.

44.75.010 Intent. It is essential that the legislature improve the accountability and efficiency of transportation-related agencies and measure transportation system performance against benchmarks established in chapter 5, Laws of 2002. Taxpayers must know that their tax dollars are being well spent to deliver critically needed transportation projects and services. To accomplish this, the transportation performance audit board is created and a system of transportation functional and performance audits is established to provide oversight and accountability of transportation-related agencies. [2003 c 362 § 1.]

44.75.020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Economy and efficiency audit" has the meaning contained in chapter 44.28 RCW.

(2) "Joint legislative audit and review committee" means the agency created in chapter 44.28 RCW, or its statutory successor.

(3) "Legislative auditor" has the meaning contained in chapter 44.28 RCW.

(4) "Legislative transportation committee" means the agency created in chapter 44.40 RCW, or its statutory successor.

(5) "Performance audit" has the meaning contained in chapter 44.28 RCW.

(6) "Performance review" means an outside evaluation of how a state agency uses its performance measures to assess the outcomes of its legislatively authorized activities.

(7) "Program audit" has the meaning contained in chapter 44.28 RCW.

(8) "Transportation performance audit board" or "board" means the board created in RCW 44.75.030.

(9) "Transportation-related agencies" means any state agency, board, or commission that receives funding primarily for transportation-related purposes. At a minimum, the department of transportation, the Washington state patrol, the department of licensing, the transportation improvement board or its successor entity, the county road administration board or its successor entity, and the traffic safety commission are considered transportation-related agencies. [2003 c 362 § 2.]

44.75.030 Board created—Membership. (1) The transportation performance audit board is created.

(2) The board will consist of four legislative members, five citizen members with transportation-related expertise, one ex officio member, and one at large member. The legislative auditor is the ex officio member. The majority and minority leaders of the house and senate transportation committees are the legislative members. The governor shall

appoint the at large member to serve for a term of four years. The citizen members must be nominated by professional associations chosen by the board's legislative members and appointed by the governor for terms of four years, except that at least half the initial appointments will be for terms of two years. The citizen members may not be currently, or within one year, employed by the Washington state department of transportation. The citizen members will consist of:

(a) One member with expertise in construction project planning, including permitting and assuring regulatory compliance;

(b) One member with expertise in construction means and methods and construction management, crafting and implementing environmental mitigation plans, and administration;

(c) One member with expertise in construction engineering services, including construction management, materials testing, materials documentation, contractor payments, inspection, surveying, and project oversight;

(d) One member with expertise in project management, including design estimating, contract packaging, and procurement; and

(e) One member with expertise in transportation planning and congestion management.

(3) The governor may not remove members from the board before the expiration of their terms unless for cause based upon a determination of incapacity, incompetence, neglect of duty, of malfeasance in office by the Thurston county superior court, upon petition and show cause proceedings brought for that purpose in that court and directed to the board member in question.

(4) No member may be appointed for more than three consecutive terms. [2003 c 362 § 3.]

44.75.040 Procedures, compensation, support. (1) The board shall meet periodically. It may adopt its own rules and may establish its own procedures. It shall act collectively in harmony with recorded resolutions or motions adopted by a majority vote of the members.

(2) Each member of the transportation performance audit board will be compensated from the general appropriation for the legislative transportation committee in accordance with RCW 43.03.250 and reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the board or that are incurred in the discharge of duties requested by the chair. However, in no event may a board member be compensated in any year for more than one hundred twenty days, except the chair may be compensated for not more than one hundred fifty days. Service on the board does not qualify as a service credit for the purposes of a public retirement system.

(3) The transportation performance audit board shall keep proper records and is subject to audit by the state auditor or other auditing entities.

(4) Staff support to the transportation performance audit board must be provided by the legislative transportation committee, which shall provide professional support for the duties, functions, responsibilities, and activities of the board, including but not limited to information technology systems; data collection, processing, analysis, and reporting; project management; and office space, equipment, and secretarial

support. The legislative evaluation and accountability program will provide data and information technology support consistent with the support currently supplied to existing legislative committees. [2003 c 362 § 4.]

44.75.050 Reviews of transportation-related agencies. (1) The transportation performance audit board may review the performance and outcome measures of transportation-related agencies. The purpose of these reviews is to ensure that the legislature has the means to adequately and accurately assess the performance and outcomes of those agencies and departments. Where two or more agencies have shared responsibility for functions or priorities of government, these reviews can also determine whether effective interagency cooperation and collaboration occurs in areas such as program coordination, administrative structures, information systems, and administration of grants and loans.

(2) In conducting these reviews, the transportation performance audit board may work in consultation with the legislative transportation committee, the joint legislative audit and review committee, the office of financial management, and other state agencies. [2003 c 362 § 5.]

44.75.060 Review methodology. The performance and outcome measures and benchmarks of each agency or department may be reviewed at the discretion of the transportation performance audit board. In setting the schedule and the extent of performance reviews, the board shall consider the timing and results of other recent state, federal, and independent reviews and audits, the seriousness of past findings, any inadequate remedial action taken by an agency or department, whether an agency or department lacks performance and outcome measures, and the desirability to include a diverse range of agencies or programs each year. [2003 c 362 § 6.]

44.75.070 Scope of reviews. The reviews may include, but are not limited to:

(1) A determination of whether the performance and outcome measures are consistent with legislative mandates, strategic plans, mission statements, and goals and objectives, and whether the legislature has established clear mandates, strategic plans, mission statements, and goals and objectives that lend themselves to performance and outcome measurement;

(2) An examination of how agency management uses the measures to manage resources in an efficient and effective manner;

(3) An assessment of how performance benchmarks are established for the purpose of assessing overall performance compared to external standards and benchmarks;

(4) An examination of how an analysis of the measurement data is used to make planning and operational improvements;

(5) A determination of how performance and outcome measures are used in the budget planning, development, and allotment processes and the extent to which the agency is in compliance with its responsibilities under RCW 43.88.090;

(6) A review of how performance data are reported to and used by the legislature both in policy development and resource allocation;

(7) An assessment of whether the performance measure data are reliable and collected in a uniform and timely manner;

(8) A determination whether targeted funding investments and established priorities of government actually produce the intended and expected services and benefits; and

(9) Recommendations as necessary or appropriate. [2003 c 362 § 7.]

44.75.080 Performance audits—Determination of necessity. After reviewing the performance or outcome measures and benchmarks of an agency or department, or at any time it so determines, the transportation performance audit board shall recommend to the executive committee of the legislative transportation committee whether a full performance or functional audit of the agency or department, or a specific program within the agency or department, is appropriate. Upon the request of the legislative transportation committee or its executive committee, the joint legislative audit and review committee shall add the full performance or functional audit to its biennial performance audit work plan. If the request duplicates or overlaps audits already in the work plan, or was performed under the previous biennial work plan, the executive committees of the legislative transportation committee and the joint legislative audit and review committee shall meet to discuss and resolve the duplication or overlap. [2003 c 362 § 8.]

44.75.090 Professional experts—Reimbursement—Transportation committee approval of methodology. (1) To the greatest extent possible, or when requested by the executive committee of the legislative transportation committee, the legislative auditor shall contract with and consult with private independent professional and technical experts to optimize the independence of the reviews and performance audits. In determining the need to contract with private experts, the legislative auditor shall consider the degree of difficulty of the review or audit, the relative cost of contracting for expertise, and the need to maintain auditor independence from the subject agency or program.

(2) After consultation with the executive committee of the legislative transportation committee on the appropriateness of costs, the legislative transportation committee shall reimburse the joint legislative audit and review committee or the legislative auditor for the costs of carrying out any requested performance audits, including the cost of contracts and consultant services.

(3) The executive committee of the legislative transportation committee must review and approve the methodology for performance audits recommended by the transportation performance audit board. [2003 c 362 § 9.]

44.75.100 Presentation and publication of performance audits. Completed performance audits must be presented to the transportation performance audit board and the legislative transportation committee. Published performance audits must be made available to the public through the legislative transportation committee and the joint legislative audit and review committee's web site and through customary public communications. Final reports must also be transmitted to

the appropriate policy and fiscal standing committees of the legislature. [2003 c 362 § 10.]

44.75.110 Scope of performance audit. The legislative auditor shall determine in writing the scope of any performance audit requested by the legislative transportation committee or its executive committee, subject to the review and approval of the final scope of the audit by the transportation performance audit board, and the legislative transportation committee or its executive committee. In doing so, the legislative auditor, the transportation performance audit board, and the legislative transportation committee or its executive committee shall consider inclusion of the following elements in the scope of the audit:

- (1) Identification of potential cost savings in the agency, its programs, and its services;
- (2) Identification and recognition of best practices;
- (3) Identification of funding to the agency, to programs, and to services that can be eliminated or reduced;
- (4) Identification of programs and services that can be eliminated, reduced, or transferred to the private sector;
- (5) Analysis of gaps and overlaps in programs and services and recommendations for improving, dropping, blending, or separating functions to correct gaps or overlaps;
- (6) Analysis and recommendations for pooling information technology systems;
- (7) Analysis of the roles and functions of the agency, its programs, and its services and their compliance with statutory authority and recommendations for eliminating or changing those roles and functions and ensuring compliance with statutory authority;
- (8) Recommendations for eliminating or changing statutes, rules, and policy directives as may be necessary to ensure that the agency carry out reasonably and properly those functions expressly vested in the department by statute; and
- (9) Verification of the reliability and validity of department performance data, self-assessments, and performance measurement systems as required under RCW 43.88.090. [2003 c 362 § 11.]

44.75.120 Contents of audit report. When conducting a full performance audit of an agency or department, or a specific program within an agency or department, or multiple agencies, in accordance with RCW 44.75.110, the legislative auditor shall solicit input from appropriate industry representatives or experts. The audit report must make recommendations regarding the continuation, abolition, consolidation, or reorganization of each affected agency, department, or program. The audit report must identify opportunities to develop government partnerships, and eliminate program redundancies that will result in increased quality, effectiveness, and efficiency of state agencies. [2003 c 362 § 12.]

44.75.800 Department of transportation audit. The transportation performance audit board shall take steps to ensure that the department of transportation is the first agency subject to the performance review and audit process established in chapter 362, Laws of 2003. [2003 c 362 § 15.]

44.75.900 Captions—2003 c 362. Captions used in this act are not part of the law. [2003 c 362 § 18.]

44.75.901 Effective date—2003 c 362. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2003]. [2003 c 362 § 19.]

Title 46

MOTOR VEHICLES

Chapters

- 46.01** Department of licensing.
- 46.04** Definitions.
- 46.08** General provisions.
- 46.09** Off-road and nonhighway vehicles.
- 46.10** Snowmobiles.
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- 46.30** Mandatory liability insurance.
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- 46.44** Size, weight, load.
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Chapter 46.01 RCW

DEPARTMENT OF LICENSING

Sections

- 46.01.140 Special deputies and subagents of director—Disposition of application fees.
- 46.01.230 Payment by check, money order, Internet—Regulations—Surrender of canceled license—Handling fee for dishonored checks.

46.01.140 Special deputies and subagents of director—Disposition of application fees. (1) The county auditor, if appointed by the director of licensing shall carry out the provisions of this title relating to the licensing of vehicles and the issuance of vehicle license number plates under the direction and supervision of the director and may with the approval of the director appoint assistants as special deputies and recommend subagents to accept applications and collect fees for vehicle licenses and transfers and to deliver vehicle license number plates.

(2) A county auditor appointed by the director may request that the director appoint subagencies within the county.

(a) Upon authorization of the director, the auditor shall use an open competitive process including, but not limited to, a written business proposal and oral interview to determine the qualifications of all interested applicants.

(b) A subagent may recommend a successor who is either the subagent's sibling, spouse, or child, or a subagency employee, as long as the recommended successor participates in the open, competitive process used to select an applicant. In making successor recommendation and appointment determinations, the following provisions apply:

(i) If a subagency is held by a partnership or corporate entity, the nomination must be submitted on behalf of, and agreed to by, all partners or corporate officers.

(ii) No subagent may receive any direct or indirect compensation or remuneration from any party or entity in recognition of a successor nomination. A subagent may not receive any financial benefit from the transfer or termination of an appointment.

(iii) (a) and (b) of this subsection are intended to assist in the efficient transfer of appointments in order to minimize public inconvenience. They do not create a proprietary or property interest in the appointment.

(c) The auditor shall submit all proposals to the director, and shall recommend the appointment of one or more subagents who have applied through the open competitive process. The auditor shall include in his or her recommendation to the director, not only the name of the successor who is a relative or employee, if applicable and if otherwise qualified, but also the name of one other applicant who is qualified and was chosen through the open competitive process. The director has final appointment authority.

(3)(a) A county auditor who is appointed as an agent by the department shall enter into a standard contract provided by the director, developed with the advice of the title and registration advisory committee.

(b) A subagent appointed under subsection (2) of this section shall enter into a standard contract with the county auditor, developed with the advice of the title and registration advisory committee. The director shall provide the standard contract to county auditors.

(c) The contracts provided for in (a) and (b) of this subsection must contain at a minimum provisions that:

(i) Describe the responsibilities, and where applicable, the liability, of each party relating to the service expectations and levels, equipment to be supplied by the department, and equipment maintenance;

(ii) Require the specific type of insurance or bonds so that the state is protected against any loss of collected motor vehicle tax revenues or loss of equipment;

(iii) Specify the amount of training that will be provided by the state, the county auditor, or subagents;

(iv) Describe allowable costs that may be charged to vehicle licensing activities as provided for in (d) of this subsection;

(v) Describe the causes and procedures for termination of the contract, which may include mediation and binding arbitration.

(d) The department shall develop procedures that will standardize and prescribe allowable costs that may be assigned to vehicle licensing and vessel registration and title activities performed by county auditors.

(e) The contracts may include any provision that the director deems necessary to ensure acceptable service and the full collection of vehicle and vessel tax revenues.

(f) The director may waive any provisions of the contract deemed necessary in order to ensure that readily accessible service is provided to the citizens of the state.

(4)(a) At any time any application is made to the director, the county auditor, or other agent pursuant to any law dealing with licenses, registration, or the right to operate any vehicle or vessel upon the public highways or waters of this state, excluding applicants already paying such fee under RCW 46.16.070 or 46.16.085, the applicant shall pay to the director, county auditor, or other agent a fee of three dollars for each application in addition to any other fees required by law.

(b) Counties that do not cover the expenses of vehicle licensing and vessel registration and title activities may submit to the department a request for cost-coverage moneys. The request must be submitted on a form developed by the department. The department shall develop procedures to verify whether a request is reasonable. Payment shall be made on requests found to be allowable from the licensing services account.

(c) Applicants for certificates of ownership, including applicants paying fees under RCW 46.16.070 or 46.16.085, shall pay to the director, county auditor, or other agent a fee of four dollars in addition to any other fees required by law.

(d) The fees under (a) and (c) of this subsection, if paid to the county auditor as agent of the director, or if paid to a subagent of the county auditor, shall be paid to the county treasurer in the same manner as other fees collected by the county auditor and credited to the county current expense fund. If the fee is paid to another agent of the director, the fee shall be used by the agent to defray his or her expenses in handling the application.

(e) Applicants required to pay the three-dollar fee established under (a) of this subsection, must pay an additional seventy-five cents, which must be collected and remitted to the state treasurer and distributed as follows:

(i) Fifty cents must be deposited into the department of licensing services account of the motor vehicle fund and must be used for agent and subagent support, which is to include but not be limited to the replacement of department-owned equipment in the possession of agents and subagents.

(ii) Twenty-five cents must be deposited into the license plate technology account created under RCW 46.16.685.

(5) A subagent shall collect a service fee of (a) eight dollars and fifty cents for changes in a certificate of ownership, with or without registration renewal, or verification of record and preparation of an affidavit of lost title other than at the time of the title application or transfer and (b) three dollars and fifty cents for registration renewal only, issuing a transit permit, or any other service under this section.

(6) If the fee is collected by the state patrol as agent for the director, the fee so collected shall be certified to the state treasurer and deposited to the credit of the state patrol highway account. If the fee is collected by the department of

transportation as agent for the director, the fee shall be certified to the state treasurer and deposited to the credit of the motor vehicle fund. All such fees collected by the director or branches of his office shall be certified to the state treasurer and deposited to the credit of the highway safety fund.

(7) Any county revenues that exceed the cost of providing vehicle licensing and vessel registration and title activities in a county, calculated in accordance with the procedures in subsection (3)(d) of this section, shall be expended as determined by the county legislative authority during the process established by law for adoption of county budgets.

(8) The director may adopt rules to implement this section. [2003 c 370 § 3; 2001 c 331 § 1; 1996 c 315 § 1; 1992 c 216 § 1; 1991 c 339 § 16; 1990 c 250 § 89; 1988 c 12 § 1; 1987 c 302 § 1; 1985 c 380 § 12. Prior: 1983 c 77 § 1; 1983 c 26 § 1; 1980 c 114 § 2; 1979 c 158 § 122; 1975 1st ex.s. c 146 § 1; 1973 c 103 § 1; 1971 ex.s. c 231 § 9; 1971 ex.s. c 91 § 3; 1965 c 156 § 14; 1963 c 85 § 1; 1961 c 12 § 46.08.100; prior: 1955 c 89 § 3; 1937 c 188 § 27; RRS § 6312-27. Formerly RCW 46.08.100.]

Application—2003 c 370: "Sections 2 and 3 of this act take effect for renewals that are due or become due on or after November 1, 2003." [2003 c 370 § 6.] Section 2 of this act was vetoed by the governor.

Effective dates—1996 c 315 §§ 1, 4, 5: "(1) Section 4 of this act and the amendments to RCW 46.01.140(4) (a) and (c) by section 1 of this act become effective on vehicle fees due or to become due on January 1, 1997, and thereafter.

(2) Section 5 of this act and the amendments to RCW 46.01.140(4) (a) and (c) by section 1 of this act become effective on vessel fees due or to become due on July 1, 1997, and thereafter.

(3) The amendments to RCW 46.01.140(5) (a) and (b) by section 1 of this act become effective on July 1, 1996." [1996 c 315 § 6.]

Effective date—1991 c 339 §§ 16, 17: "Sections 16 and 17 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 339 § 34.]

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

Severability—1987 c 302: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 302 § 5.]

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.01.230 Payment by check, money order, Internet—Regulations—Surrender of canceled license—Handling fee for dishonored checks. (1) The department of licensing is authorized to accept checks and money orders for payment of drivers' licenses, certificates of ownership and registration, motor vehicle excise taxes, gross weight fees, and other fees and taxes collected by the department, in accordance with regulations adopted by the director. The director's regulations shall duly provide for the public's convenience consistent with sound business practice and shall encourage the annual renewal of vehicle registrations by mail to the department, authorizing checks and money orders for payment. Such regulations shall contain provisions for cancellation of any registrations, licenses, or permits paid for by checks or money orders which are not duly paid and for the necessary accounting procedures in such cases: PROVIDED, That any bona fide purchaser for value of a vehicle shall not be liable or responsible for any prior uncollected

taxes and fees paid, pursuant to this section, by a check which has subsequently been dishonored: AND PROVIDED FURTHER, That no transfer of ownership of a vehicle may be denied to a bona fide purchaser for value of a vehicle if there are outstanding uncollected fees or taxes for which a predecessor paid, pursuant to this section, by check which has subsequently been dishonored nor shall the new owner be required to pay any fee for replacement vehicle license number plates that may be required pursuant to RCW 46.16.270 as now or hereafter amended.

(2) It is a traffic infraction to fail to surrender within ten days to the department or any authorized agent of the department any certificate, license, or permit after being notified that such certificate, license, or permit has been canceled pursuant to this section. Notice of cancellation may be accomplished by sending a notice by first class mail using the last known address in department records for the holder of the certificate, license, or permit, and recording the transmittal on an affidavit of first class mail.

(3) Whenever registrations, licenses, or permits have been paid for by checks that have been dishonored by nonacceptance or nonpayment, a reasonable handling fee may be assessed for each such instrument. Notwithstanding provisions of any other laws, county auditors, agents, and subagents, appointed or approved by the director pursuant to RCW 46.01.140, may collect restitution, and where they have collected restitution may retain the reasonable handling fee. The amount of the reasonable handling fee may be set by rule by the director.

(4) In those counties where the county auditor has been appointed an agent of the director under RCW 46.01.140, the auditor shall continue to process mail-in registration renewals until directed otherwise by legislative authority. Subagents appointed by the director under RCW 46.01.140 have the same authority to mail out registrations and replacement plates to Internet payment option customers as the agents until directed otherwise by legislative authority. The department shall provide separate statements giving notice to Internet payment option customers that: (a) A subagent service fee, as provided in RCW 46.01.140(5)(b), will be collected by a subagent office for providing mail and pick-up services; and (b) a filing fee will be collected on all transactions listed under RCW 46.01.140(4)(a). The statement must include the amount of the fee and be published on the department's Internet web site on the page that lists each department, county auditor, and subagent office, eligible to provide mail or pick-up services for registration renewals and replacement plates. The statements must be published below each office listed. [2003 c 369 § 1; 1994 c 262 § 1; 1992 c 216 § 2; 1987 c 302 § 2; 1979 ex.s. c 136 § 39; 1979 c 158 § 124; 1975 c 52 § 1; 1965 ex.s. c 170 § 44.]

Effective date—2003 c 369: "This act takes effect October 1, 2003." [2003 c 369 § 2.]

Severability—1987 c 302: See note following RCW 46.01.140.

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

Chapter 46.04 RCW DEFINITIONS

Sections

46.04.320	Motor vehicle.
46.04.330	Motorcycle.
46.04.332	Motor-driven cycle.
46.04.336	Motorized foot scooter.
46.04.357	Neighborhood electric vehicle.
46.04.400	Pedestrian.
46.04.415	Power wheelchair.
46.04.670	Vehicle.

46.04.320 Motor vehicle. "Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. "Motor vehicle" includes a neighborhood electric vehicle as defined in RCW 46.04.357. An electric personal assistive mobility device is not considered a motor vehicle. A power wheelchair is not considered a motor vehicle. [2003 c 353 § 1; 2003 c 141 § 2; 2002 c 247 § 2; 1961 c 12 § 46.04.320. Prior: 1959 c 49 § 33; 1955 c 384 § 10; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Reviser's note: This section was amended by 2003 c 141 § 2 and by 2003 c 353 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 353: "This act takes effect August 1, 2003." [2003 c 353 § 12.]

Legislative review—2002 c 247: See note following RCW 46.04.1695.

46.04.330 Motorcycle. "Motorcycle" means a motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and is designed to be steered with a handle bar, but excluding a farm tractor, a power wheelchair, an electric personal assistive mobility device, and a moped.

The Washington state patrol may approve of and define as a "motorcycle" a motor vehicle that fails to meet these specific criteria, but that is essentially similar in performance and application to motor vehicles that do meet these specific criteria. [2003 c 141 § 3; 2002 c 247 § 3; 1990 c 250 § 20; 1979 ex.s. c 213 § 2; 1961 c 12 § 46.04.330. Prior: 1959 c 49 § 34; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Legislative review—2002 c 247: See note following RCW 46.04.1695.

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

46.04.332 Motor-driven cycle. "Motor-driven cycle" means every motorcycle, including every motor scooter, with a motor that produces not to exceed five brake horsepower (developed by a prime mover, as measured by a brake applied to the driving shaft). A motor-driven cycle does not include a moped, a power wheelchair, a motorized foot scooter, or an electric personal assistive mobility device. [2003 c 353 § 7; 2003 c 141 § 4; 2002 c 247 § 4; 1979 ex.s. c 213 § 3; 1963 c 154 § 28.]

[2003 RCW Supp—page 606]

Reviser's note: This section was amended by 2003 c 141 § 4 and by 2003 c 353 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 353: See note following RCW 46.04.320.

Legislative review—2002 c 247: See note following RCW 46.04.1695.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.04.336 Motorized foot scooter. "Motorized foot scooter" means a device with no more than two ten-inch or smaller diameter wheels that has handlebars, is designed to be stood or sat upon by the operator, and is powered by an internal combustion engine or electric motor that is capable of propelling the device with or without human propulsion.

For purposes of this section, a motor-driven cycle, a moped, an electric-assisted bicycle, or a motorcycle is not a motorized foot scooter. [2003 c 353 § 6.]

Effective date—2003 c 353: See note following RCW 46.04.320.

46.04.357 Neighborhood electric vehicle. "Neighborhood electric vehicle" means a self-propelled, electrically powered four-wheeled motor vehicle whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour and conforms to federal regulations under Title 49 C.F.R. Part 571.500. [2003 c 353 § 2.]

Effective date—2003 c 353: See note following RCW 46.04.320.

46.04.400 Pedestrian. "Pedestrian" means any person who is afoot or who is using a wheelchair, a power wheelchair, or a means of conveyance propelled by human power other than a bicycle. [2003 c 141 § 5; 1990 c 241 § 1; 1961 c 12 § 46.04.400. Prior: 1959 c 49 § 41; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.415 Power wheelchair. "Power wheelchair" means any self-propelled vehicle capable of traveling no more than fifteen miles per hour, usable indoors, designed as a mobility aid for individuals with mobility impairments, and operated by such an individual. [2003 c 141 § 1.]

Wheelchair conveyance: RCW 46.04.710.

46.04.670 Vehicle. "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, including bicycles. The term does not include power wheelchairs or devices other than bicycles moved by human or animal power or used exclusively upon stationary rails or tracks. Mopeds shall not be considered vehicles or motor vehicles for the purposes of chapter 46.70 RCW. Bicycles shall not be considered vehicles for the purposes of chapter 46.12, 46.16, or 46.70 RCW. Electric personal assistive mobility devices are not considered vehicles or motor vehicles for the purposes of chapter 46.12, 46.16, 46.29, 46.37, or 46.70 RCW. [2003 c 141 § 6; 2002 c 247 § 5; 1994 c 262 § 2; 1991 c 214 § 2; 1979 ex.s. c 213 § 4; 1961 c 12 § 46.04.670. Prior: 1959 c 49 § 72; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Legislative review—2002 c 247: See note following RCW 46.04.1695.

*Mopeds**helmet required: RCW 46.37.530, 46.37.535.**motorcycle endorsement, exemption: RCW 46.20.500.**operation and safety standards: RCW 46.61.710, 46.61.720.**registration: RCW 46.16.630.*

Chapter 46.08 RCW
GENERAL PROVISIONS

Sections

46.08.170 Control of traffic on capitol grounds—Violations, traffic infractions, misdemeanors—Jurisdiction. (*Effective July 1, 2004.*)

46.08.170 Control of traffic on capitol grounds—Violations, traffic infractions, misdemeanors—Jurisdiction. (*Effective July 1, 2004.*)

(1) Except as provided in subsection (2) of this section, any violation of a rule or regulation prescribed under RCW 46.08.150 is a traffic infraction, and the district courts of Thurston county shall have jurisdiction over such offenses: PROVIDED, That violation of a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(2) Violation of such a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [2003 c 53 § 232; 1987 c 202 § 213; 1979 ex.s. c 136 § 40; 1963 c 158 § 2; 1961 c 12 § 46.08.170. Prior: 1947 c 11 § 3; Rem. Supp. 1947 § 7921-22.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

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

Chapter 46.09 RCW
OFF-ROAD AND NONHIGHWAY VEHICLES

Sections

46.09.120 Operating violations.
46.09.130 Additional violations—Penalty. (*Effective July 1, 2004.*)
46.09.170 Refunds from motor vehicle fund—Distribution—Use. (*Expires June 30, 2005.*)
46.09.170 Refunds from motor vehicle fund—Distribution—Use. (*Effective June 30, 2005.*)
46.09.280 Nonhighway and off-road vehicle advisory committee.

46.09.120 Operating violations. (1) It is a traffic infraction for any person to operate any nonhighway vehicle:

(a) In such a manner as to endanger the property of another;

(b) On lands not owned by the operator or owner of the nonhighway vehicle without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others regardless of ownership;

(c) On lands not owned by the operator or owner of the nonhighway vehicle without an adequate braking device or when otherwise required for the safety of others regardless of ownership;

(d) Without a spark arrester approved by the department of natural resources;

(e) Without an adequate, and operating, muffling device which effectively limits vehicle noise to no more than eighty-six decibels on the "A" scale at fifty feet as measured by the

Society of Automotive Engineers (SAE) test procedure J 331a, except that a maximum noise level of one hundred and five decibels on the "A" scale at a distance of twenty inches from the exhaust outlet shall be an acceptable substitute in lieu of the Society of Automotive Engineers test procedure J 331a when measured:

(i) At a forty-five degree angle at a distance of twenty inches from the exhaust outlet;

(ii) With the vehicle stationary and the engine running at a steady speed equal to one-half of the manufacturer's maximum allowable ("red line") engine speed or where the manufacturer's maximum allowable engine speed is not known the test speed in revolutions per minute calculated as sixty percent of the speed at which maximum horsepower is developed; and

(iii) With the microphone placed ten inches from the side of the vehicle, one-half way between the lowest part of the vehicle body and the ground plane, and in the same lateral plane as the rearmost exhaust outlet where the outlet of the exhaust pipe is under the vehicle;

(f) On lands not owned by the operator or owner of the nonhighway vehicle upon the shoulder or inside bank or slope of any nonhighway road or highway, or upon the median of any divided highway;

(g) On lands not owned by the operator or owner of the nonhighway vehicle in any area or in such a manner so as to unreasonably expose the underlying soil, or to create an erosion condition, or to injure, damage, or destroy trees, growing crops, or other vegetation;

(h) On lands not owned by the operator or owner of the nonhighway vehicle or on any nonhighway road or trail, when these are restricted to pedestrian or animal travel; and

(i) On any public lands in violation of rules and regulations of the agency administering such lands.

(2) It is a misdemeanor for any person to operate any nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance. [2003 c 377 § 1; 1979 ex.s. c 136 § 41; 1977 ex.s. c 220 § 10; 1972 ex.s. c 153 § 12; 1971 ex.s. c 47 § 17.]

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

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

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.130 Additional violations—Penalty. (*Effective July 1, 2004.*) (1) No person may operate a nonhighway vehicle in such a way as to endanger human life.

(2) No person shall operate a nonhighway vehicle in such a way as to run down or harass any wildlife or animal, nor carry, transport, or convey any loaded weapon in or upon, nor hunt from, any nonhighway vehicle except by permit issued by the director of fish and wildlife under RCW 77.32.237: PROVIDED, That it shall not be unlawful to carry, transport, or convey a loaded pistol in or upon a nonhighway vehicle if the person complies with the terms and conditions of chapter 9.41 RCW.

(3) Violation of this section is a gross misdemeanor. [2003 c 53 § 233; 1994 c 264 § 35; 1989 c 297 § 3; 1986 c 206 § 7; 1977 ex.s. c 220 § 11; 1971 ex.s. c 47 § 18.]

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

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

46.09.170 Refunds from motor vehicle fund—Distribution—Use. (Expires June 30, 2005.) (1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (c) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (d) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090. The treasurer shall place these funds in the general fund as follows:

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

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

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

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

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

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

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

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

(iv) Fifty-four and one-half percent, together with the funds received by the interagency committee for outdoor recreation under RCW 46.09.110, shall be credited to the non-highway and off-road vehicle activities program account to be administered by the committee for planning, acquisition, development, maintenance, and management of ORV recreation facilities and nonhighway road recreation facilities; ORV user education and information; and ORV law enforce-

ment programs. During the fiscal year ending June 30, 2004, a portion of these funds may be appropriated to the department of natural resources to maintain and operate existing ORV and other recreation facilities, including ORV campgrounds, for the state parks and recreation commission to construct and upgrade trails and trail-related facilities for both motorized and nonmotorized uses, and for other activities identified in this section. The funds under this subsection shall be expended in accordance with the following limitations, except that during the fiscal year ending June 30, 2004, funds appropriated to the committee from motor vehicle fuel tax revenues for the activities in (e)(iv)(B) and (C) of this subsection shall be reduced by the amounts appropriated to the department of natural resources and the state parks and recreation commission as provided in this subsection:

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

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

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

(2) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.

(3) During the 2003-05 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the ORV account to the interagency committee for outdoor recreation, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission. This appropriation is not required to follow the specific distribution specified in subsection (1) of this section. [2003 1st sp.s. c 26 § 920; 2003 1st sp.s. c 25 § 922; 2003 c 361 § 407; 1995 c 166 § 9; 1994 c 264 § 36; 1990 c 42 § 115; 1988 c 36 § 25; 1986 c 206 § 8; 1979 c 158 § 130; 1977 ex.s. c 220 § 14; 1975 1st ex.s. c 34 § 1; 1974 ex.s. c 144 § 3; 1972 ex.s. c 153 § 15; 1971 ex.s. c 47 § 22.]

Reviser's note: This section was amended by 2003 c 361 § 407, 2003 1st sp.s. c 25 § 922, and by 2003 1st sp.s. c 26 § 920, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—Severability—Effective dates—2003 1st sp.s. c 26: See notes following RCW 43.135.045.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

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

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

Effective date—1975 1st ex.s. c 34: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 34 § 4.]

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.170 Refunds from motor vehicle fund—Distribution—Use. (*Effective June 30, 2005.*) (1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (c) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (d) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090. The treasurer shall place these funds in the general fund as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(2) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.

(3) During the 2003-05 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the ORV account to the interagency committee for outdoor recreation, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission. This appropriation is not required to follow the specific distribution specified in subsection (1) of this section. [2003 1st sp.s. c 25 § 922; 2003 c 361 § 407; 1995 c 166 § 9; 1994 c 264 § 36; 1990 c 42 § 115; 1988 c 36 § 25; 1986 c 206 § 8; 1979 c 158 § 130; 1977 ex.s. c 220 § 14; 1975 1st ex.s. c 34 § 1; 1974 ex.s. c 144 § 3; 1972 ex.s. c 153 § 15; 1971 ex.s. c 47 § 22.]

Reviser's note: This section was amended by 2003 c 361 § 407 and by 2003 1st sp.s. c 25 § 922, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2003 1st sp.s. c 25: See note following RCW 19.28.351.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

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

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

Effective date—1975 1st ex.s. c 34: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 34 § 4.]

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.280 Nonhighway and off-road vehicle advisory committee. The interagency committee for outdoor recreation shall establish the nonhighway and off-road vehicle advisory committee to provide advice regarding the administration of this chapter. The nonhighway and off-road vehicle advisory committee consists of a proportional representation of persons with recreational experience in areas identified in the most recent fuel use study, including but not limited to people with off-road vehicle, hiking, equestrian, mountain biking, hunting, fishing, and wildlife viewing experience. Only representatives of organized ORV groups may be voting members of the committee with respect to expenditure of funds received under RCW 46.09.110. [2003 c 185 § 1; 1986 c 206 § 13.]

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

Chapter 46.10 RCW SNOWMOBILES

Sections

46.10.130 Additional violations—Penalty. (*Effective July 1, 2004.*)
46.10.170 Amount of snowmobile fuel tax paid as motor vehicle fuel tax.

46.10.130 Additional violations—Penalty. (*Effective July 1, 2004.*) (1) No person shall operate a snowmobile in such a way as to endanger human life.

(2) No person shall operate a snowmobile in such a way as to run down or harass deer, elk, or any wildlife, or any domestic animal, nor shall any person carry any loaded weapon upon, nor hunt from, any snowmobile except by permit issued by the director of fish and wildlife under RCW 77.32.237.

(3) Any person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 234; 1994 c 264 § 37; 1989 c 297 § 4; 1979 ex.s. c 182 § 11; 1971 ex.s. c 29 § 13.]

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

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

46.10.170 Amount of snowmobile fuel tax paid as motor vehicle fuel tax. From time to time, but at least once each four years, the department shall determine the amount of moneys paid to it as motor vehicle fuel tax that is tax on snowmobile fuel. Such determination shall use one hundred thirty-five gallons as the average yearly fuel usage per snowmobile, the number of registered snowmobiles during the calendar year under determination, and a fuel tax rate of: (1) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (2) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (3) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (4) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (5) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter. [2003 c 361 § 408; 1994 c 262 § 4; 1993 c 54 § 7; 1990 c 42 § 117; 1979 ex.s. c 182 § 13; 1971 ex.s. c 29 § 17.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

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

Chapter 46.12 RCW

CERTIFICATES OF OWNERSHIP AND REGISTRATION

Sections

46.12.070	Destruction of vehicle—Surrender of certificates, penalty—Notice of settlement by insurance company. (<i>Effective July 1, 2004.</i>)
46.12.101	Transfer of ownership—Requirements—Penalty, exceptions.
46.12.210	Penalty for false statements or illegal transfers. (<i>Effective July 1, 2004.</i>)
46.12.220	Alteration or forgery—Penalty. (<i>Effective July 1, 2004.</i>)
46.12.510	Donations for organ donation awareness.

46.12.070 Destruction of vehicle—Surrender of certificates, penalty—Notice of settlement by insurance company. (*Effective July 1, 2004.*) (1) Upon the destruction of any vehicle issued a certificate of ownership under this chapter or a license registration under chapter 46.16 RCW, the registered owner and the legal owner shall forthwith and within fifteen days thereafter forward and surrender the certificate to the department, together with a statement of the

reason for the surrender and the date and place of destruction. Failure to notify the department or the possession by any person of any such certificate for a vehicle so destroyed, after fifteen days following its destruction, is prima facie evidence of violation of the provisions of this chapter and constitutes a gross misdemeanor.

(2) Any insurance company settling an insurance claim on a vehicle that has been issued a certificate of ownership under this chapter or a certificate of license registration under chapter 46.16 RCW as a total loss, less salvage value, shall notify the department thereof within fifteen days after the settlement of the claim. Notification shall be provided regardless of where or in what jurisdiction the total loss occurred.

(3) For a motor vehicle having a model year designation at least six years before the calendar year of destruction, the notification to the department must include a statement of whether the retail fair market value of the motor vehicle immediately before the destruction was at least the then market value threshold amount as defined in RCW 46.12.005. [2003 c 53 § 235; 2002 c 245 § 2; 1990 c 250 § 28; 1961 c 12 § 46.12.070. Prior: 1959 c 166 § 4; prior: 1947 c 164 § 3(b); 1939 c 182 § 1(b); 1937 c 188 § 5(b); Rem. Supp. 1947 § 6312-5(b).]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

46.12.101 Transfer of ownership—Requirements—Penalty, exceptions. A transfer of ownership in a motor vehicle is perfected by compliance with the requirements of this section.

(1) If an owner transfers his or her interest in a vehicle, other than by the creation, deletion, or change of a security interest, the owner shall, at the time of the delivery of the vehicle, execute an assignment to the transferee and provide an odometer disclosure statement under RCW 46.12.124 on the certificate of ownership or as the department otherwise prescribes, and cause the certificate and assignment to be transmitted to the transferee. The owner shall notify the department or its agents or subagents, in writing, on the appropriate form, of the date of the sale or transfer, the name and address of the owner and of the transferee, the transferee's driver's license number if available, and such description of the vehicle, including the vehicle identification number, the license plate number, or both, as may be required in the appropriate form provided or approved for that purpose by the department. The report of sale will be deemed properly filed if all information required in this section is provided on the form and includes a department-authorized notation that the document was received by the department, its agents, or subagents on or before the fifth day after the sale of the vehicle, excluding Saturdays, Sundays, and state and federal holidays. Agents and subagents shall immediately electronically transmit the seller's report of sale to the department. Reports of sale processed and recorded by the department's agents or subagents may be subject to fees as specified in RCW 46.01.140 (4)(a) or (5)(b). By January 1, 2003, the department shall create a system enabling the seller of a vehicle to transmit the report of sale electronically. The system created by the department must immediately indicate on the

department's vehicle record that a seller's report of sale has been filed.

(2) The requirements of subsection (1) of this section to provide an odometer disclosure statement apply to the transfer of vehicles held for lease when transferred to a lessee and then to the lessor at the end of the leasehold and to vehicles held in a fleet when transferred to a purchaser.

(3) Except as provided in RCW 46.70.122 the transferee shall within fifteen days after delivery to the transferee of the vehicle, execute the application for a new certificate of ownership in the same space provided therefor on the certificate or as the department prescribes, and cause the certificates and application to be transmitted to the department.

(4) Upon request of the owner or transferee, a secured party in possession of the certificate of ownership shall, unless the transfer was a breach of its security agreement, either deliver the certificate to the transferee for transmission to the department or, when the secured party receives the owner's assignment from the transferee, it shall transmit the transferee's application for a new certificate, the existing certificate, and the required fee to the department. Compliance with this section does not affect the rights of the secured party.

(5) If a security interest is reserved or created at the time of the transfer, the certificate of ownership shall be retained by or delivered to the person who becomes the secured party, and the parties shall comply with the provisions of RCW 46.12.170.

(6) If the purchaser or transferee fails or neglects to make application to transfer the certificate of ownership and license registration within fifteen days after the date of delivery of the vehicle, he or she shall on making application for transfer be assessed a twenty-five dollar penalty on the sixteenth day and two dollars additional for each day thereafter, but not to exceed one hundred dollars. The director may by rule establish conditions under which the penalty will not be assessed when an application for transfer is delayed for reasons beyond the control of the purchaser. Conditions for not assessing the penalty may be established for but not limited to delays caused by:

- (a) The department requesting additional supporting documents;
- (b) Extended hospitalization or illness of the purchaser;
- (c) Failure of a legal owner to release his or her interest;
- (d) Failure, negligence, or nonperformance of the department, auditor, or subagent.

Failure or neglect to make application to transfer the certificate of ownership and license registration within forty-five days after the date of delivery of the vehicle is a misdemeanor.

(7) Upon receipt of an application for reissue or replacement of a certificate of ownership and transfer of license registration, accompanied by the endorsed certificate of ownership or other documentary evidence as is deemed necessary, the department shall, if the application is in order and if all provisions relating to the certificate of ownership and license registration have been complied with, issue new certificates of title and license registration as in the case of an original issue and shall transmit the fees together with an itemized detailed report to the state treasurer.

(8) Once each quarter the department shall report to the department of revenue a list of those vehicles for which a seller's report has been received but no transfer of title has taken place. [2003 c 264 § 7; 2002 c 279 § 1; 1998 c 203 § 11; 1991 c 339 § 19; 1990 c 238 § 4; 1987 c 127 § 1; 1984 c 39 § 1; 1972 ex.s. c 99 § 1; 1969 ex.s. c 281 § 38; 1969 ex.s. c 42 § 1; 1967 c 140 § 7.]

Finding—1998 c 203: See note following RCW 46.55.105.

Effective date, implementation—1990 c 238: See note following RCW 46.12.030.

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

46.12.210 Penalty for false statements or illegal transfers. (Effective July 1, 2004.) Any person who knowingly makes any false statement of a material fact, either in his or her application for the certificate of ownership or in any assignment thereof, or who with intent to procure or pass ownership to a vehicle which he or she knows or has reason to believe has been stolen, receives or transfers possession of the same from or to another or who has in his or her possession any vehicle which he or she knows or has reason to believe has been stolen, and who is not an officer of the law engaged at the time in the performance of his or her duty as such officer, is guilty of a class B felony and upon conviction shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than ten years, or both such fine and imprisonment. This provision shall not exclude any other offenses or penalties prescribed by any existing or future law for the larceny or unauthorized taking of a motor vehicle. [2003 c 53 § 236; 1961 c 12 § 46.12.210. Prior: 1937 c 188 § 12; RRS § 6312-12.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

46.12.220 Alteration or forgery—Penalty. (Effective July 1, 2004.) Any person who alters or forges or causes to be altered or forged any certificate issued by the director pursuant to the provisions of this chapter, or any assignment thereof, or any release or notice of release of any encumbrance referred to therein, or who shall hold or use any such certificate or assignment, or release or notice of release, knowing the same to have been altered or forged, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 237; 1967 c 32 § 12; 1961 c 12 § 46.12.220. Prior: 1937 c 188 § 13; RRS § 6312-13.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

46.12.510 Donations for organ donation awareness. An applicant for a new or renewed registration for a vehicle required to be registered under this chapter or chapter 46.16 RCW may make a donation of one dollar or more to the organ and tissue donation awareness account to promote the donation of organs and tissues under the provisions of the uniform anatomical gift act, RCW 68.50.520 through *68.50.630. The department shall collect the donations and credit the donations to the organ and tissue donation awareness account, created in RCW 68.50.640. At least quarterly, the department shall transmit donations made to the organ and tissue donation awareness account to the foundation estab-

lished for organ and tissue donation awareness purposes by the Washington state organ procurement organizations. All Washington state organ procurement organizations will have proportional access to these funds to conduct public education in their service areas. The donation of one or more dollars is voluntary and may be refused by the applicant. The department shall make available informational booklets or other informational sources on the importance of organ and tissue donations to applicants.

The department shall inquire of each applicant at the time the completed application is presented whether the applicant is interested in making a donation of one dollar or more and shall also specifically inform the applicant of the option for organ and tissue donations as required by RCW 46.20.113. The department shall also provide written information to each applicant volunteering to become an organ and tissue donor. The written information shall disclose that the applicant's name shall be transmitted to the organ and tissue donor registry created in RCW 68.50.635, and that the applicant shall notify a Washington state organ procurement organization of any changes to the applicant's donor status.

All reasonable costs associated with the creation of the donation program created under this section must be paid proportionally or by other agreement by a Washington state organ procurement organization.

For the purposes of this section, "reasonable costs" and "Washington state organ procurement organization" have the same meaning as defined in RCW 68.50.530. [2003 c 94 § 6.]

***Reviser's note:** RCW 68.50.630 was repealed by 2002 c 45 § 1.

Application—2003 c 94 § 6: "Section 6 of this act takes effect with registrations that are due or become due January 1, 2004, or later." [2003 c 94 § 8.]

Findings—2003 c 94: See note following RCW 68.50.530.

Chapter 46.16 RCW VEHICLE LICENSES

Sections

46.16.010	Licenses and plates required—Penalties—Exceptions. (<i>Effective until July 1, 2004.</i>)
46.16.010	Licenses and plates required—Penalties—Exceptions. (<i>Effective July 1, 2004.</i>)
46.16.0621	License fee (<i>as amended by 2002 c 352.</i>)
46.16.0621	License fee (<i>as amended by 2003 c 1 (Initiative Measure No. 776).</i>)
46.16.070	License fee on trucks, buses, and for hire vehicles based on gross weight. (<i>Effective if Initiative Measure No. 776 is declared unconstitutional by pending court action.</i>)
46.16.070	License fee on trucks, buses, and for hire vehicles based on gross weight. (<i>Effective if Initiative Measure No. 776 is upheld by pending court action.</i>)
46.16.233	Standard background—Periodic replacement—Retention of current plate number.
46.16.295	Returned plates—Reuse.
46.16.314	Special license plates—Authority to continue.
46.16.381	Special parking for disabled persons—Penalties—Enforcement.
46.16.685	License plate technology account.
46.16.690	License plate design services—Fee.
46.16.700	Special license plates—Intent.
46.16.705	Special license plate review board—Created.
46.16.715	Board—Administration.
46.16.725	Board—Powers and duties.
46.16.735	Special license plates—Sponsoring organization requirements.
46.16.745	Special license plates—Sponsor application requirements.
46.16.755	Special license plates—Disposition of revenues.
46.16.765	Special license plates—Continuing requirements.

46.16.775 Special license plates—Nonreviewed plates.

46.16.010 Licenses and plates required—Penalties—Exceptions. (*Effective until July 1, 2004.*) (1) It is unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided. Failure to make initial registration before operation on the highways of this state is a misdemeanor, and any person convicted thereof must be punished by a fine of no less than three hundred thirty dollars, no part of which may be suspended or deferred.

Failure to renew an expired registration before operation on the highways of this state is a traffic infraction.

(2) The licensing of a vehicle in another state by a resident of this state, as defined in RCW 46.16.028, evading the payment of any tax or license fee imposed in connection with registration, is a gross misdemeanor punishable as follows:

(a) For a first offense, up to one year in the county jail and a fine equal to twice the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(b) For a second or subsequent offense, up to one year in the county jail and a fine equal to four times the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(c) For fines levied under (b) of this subsection, an amount equal to the avoided taxes and fees owed will be deposited in the vehicle licensing fraud account created in the state treasury;

(d) The avoided taxes and fees shall be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion.

(3) These provisions shall not apply to the following vehicles:

(a) Motorized foot scooters;

(b) Electric-assisted bicycles;

(c) Farm vehicles if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law;

(d) Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of spray and fertilizer applicator rigs and not used, designed, or modified primarily for the purpose of transportation;

(e) Fork lifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses which they serve: PROVIDED FURTHER, That these provisions shall not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks;

(f) "Special highway construction equipment" defined as follows: Any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (i) are in excess of the legal width, or (ii) which, because of their length, height, or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (iii) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

"Special highway construction equipment" does not include any of the following:

Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway, including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(4) The following vehicles, whether operated solo or in combination, are exempt from license registration and displaying license plates as required by this chapter:

(a) A converter gear used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle. Converter gear includes an auxiliary axle, booster axle, dolly, and jeep axle.

(b) A tow dolly that is used for towing a motor vehicle behind another motor vehicle. The front or rear wheels of the towed vehicle are secured to and rest on the tow dolly that is attached to the towing vehicle by a tow bar. [2003 c 353 § 8; 2000 c 229 § 1; 1999 c 277 § 4. Prior: 1997 c 328 § 2; 1997 c 241 § 13; 1996 c 184 § 1; 1993 c 238 § 1; 1991 c 163 § 1; 1989 c 192 § 2; 1986 c 186 § 1; 1977 ex.s. c 148 § 1; 1973 1st ex.s. c 17 § 2; 1972 ex.s. c 5 § 2; 1969 c 27 § 3; 1967 c 202 § 2; 1963 ex.s. c 3 § 51; 1961 ex.s. c 21 § 32; 1961 c 12 § 46.16.010; prior: 1955 c 265 § 1; 1947 c 33 § 1; 1937 c 188 § 15; Rem. Supp. 1947 § 6312-15; 1929 c 99 § 5; RRS § 6324.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Effective date—2003 c 353: See note following RCW 46.04.320.

Effective date—2000 c 229: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2000]." [2000 c 229 § 9.]

Effective date—1996 c 184 §§ 1-6: "Sections 1 through 6 of this act take effect January 1, 1997." [1996 c 184 § 8.]

Legislative intent—1989 c 192: "The legislature recognizes that there are residents of this state who intentionally register motor vehicles in other states to evade payment of taxes and fees required by the laws of this state. This results in a substantial loss of revenue to the state. It is the intent of the legislature to impose a stronger criminal penalty upon those residents who defraud the state, thereby enhancing compliance with the registration laws of this state and further enhancing enforcement and collection efforts.

In order to encourage voluntary compliance with the registration laws of this state, administrative penalties associated with failing to register a motor vehicle are waived until September 1, 1989. It is not the intent of the legislature to waive traffic infraction or criminal traffic violations imposed prior to July 23, 1989." [1989 c 192 § 1.]

Effective date—1989 c 192 § 2: "Section 2 of this act shall take effect September 1, 1989." [1989 c 192 § 3.]

46.16.010 Licenses and plates required—Penalties—Exceptions. (Effective July 1, 2004.) (1) It is unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided.

(2) Failure to make initial registration before operation on the highways of this state is a misdemeanor, and any person convicted thereof must be punished by a fine of no less than three hundred thirty dollars, no part of which may be suspended or deferred.

(3) Failure to renew an expired registration before operation on the highways of this state is a traffic infraction.

(4) The licensing of a vehicle in another state by a resident of this state, as defined in RCW 46.16.028, evading the payment of any tax or license fee imposed in connection with registration, is a gross misdemeanor punishable as follows:

(a) For a first offense, up to one year in the county jail and a fine equal to twice the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(b) For a second or subsequent offense, up to one year in the county jail and a fine equal to four times the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(c) For fines levied under (b) of this subsection, an amount equal to the avoided taxes and fees owed will be deposited in the vehicle licensing fraud account created in the state treasury;

(d) The avoided taxes and fees shall be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion.

(5) These provisions shall not apply to the following vehicles:

(a) Motorized foot scooters;

(b) Electric-assisted bicycles;

(c) Farm vehicles if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements

from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law;

(d) Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of spray and fertilizer applicator rigs and not used, designed, or modified primarily for the purpose of transportation;

(e) Fork lifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses which they serve: PROVIDED FURTHER, That these provisions shall not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks;

(f) "Special highway construction equipment" defined as follows: Any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (i) are in excess of the legal width, or (ii) which, because of their length, height, or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (iii) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

"Special highway construction equipment" does not include any of the following:

Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway, including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(6) The following vehicles, whether operated solo or in combination, are exempt from license registration and display license plates as required by this chapter:

(a) A converter gear used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the

number of axles of a vehicle. Converter gear includes an auxiliary axle, booster axle, dolly, and jeep axle.

(b) A tow dolly that is used for towing a motor vehicle behind another motor vehicle. The front or rear wheels of the towed vehicle are secured to and rest on the tow dolly that is attached to the towing vehicle by a tow bar. [2003 c 353 § 8; 2003 c 53 § 238; 2000 c 229 § 1; 1999 c 277 § 4. Prior: 1997 c 328 § 2; 1997 c 241 § 13; 1996 c 184 § 1; 1993 c 238 § 1; 1991 c 163 § 1; 1989 c 192 § 2; 1986 c 186 § 1; 1977 ex.s. c 148 § 1; 1973 1st ex.s. c 17 § 2; 1972 ex.s. c 5 § 2; 1969 c 27 § 3; 1967 c 202 § 2; 1963 ex.s. c 3 § 51; 1961 ex.s. c 21 § 32; 1961 c 12 § 46.16.010; prior: 1955 c 265 § 1; 1947 c 33 § 1; 1937 c 188 § 15; Rem. Supp. 1947 § 6312-15; 1929 c 99 § 5; RRS § 6324.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Reviser's note: This section was amended by 2003 c 53 § 238 and by 2003 c 353 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 353: See note following RCW 46.04.320.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2000 c 229: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2000]." [2000 c 229 § 9.]

Effective date—1996 c 184 §§ 1-6: "Sections 1 through 6 of this act take effect January 1, 1997." [1996 c 184 § 8.]

Legislative intent—1989 c 192: "The legislature recognizes that there are residents of this state who intentionally register motor vehicles in other states to evade payment of taxes and fees required by the laws of this state. This results in a substantial loss of revenue to the state. It is the intent of the legislature to impose a stronger criminal penalty upon those residents who defraud the state, thereby enhancing compliance with the registration laws of this state and further enhancing enforcement and collection efforts.

In order to encourage voluntary compliance with the registration laws of this state, administrative penalties associated with failing to register a motor vehicle are waived until September 1, 1989. It is not the intent of the legislature to waive traffic infraction or criminal traffic violations imposed prior to July 23, 1989." [1989 c 192 § 1.]

Effective date—1989 c 192 § 2: "Section 2 of this act shall take effect September 1, 1989." [1989 c 192 § 3.]

46.16.0621 License fee (as amended by 2002 c 352). (1) License tab fees shall be thirty dollars per year for all vehicles.

(2) For the purposes of this section, "license tab fees" are defined as the general fees paid annually for licensing motor vehicles and trailers as defined in RCW 46.04.620 and 46.04.623. Trailers licensed under RCW 46.16.068 or 46.16.085 and campers licensed under RCW 46.16.505 are not required to pay license tab fees under this section. [2002 c 352 § 7; 2000 1st sp.s. c 1 § 1.]

Reviser's note: (1) RCW 46.16.0621 was amended twice in 2002, first by the legislature in 2002 c 352 § 7 and then by Initiative Measure No. 776, each without reference to the other. For analogy to legislative double amendment, see RCW 1.12.025.

(2) The constitutionality of Initiative Measure No. 776 is being challenged in *Pierce Co. v. State of Washington*, King Co. Superior Ct. No. 02-2-35125-5 SEA.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—2000 1st sp.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2000]." [2000 1st sp.s. c 1 § 3.]

Retroactive application—2000 1st sp.s. c 1: "This act applies retroactively to January 1, 2000." [2000 1st sp.s. c 1 § 4.]

46.16.0621 License fee (as amended by 2003 c 1 (Initiative Measure No. 776)). (1) License tab fees (~~shall be thirty dollars~~) are required to be \$30 per year for motor vehicles, regardless of year, value, make, or model(~~(beginning January 1, 2000)~~).

(2) For the purposes of this section, "license tab fees" are defined as the general fees paid annually for licensing motor vehicles, including cars, sport utility vehicles, motorcycles, and motor homes. [2003 c 1 § 2 (Initiative Measure No. 776, approved November 5, 2002); 2000 1st sp.s. c 1 § 1.]

Reviser's note: (1) RCW 46.16.0621 was amended twice in 2002, first by the legislature in 2002 c 352 § 7 and then by Initiative Measure No. 776, each without reference to the other. For analogy to legislative double amendment, see RCW 1.12.025.

(2) The constitutionality of Initiative Measure No. 776 is being challenged in *Pierce Co. v. State of Washington*, King Co. Superior Ct. No. 02-2-35125-5 SEA.

Severability—Savings—2003 c 1 (Initiative Measure No. 776): See note following RCW 81.104.160.

Policies and purposes—2003 c 1 (Initiative Measure No. 776): "This measure would require license tab fees to be \$30 per year for motor vehicles and light trucks and would repeal certain government-imposed charges, including excise taxes and fees, levied on motor vehicles. Politicians promised "\$30 license tabs are here to stay" and promised any increases in vehicle-related taxes, fees and surcharges would be put to a public vote. Politicians should keep their promises. As long as taxpayers must pay incredibly high sales taxes when buying motor vehicles (meaning state and local governments receive huge windfalls of sales tax revenue from these transactions), the people want license tab fees to not exceed the promised \$30 per year. Without this follow-up measure, "tab creep" will continue until license tab fees are once again obscenely expensive, as they were prior to Initiative 695. The people want a public vote on any increases in vehicle-related taxes, fees and surcharges to ensure increased accountability. Voters will require more cost-effective use of existing revenues and fundamental reforms before approving higher charges on motor vehicles (such changes may remove the need for any increases). Also, dramatic changes to transportation plans and programs previously presented to voters must be resubmitted. This measure provides a strong directive to all taxing districts to obtain voter approval before imposing taxes, fees and surcharges on motor vehicles. However, if the legislature ignores this clear message, a referendum will be filed to protect the voters' rights. Politicians should just do the right thing and keep their promises." [2003 c 1 § 1 (Initiative Measure No. 776, approved November 5, 2002).]

Construction—2003 c 1 (Initiative Measure No. 776): "The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act." [2003 c 1 § 9 (Initiative Measure No. 776, approved November 5, 2002).]

Intent—2003 c 1 (Initiative Measure No. 776): "The people have made clear through the passage of numerous initiatives and referenda that taxes need to be reasonable and tax increases should always be a last resort. However, politicians throughout the state of Washington continue to ignore these repeated mandates.

The people expect politicians to keep their promises. The legislative intent of this measure is to ensure that they do.

Politicians are reminded:

(1) Washington voters want license tab fees to be \$30 per year for motor vehicles unless voters authorize higher vehicle-related charges at an election.

(2) All political power is vested in the people, as stated in Article I, section 1 of the Washington state Constitution.

(3) The first power reserved by the people is the initiative, as stated in Article II, section 1 of the Washington state Constitution.

(4) When voters approve initiatives, politicians have a moral, ethical, and constitutional obligation to fully implement them. When politicians ignore this obligation, they corrupt the term "public servant."

(5) Any attempt to violate the clear intent and spirit of this measure undermines the trust of the people in their government and will increase the likelihood of future tax limitation measures." [2003 c 1 § 11 (Initiative Measure No. 776, approved November 5, 2002).]

Effective date—2000 1st sp.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the

state government and its existing public institutions, and takes effect immediately [March 31, 2000]." [2000 1st sp.s. c 1 § 3.]

Retroactive application—2000 1st sp.s. c 1: "This act applies retroactively to January 1, 2000." [2000 1st sp.s. c 1 § 4.]

46.16.070 License fee on trucks, buses, and for hire vehicles based on gross weight. (Effective if Initiative Measure No. 776 is declared unconstitutional by pending court action.) (1) In lieu of all other vehicle licensing fees, unless specifically exempt, and in addition to the mileage fees prescribed for buses and stages in RCW 46.16.125, there shall be paid and collected annually for each truck, motor truck, truck tractor, road tractor, tractor, bus, auto stage, or for hire vehicle with seating capacity of more than six, based upon the declared combined gross weight or declared gross weight under chapter 46.44 RCW, the following licensing fees by such gross weight:

DECLARED GROSS WEIGHT	SCHEDULE A	SCHEDULE B
4,000 lbs.	\$ 37.00	\$ 37.00
6,000 lbs.	\$ 44.00	\$ 44.00
8,000 lbs.	\$ 55.00	\$ 55.00
10,000 lbs.	\$ 62.00	\$ 62.00
12,000 lbs.	\$ 79.00	\$ 79.00
14,000 lbs.	\$ 90.00	\$ 90.00
16,000 lbs.	\$ 102.00	\$ 102.00
18,000 lbs.	\$ 154.00	\$ 154.00
20,000 lbs.	\$ 171.00	\$ 171.00
22,000 lbs.	\$ 185.00	\$ 185.00
24,000 lbs.	\$ 200.00	\$ 200.00
26,000 lbs.	\$ 211.00	\$ 211.00
28,000 lbs.	\$ 249.00	\$ 249.00
30,000 lbs.	\$ 287.00	\$ 287.00
32,000 lbs.	\$ 346.00	\$ 346.00
34,000 lbs.	\$ 368.00	\$ 368.00
36,000 lbs.	\$ 399.00	\$ 399.00
38,000 lbs.	\$ 438.00	\$ 438.00
40,000 lbs.	\$ 501.00	\$ 501.00
42,000 lbs.	\$ 521.00	\$ 611.00
44,000 lbs.	\$ 532.00	\$ 622.00
46,000 lbs.	\$ 572.00	\$ 662.00
48,000 lbs.	\$ 596.00	\$ 686.00
50,000 lbs.	\$ 647.00	\$ 737.00
52,000 lbs.	\$ 680.00	\$ 770.00
54,000 lbs.	\$ 734.00	\$ 824.00
56,000 lbs.	\$ 775.00	\$ 865.00
58,000 lbs.	\$ 806.00	\$ 896.00
60,000 lbs.	\$ 859.00	\$ 949.00
62,000 lbs.	\$ 921.00	\$ 1,011.00
64,000 lbs.	\$ 941.00	\$ 1,031.00
66,000 lbs.	\$ 1,048.00	\$ 1,138.00
68,000 lbs.	\$ 1,093.00	\$ 1,183.00
70,000 lbs.	\$ 1,177.00	\$ 1,267.00
72,000 lbs.	\$ 1,259.00	\$ 1,349.00
74,000 lbs.	\$ 1,368.00	\$ 1,458.00
76,000 lbs.	\$ 1,478.00	\$ 1,568.00
78,000 lbs.	\$ 1,614.00	\$ 1,704.00
80,000 lbs.	\$ 1,742.00	\$ 1,832.00
82,000 lbs.	\$ 1,863.00	\$ 1,953.00

84,000 lbs.....	\$ 1,983.00.....	\$ 2,073.00
86,000 lbs.....	\$ 2,104.00.....	\$ 2,194.00
88,000 lbs.....	\$ 2,225.00.....	\$ 2,315.00
90,000 lbs.....	\$ 2,346.00.....	\$ 2,436.00
92,000 lbs.....	\$ 2,466.00.....	\$ 2,556.00
94,000 lbs.....	\$ 2,587.00.....	\$ 2,677.00
96,000 lbs.....	\$ 2,708.00.....	\$ 2,798.00
98,000 lbs.....	\$ 2,829.00.....	\$ 2,919.00
100,000 lbs.....	\$ 2,949.00.....	\$ 3,039.00
102,000 lbs.....	\$ 3,070.00.....	\$ 3,160.00
104,000 lbs.....	\$ 3,191.00.....	\$ 3,281.00
105,500 lbs.....	\$ 3,312.00.....	\$ 3,402.00

Schedule A applies to vehicles either used exclusively for hauling logs or that do not tow trailers. Schedule B applies to vehicles that tow trailers and are not covered under Schedule A.

Every truck, motor truck, truck tractor, and tractor exceeding 6,000 pounds empty scale weight registered under chapter 46.16, 46.87, or 46.88 RCW shall be licensed for not less than one hundred fifty percent of its empty weight unless the amount would be in excess of the legal limits prescribed for such a vehicle in RCW 46.44.041 or 46.44.042, in which event the vehicle shall be licensed for the maximum weight authorized for such a vehicle or unless the vehicle is used only for the purpose of transporting any well drilling machine, air compressor, rock crusher, conveyor, hoist, donkey engine, cook house, tool house, bunk house, or similar machine or structure attached to or made a part of such vehicle.

The following provisions apply when increasing gross or combined gross weight for a vehicle licensed under this section:

(a) The new license fee will be one-twelfth of the fee listed above for the new gross weight, multiplied by the number of months remaining in the period for which licensing fees have been paid, including the month in which the new gross weight is effective.

(b) Upon surrender of the current certificate of registration or cab card, the new licensing fees due shall be reduced by the amount of the licensing fees previously paid for the same period for which new fees are being charged.

(2) The proceeds from the fees collected under subsection (1) of this section shall be distributed in accordance with RCW 46.68.035. [2003 c 361 § 201; 1994 c 262 § 8; 1993 sp.s. c 23 § 60. Prior: 1993 c 123 § 5; 1993 c 102 § 1; 1990 c 42 § 105; 1989 c 156 § 1; prior: 1987 1st ex.s. c 9 § 4; 1987 c 244 § 3; 1986 c 18 § 4; 1985 c 380 § 15; 1975-'76 2nd ex.s. c 64 § 1; 1969 ex.s. c 281 § 54; 1967 ex.s. c 118 § 1; 1967 ex.s. c 83 § 56; 1961 ex.s. c 7 § 11; 1961 c 12 § 46.16.070; prior: 1957 c 273 § 1; 1955 c 363 § 2; prior: 1951 c 269 § 9; 1950 ex.s. c 15 § 1, part; 1939 c 182 § 3, part; 1937 c 188 § 17, part; 1931 c 140 § 1, part; 1921 c 96 § 15, part; 1919 c 46 § 1, part; 1917 c 155 § 10, part; 1915 c 142 § 15, part; Rem. Supp. 1949 § 6312-17, part; RRS § 6326, part.]

Application—2003 c 361 § 201: "Section 201 of this act is effective with registrations that are due or will become due August 1, 2003, and thereafter." [2003 c 361 § 704.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—1994 c 262 §§ 8, 28: "Sections 8 and 28 of this act take effect July 1, 1994." [1994 c 262 § 29.]

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: "Chapter 102, Laws of 1993 and chapter 123, Laws of 1993 each take effect January 1, 1994." [1993 sp.s. c 23 § 66.]

Effective dates—1993 sp.s. c 23: See note following RCW 43.89.010.

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

Application—1989 c 156: "This act first applies to the renewal of vehicle registrations that have a December 1990 or later expiration date and all initial vehicle registrations that are effective on or after January 1, 1990." [1989 c 156 § 5.]

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

Effective dates—1975-'76 2nd ex.s. c 64: "Sections 1, 2, and 5 through 24 of this 1976 amendatory act shall take effect on July 1, 1976, and sections 3 and 4 of this 1976 amendatory act shall take effect on January 1, 1977. All current and outstanding valid licenses and permits held by licensees on July 1, 1976, shall remain valid until their expiration dates, but renewals and original applications made after July 1, 1976, shall be governed by the law in effect at the time such renewal or application is made." [1975-'76 2nd ex.s. c 64 § 25.]

Severability—1975-'76 2nd ex.s. c 64: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 64 § 26.]

Effective date—1969 ex.s. c 281: See note following RCW 46.88.010.

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

46.16.070 License fee on trucks, buses, and for hire vehicles based on gross weight. (Effective if Initiative Measure No. 776 is upheld by pending court action.) (1) In lieu of all other vehicle licensing fees, unless specifically exempt, and in addition to the mileage fees prescribed for buses and stages in RCW 46.16.125, there shall be paid and collected annually for each truck, motor truck, truck tractor, road tractor, tractor, bus, auto stage, or for hire vehicle with seating capacity of more than six, based upon the declared combined gross weight or declared gross weight thereof pursuant to the provisions of chapter 46.44 RCW, the following licensing fees by such gross weight:

DECLARED GROSS WEIGHT	SCHEDULE A	SCHEDULE B
4,000 lbs.	\$ 30.00.....	\$ 30.00
6,000 lbs.	\$ 30.00.....	\$ 30.00
8,000 lbs.	\$ 30.00.....	\$ 30.00
10,000 lbs.	\$ 62.00.....	\$ 62.00
12,000 lbs.	\$ 72.00.....	\$ 72.00
14,000 lbs.	\$ 82.00.....	\$ 82.00
16,000 lbs.	\$ 92.00.....	\$ 92.00
18,000 lbs.	\$ 137.00.....	\$ 137.00
20,000 lbs.	\$ 152.00.....	\$ 152.00
22,000 lbs.	\$ 164.00.....	\$ 164.00
24,000 lbs.	\$ 177.00.....	\$ 177.00
26,000 lbs.	\$ 187.00.....	\$ 187.00
28,000 lbs.	\$ 220.00.....	\$ 220.00
30,000 lbs.	\$ 253.00.....	\$ 253.00
32,000 lbs.	\$ 304.00.....	\$ 304.00
34,000 lbs.	\$ 323.00.....	\$ 323.00
36,000 lbs.	\$ 350.00.....	\$ 350.00
38,000 lbs.	\$ 384.00.....	\$ 384.00
40,000 lbs.	\$ 439.00.....	\$ 439.00
42,000 lbs.	\$ 456.00.....	\$ 546.00
44,000 lbs.	\$ 466.00.....	\$ 556.00
46,000 lbs.	\$ 501.00.....	\$ 591.00
48,000 lbs.	\$ 522.00.....	\$ 612.00

50,000 lbs.....	\$ 566.00	\$ 656.00
52,000 lbs.....	\$ 595.00	\$ 685.00
54,000 lbs.....	\$ 642.00	\$ 732.00
56,000 lbs.....	\$ 677.00	\$ 767.00
58,000 lbs.....	\$ 704.00	\$ 794.00
60,000 lbs.....	\$ 750.00	\$ 840.00
62,000 lbs.....	\$ 804.00	\$ 894.00
64,000 lbs.....	\$ 822.00	\$ 912.00
66,000 lbs.....	\$ 915.00	\$ 1,005.00
68,000 lbs.....	\$ 954.00	\$ 1,044.00
70,000 lbs.....	\$ 1,027.00	\$ 1,117.00
72,000 lbs.....	\$ 1,098.00	\$ 1,188.00
74,000 lbs.....	\$ 1,193.00	\$ 1,283.00
76,000 lbs.....	\$ 1,289.00	\$ 1,379.00
78,000 lbs.....	\$ 1,407.00	\$ 1,497.00
80,000 lbs.....	\$ 1,518.00	\$ 1,608.00
82,000 lbs.....	\$ 1,623.00	\$ 1,713.00
84,000 lbs.....	\$ 1,728.00	\$ 1,818.00
86,000 lbs.....	\$ 1,833.00	\$ 1,923.00
88,000 lbs.....	\$ 1,938.00	\$ 2,028.00
90,000 lbs.....	\$ 2,043.00	\$ 2,133.00
92,000 lbs.....	\$ 2,148.00	\$ 2,238.00
94,000 lbs.....	\$ 2,253.00	\$ 2,343.00
96,000 lbs.....	\$ 2,358.00	\$ 2,448.00
98,000 lbs.....	\$ 2,463.00	\$ 2,553.00
100,000 lbs.....	\$ 2,568.00	\$ 2,658.00
102,000 lbs.....	\$ 2,673.00	\$ 2,763.00
104,000 lbs.....	\$ 2,778.00	\$ 2,868.00
105,500 lbs.....	\$ 2,883.00	\$ 2,973.00

Schedule A applies to vehicles either used exclusively for hauling logs or that do not tow trailers. Schedule B applies to vehicles that tow trailers and are not covered under Schedule A.

Every truck, motor truck, truck tractor, and tractor exceeding 6,000 pounds empty scale weight registered under chapter 46.16, 46.87, or 46.88 RCW shall be licensed for not less than one hundred fifty percent of its empty weight unless the amount would be in excess of the legal limits prescribed for such a vehicle in RCW 46.44.041 or 46.44.042, in which event the vehicle shall be licensed for the maximum weight authorized for such a vehicle or unless the vehicle is used only for the purpose of transporting any well drilling machine, air compressor, rock crusher, conveyor, hoist, donkey engine, cook house, tool house, bunk house, or similar machine or structure attached to or made a part of such vehicle.

The following provisions apply when increasing gross or combined gross weight for a vehicle licensed under this section:

(a) The new license fee will be one-twelfth of the fee listed above for the new gross weight, multiplied by the number of months remaining in the period for which licensing fees have been paid, including the month in which the new gross weight is effective.

(b) Upon surrender of the current certificate of registration or cab card, the new licensing fees due shall be reduced by the amount of the licensing fees previously paid for the same period for which new fees are being charged.

(2) The proceeds from the fees collected under subsection (1) of this section shall be distributed in accordance with RCW 46.68.035. [2003 c 1 § 3 (Initiative Measure No. 776, approved November 5, 2002); 1994 c 262 § 8; 1993 sp.s. c 23 § 60. Prior: 1993 c 123 § 5; 1993 c 102 § 1; 1990 c 42 § 105; 1989 c 156 § 1; prior: 1987 1st ex.s. c 9 § 4; 1987 c 244 § 3; 1986 c 18 § 4; 1985 c 380 § 15; 1975-'76 2nd ex.s. c 64 § 1; 1969 ex.s. c 281 § 54; 1967 ex.s. c 118 § 1; 1967 ex.s. c 83 §

56; 1961 ex.s. c 7 § 11; 1961 c 12 § 46.16.070; prior: 1957 c 273 § 1; 1955 c 363 § 2; prior: 1951 c 269 § 9; 1950 ex.s. c 15 § 1, part; 1939 c 182 § 3, part; 1937 c 188 § 17, part; 1931 c 140 § 1, part; 1921 c 96 § 15, part; 1919 c 46 § 1, part; 1917 c 155 § 10, part; 1915 c 142 § 15, part; Rem. Supp. 1949 § 6312-17, part; RRS § 6326, part.]

Reviser's note: The constitutionality of Initiative Measure No. 776 is being challenged in *Pierce Co. v. State of Washington*, King Co. Superior Ct. No. 02-2-35125-5 SEA.

Construction—Intent—2003 c 1 (Initiative Measure No. 776): See notes following RCW 46.16.0621.

Severability—Savings—2003 c 1 (Initiative Measure No. 776): See note following RCW 81.104.160.

Effective date—1994 c 262 §§ 8, 28: "Sections 8 and 28 of this act take effect July 1, 1994." [1994 c 262 § 29.]

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: "Chapter 102, Laws of 1993 and chapter 123, Laws of 1993 each take effect January 1, 1994." [1993 sp.s. c 23 § 66.]

Effective dates—1993 sp.s. c 23: See note following RCW 43.89.010.

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

Application—1989 c 156: "This act first applies to the renewal of vehicle registrations that have a December 1990 or later expiration date and all initial vehicle registrations that are effective on or after January 1, 1990." [1989 c 156 § 5.]

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

Effective dates—1975-'76 2nd ex.s. c 64: "Sections 1, 2, and 5 through 24 of this 1976 amendatory act shall take effect on July 1, 1976, and sections 3 and 4 of this 1976 amendatory act shall take effect on January 1, 1977. All current and outstanding valid licenses and permits held by licensees on July 1, 1976, shall remain valid until their expiration dates, but renewals and original applications made after July 1, 1976, shall be governed by the law in effect at the time such renewal or application is made." [1975-'76 2nd ex.s. c 64 § 25.]

Severability—1975-'76 2nd ex.s. c 64: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 64 § 26.]

Effective date—1969 ex.s. c 281: See note following RCW 46.88.010.

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

46.16.233 Standard background—Periodic replacement—Retention of current plate number. (1) Except for those license plates issued under RCW 46.16.305(1) before January 1, 1987, under RCW 46.16.305(3), and to commercial vehicles with a gross weight in excess of twenty-six thousand pounds, effective with vehicle registrations due or to become due on January 1, 2001, the appearance of the background of all vehicle license plates may vary in color and design but must be legible and clearly identifiable as a Washington state license plate, as designated by the department. Additionally, to ensure maximum legibility and reflectivity, the department shall periodically provide for the replacement of license plates, except for commercial vehicles with a gross weight in excess of twenty-six thousand pounds. Frequency of replacement shall be established in accordance with empirical studies documenting the longevity of the reflective materials used to make license plates.

(2) Special license plate series approved by the special license plate review board created under RCW 46.16.705 and

enacted by the legislature may display a symbol or artwork approved by the special license plate review board.

(3) By November 1, 2003, in providing for the periodic replacement of license plates, the department shall offer to vehicle owners the option of retaining their current license plate numbers. The department shall charge a retention fee of twenty dollars if this option is exercised. Revenue generated from the retention fee must be deposited into the multimodal transportation account. [2003 c 361 § 501; 2003 c 196 § 401; 2000 c 37 § 1; 1997 c 291 § 2.]

Reviser's note: This section was amended by 2003 c 196 § 401 and by 2003 c 361 § 501, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.295 Returned plates—Reuse. The department may, upon request, provide license plates that have been used and subsequently returned to the department to individuals for nonvehicular use. The department may charge a fee of up to five dollars per plate to cover costs of recovery, postage, and handling. The department may waive the fee for plates used in educational projects, and may, by rule, provide standards for the fee waiver and restrictions on the number of plates provided to any one person. [2003 c 359 § 1.]

46.16.314 Special license plates—Authority to continue. The department has the sole discretion, based upon the number of sales to date, to determine whether or not to continue issuing license plates in a special series created before January 1, 2003. [2003 c 196 § 501; 1997 c 291 § 9.]

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.381 Special parking for disabled persons—Penalties—Enforcement. (1) The director shall grant special parking privileges to any person who has a disability that limits or impairs the ability to walk and meets one of the following criteria, as determined by a licensed physician or an advanced registered nurse practitioner licensed under chapter 18.79 RCW:

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

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

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

(d) Uses portable oxygen;

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

(f) Impairment by cardiovascular disease or cardiac condition to the extent that the person's functional limitations are

classified as class III or IV under standards accepted by the American Heart Association; or

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

(2) The applications for disabled parking permits and temporary disabled parking permits are official state documents. Knowingly providing false information in conjunction with the application is a gross misdemeanor punishable under chapter 9A.20 RCW. The following statement must appear on each application form immediately below the physician's or advanced registered nurse practitioner's signature and immediately below the applicant's signature: "A disabled parking permit may be issued only for a medical necessity that severely affects mobility (RCW 46.16.381). Knowingly providing false information on this application is a gross misdemeanor. The penalty is up to one year in jail and a fine of up to \$5,000 or both."

(3) Persons who qualify for special parking privileges are entitled to receive from the department of licensing a removable windshield placard bearing the international symbol of access and an individual serial number, along with a special identification card bearing the name and date of birth of the person to whom the placard is issued, and the placard's serial number. The special identification card shall be issued no later than January 1, 2000, to all persons who are issued parking placards, including those issued for temporary disabilities, and special disabled parking license plates. The department shall design the placard to be displayed when the vehicle is parked by suspending it from the rearview mirror, or in the absence of a rearview mirror the card may be displayed on the dashboard of any vehicle used to transport the disabled person. Instead of regular motor vehicle license plates, disabled persons are entitled to receive special license plates bearing the international symbol of access for one vehicle registered in the disabled person's name. Disabled persons who are not issued the special license plates are entitled to receive a second special placard upon submitting a written request to the department. Persons who have been issued the parking privileges and who are using a vehicle or are riding in a vehicle displaying the special license plates or placard may park in places reserved for mobility disabled persons. The director shall adopt rules providing for the issuance of special placards and license plates to public transportation authorities, nursing homes licensed under chapter 18.51 RCW, boarding homes licensed under chapter 18.20 RCW, senior citizen centers, private nonprofit agencies as defined in chapter 24.03 RCW, and vehicles registered with the department as cabulances that regularly transport disabled persons who have been determined eligible for special parking privileges provided under this section. The director may issue special license plates for a vehicle registered in the name of the public transportation authority, nursing home, boarding homes, senior citizen center, private nonprofit agency, or cabulance service if the vehicle is primarily used to transport persons with disabilities described in this section. Public transportation authorities, nursing homes, boarding homes, senior citizen centers, private nonprofit agencies, and

cabulance services are responsible for insuring that the special placards and license plates are not used improperly and are responsible for all fines and penalties for improper use.

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

(5) The special license plate shall be renewed in the same manner and at the time required for the renewal of regular motor vehicle license plates under this chapter. No special license plate may be issued to a person who is temporarily disabled. A person who has a condition expected to improve within six months may be issued a temporary placard for a period not to exceed six months. If the condition exists after six months a new temporary placard shall be issued upon receipt of a new certification from the disabled person's physician. The permanent parking placard and identification card of a disabled person shall be renewed at least every five years, as required by the director, by satisfactory proof of the right to continued use of the privileges. In the event of the permit holder's death, the parking placard and identification card must be immediately surrendered to the department. The department shall match and purge its disabled permit data base with available death record information at least every twelve months.

(6) Each person who has been issued a permanent disabled parking permit on or before July 1, 1998, must renew the permit no later than July 1, 2003, subject to a schedule to be set by the department, or the permit will expire.

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

(8) Any unauthorized use of the special placard, special license plate, or identification card is a traffic infraction with a monetary penalty of two hundred fifty dollars.

(9) It is a parking infraction, with a monetary penalty of two hundred fifty dollars for a person to make inaccessible the access aisle located next to a space reserved for physically disabled persons. The clerk of the court shall report all violations related to this subsection to the department.

(10) It is a parking infraction, with a monetary penalty of two hundred fifty dollars for any person to park a vehicle in a parking place provided on private property without charge or on public property reserved for physically disabled persons without a special license plate or placard. If a person is charged with a violation, the person shall not be determined to have committed an infraction if the person produces in court or before the court appearance the special license plate or placard required under this section. A local jurisdiction providing nonmetered, on-street parking places reserved for physically disabled persons may impose by ordinance time restrictions of no less than four hours on the use of these parking places. A local jurisdiction may impose by ordinance

time restrictions of no less than four hours on the use of non-reserved, on-street parking spaces by vehicles displaying the special parking placards. All time restrictions must be clearly posted.

(11) The penalties imposed under subsections (9) and (10) of this section shall be used by that local jurisdiction exclusively for law enforcement. The court may also impose an additional penalty sufficient to reimburse the local jurisdiction for any costs it may have incurred in removal and storage of the improperly parked vehicle.

(12) Except as provided by subsection (2) of this section, it is a traffic infraction with a monetary penalty of two hundred fifty dollars for any person willfully to obtain a special license plate, placard, or identification card in a manner other than that established under this section.

(13)(a) A law enforcement agency authorized to enforce parking laws may appoint volunteers, with a limited commission, to issue notices of infractions for violations of this section or RCW 46.61.581. Volunteers must be at least twenty-one years of age. The law enforcement agency appointing volunteers may establish any other qualifications the agency deems desirable.

(b) An agency appointing volunteers under this section must provide training to the volunteers before authorizing them to issue notices of infractions.

(c) A notice of infraction issued by a volunteer appointed under this subsection has the same force and effect as a notice of infraction issued by a police officer for the same offense.

(d) A police officer or a volunteer may request a person to show the person's identification card or special parking placard when investigating the possibility of a violation of this section. If the request is refused, the person in charge of the vehicle may be issued a notice of infraction for a violation of this section.

(14) For second or subsequent violations of this section, in addition to a monetary fine, the violator must complete a minimum of forty hours of:

(a) Community restitution for a nonprofit organization that serves the disabled community or persons having disabling diseases; or

(b) Any other community restitution that may sensitize the violator to the needs and obstacles faced by persons who have disabilities.

(15) The court may not suspend more than one-half of any fine imposed under subsection (8), (9), (10), or (12) of this section. [2003 c 371 § 1; 2002 c 175 § 33; 2001 c 67 § 1; 1999 c 136 § 1; 1998 c 294 § 1; 1995 c 384 § 1; 1994 c 194 § 6; 1993 c 106 § 1; 1992 c 148 § 1; 1991 c 339 § 21; 1990 c 24 § 1; 1986 c 96 § 1; 1984 c 154 § 2.]

Effective date—2002 c 175: See note following RCW 7.80.130.

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

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

Severability—1984 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 154 § 10.]

Accessible parking spaces required: RCW 70.92.140.

46.16.685 License plate technology account. The license plate technology account is created in the state treasury. All receipts collected under RCW 46.01.140(4)(e)(ii) must be deposited into this account. Expenditures from this account must support current and future license plate technology and systems integration upgrades for both the department and correctional industries. Moneys in the account may be spent only after appropriation. Additionally, the moneys in this account may be used to reimburse the motor vehicle account for any appropriation made to implement the digital license plate system. [2003 c 370 § 4.]

46.16.690 License plate design services—Fee. The department shall offer license plate design services to organizations that are sponsoring a new special license plate series or are seeking to redesign the appearance of an existing special license plate series that they sponsored. In providing this service, the department must work with the requesting organization in determining the specific qualities of the new plate design and must provide full design services to the organization. The department shall collect from the requesting organization a fee of one thousand five hundred dollars for providing license plate design services. This fee includes one original license plate design and up to five additional renditions of the original design. If the organization requests the department to provide further renditions, in addition to the five renditions provided for under the original fee, the department shall collect an additional fee of five hundred dollars per rendition. All revenue collected under this section must be deposited into the multimodal transportation account. [2003 c 361 § 502.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

46.16.700 Special license plates—Intent. The legislature has seen an increase in the demand from constituent groups seeking recognition and funding through the establishment of commemorative or special license plates. The high cost of implementing a new special license plate series coupled with the uncertainty of the state's ability to recoup its costs, has led the legislature to delay the implementation of new special license plates. In order to address these issues, it is the intent of the legislature to create a mechanism that will allow for the evaluation of special license plate requests and establish a funding policy that will alleviate the financial burden currently placed on the state. Using these two strategies, the legislature will be better equipped to efficiently process special license plate legislation. [2003 c 196 § 1.]

Part headings not law—2003 c 196: "Part headings used in this act are not part of the law." [2003 c 196 § 601.]

46.16.705 Special license plate review board—Created. (1) The special license plate review board is created.

(2) The board will consist of seven members: One member appointed by the governor and who will serve as chair of the board; four members of the legislature, one from each caucus of the house of representatives and the senate; a department of licensing representative appointed by the director; and a Washington state patrol representative appointed by the chief.

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(3) Members shall serve terms of four years, except that four of the members initially appointed will be appointed for terms of two years. No member may be appointed for more than three consecutive terms.

(4) The legislative transportation committee may remove members from the board before the expiration of their terms only for cause based upon a determination of incapacity, incompetence, neglect of duty, or malfeasance in office as ordered by the Thurston county superior court, upon petition and show cause proceedings brought for that purpose in that court and directed to the board member in question. [2003 c 196 § 101.]

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.715 Board—Administration. (1) The board shall meet periodically at the call of the chair, but must meet at least one time each year within ninety days before an upcoming regular session of the legislature. The board may adopt its own rules and may establish its own procedures. It shall act collectively in harmony with recorded resolutions or motions adopted by a majority vote of the members, and it must have a quorum present to take a vote on a special license plate application.

(2) The board will be compensated from the general appropriation for the legislative transportation committee in accordance with RCW 43.03.250. Each board member will be compensated in accordance with RCW 43.03.250 and reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the board or that are incurred in the discharge of duties requested by the chair. However, in no event may a board member be compensated in any year for more than one hundred twenty days, except the chair may be compensated for not more than one hundred fifty days. Service on the board does not qualify as a service credit for the purposes of a public retirement system.

(3) The board shall keep proper records and is subject to audit by the state auditor or other auditing entities.

(4) The department of licensing shall provide administrative support to the board, which must include at least the following:

(a) Provide general staffing to meet the administrative needs of the board;

(b) Report to the board on the reimbursement status of any new special license plate series for which the state had to pay the start-up costs;

(c) Process special license plate applications and confirm that the sponsoring organization has submitted all required documentation. If an incomplete application is received, the department must return it to the sponsoring organization;

(d) Compile the annual financial reports submitted by sponsoring organizations with active special license plate series and present those reports to the board for review and approval.

(5) The legislative transportation committee shall provide general oversight of the board, which must include at least the following:

(a) Process and approve board member compensation requests;

(b) Review the annual financial reports submitted to the board by sponsoring organizations;

(c) Review annually the list of the board's approved and rejected special license plate proposals submitted by sponsoring organizations. [2003 c 196 § 102.]

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.725 Board—Powers and duties. (1) The creation of the board does not in any way preclude the authority of the legislature to independently propose and enact special license plate legislation.

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

(3) Duties of the board include but are not limited to the following:

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

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

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

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The board may submit a recommendation to discontinue a special plate series to the chairs of the senate and house of representatives transportation committees. [2003 c 196 § 103.]

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.735 Special license plates—Sponsoring organization requirements. (1) For an organization to qualify for a special license plate under the special license plate approval program created in RCW 46.16.705 through 46.16.765, the sponsoring organization must submit documentation in conjunction with the application to the department that verifies:

(a) That the organization is a nonprofit organization, as defined in 26 U.S.C. Sec. 501(c)(3). The department may request a copy of an Internal Revenue Service ruling to verify an organization's nonprofit status; and

(b) That the organization is located in Washington and has registered as a charitable organization with the secretary of state's office as required by law.

(2) For a governmental body to qualify for a special license plate under the special license plate approval program created in RCW 46.16.705 through 46.16.765, a governmental body must be:

(a) A political subdivision, including but not limited to any county, city, town, municipal corporation, or special purpose taxing district that has the express permission of the political subdivision's executive body to sponsor a special license plate;

(b) A federally recognized tribal government that has received the approval of the executive body of that government to sponsor a special license plate;

(c) A state agency that has both received approval from the director of the agency or the department head, and has the express statutory authority to sponsor a special license plate; or

(d) A community or technical college that has the express permission of the college's board of trustees to sponsor a special license plate. [2003 c 196 § 201.]

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.745 Special license plates—Sponsor application requirements. (1) A sponsoring organization meeting the requirements of RCW 46.16.735, applying for the creation of a special license plate to the special license plate review board must, on an application supplied by the department, provide the minimum application requirements in subsection (2) of this section. If the sponsoring organization cannot meet the payment requirements of subsection (2) of this section, then the organization must meet the requirements of subsection (3) of this section.

(2) The sponsoring organization shall:

(a) Submit prepayment of all start-up costs associated with the creation and implementation of the special license plate in an amount determined by the department. The department shall place this money into the special license plate applicant trust account created under RCW 46.16.755(3);

(b) Provide a proposed license plate design;

(c) Provide a marketing strategy outlining short and long-term marketing plans for the special license plate and a financial analysis outlining the anticipated revenue and the planned expenditures of the revenues derived from the sale of the special license plate;

(d) Provide a signature of a legislative sponsor and proposed legislation creating the special license plate; and

(e) Provide proof of organizational qualifications as determined by the department as provided for in RCW 46.16.735.

(3) If the sponsoring organization is not able to meet the payment requirements of subsection (2)(a) of this section and can demonstrate this fact to the satisfaction of the department, the sponsoring organization shall:

(a) Submit an application and nonrefundable fee of two thousand dollars, for deposit in the motor vehicle account, to the department;

(b) Provide signature sheets that include signatures from individuals who intend to purchase the special license plate and the number of plates each individual intends to purchase. The sheets must reflect a minimum of two thousand intended purchases of the special license plate;

(c) Provide a proposed license plate design;

(d) Provide a marketing strategy outlining short and long-term marketing plans for the special license plate and a financial analysis outlining the anticipated revenue and the planned expenditures of the revenues derived from the sale of the special license plate;

(e) Provide a signature of a legislative sponsor and proposed legislation creating the special license plate; and

(f) Provide proof of organizational qualifications as determined by the department as provided in RCW 46.16.735.

(4) After an application is approved by the special license plate review board, the application need not be reviewed again by the board for a period of three years. [2003 c 196 § 301.]

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.755 Special license plates—Disposition of revenues. (1)(a) Revenues generated from the sale of special license plates for those sponsoring organizations who used the application process in RCW 46.16.745(3) must be deposited into the motor vehicle account until the department determines that the state's implementation costs have been fully reimbursed. The department shall apply the application fee required under RCW 46.16.745(3)(a) towards those costs.

(b) When it is determined that the state has been fully reimbursed the department must notify the house of representatives and senate transportation committees, the sponsoring organization, and the treasurer, and commence the distribution of the revenue as otherwise provided by law.

(2) If reimbursement does not occur within the two-year time frame, the special license plate series must be placed in probationary status for a period of one year from that date. If the state is still not fully reimbursed for its implementation costs after the one-year probation, the plate series must be discontinued immediately. Special plates issued before discontinuation are valid until replaced under RCW 46.16.233. The state must be reimbursed for its portion of the implementation costs within two years from the date the new plate series goes on sale to the public.

(3) The special license plate applicant trust account is created in the custody of the state treasurer. All receipts from special license plate applicants, except the application fee as provided in RCW 46.16.745(3), must be deposited into the account. Only the director of the department or the director's designee may authorize disbursements from the account. The account is not subject to the allotment procedures under chapter 43.88 RCW, nor is an appropriation required for disbursements.

(4) The department shall provide the special license plate applicant with a written receipt for the payment.

(5) The department shall maintain a record of each special license plate applicant trust account deposit, including, but not limited to, the name and address of each special license plate applicant whose funds are being deposited, the amount paid, and the date of the deposit.

(6) After the department receives written notice that the special license plate applicant's application has been:

(a) Approved by the legislature the director shall request that the money be transferred to the motor vehicle account;

(b) Denied by the special license plate review board or the legislature the director shall provide a refund to the applicant within thirty days; or

(c) Withdrawn by the special license plate applicant the director shall provide a refund to the applicant within thirty days. [2003 c 196 § 302.]

Part headings not law—2003 c 196: See note following RCW 46.16.700.

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46.16.765 Special license plates—Continuing requirements. (1) Within thirty days of legislative enactment of a new special license plate series for a qualifying organization meeting the requirements of RCW 46.16.735(1), the department shall enter into a written agreement with the organization that sponsored the special license plate. The agreement must identify the services to be performed by the sponsoring organization. The agreement must be consistent with all applicable state law and include the following provision:

"No portion of any funds disbursed under the agreement may be used, directly or indirectly, for any of the following purposes:

(a) Attempting to influence: (i) The passage or defeat of legislation by the legislature of the state of Washington, by a county, city, town, or other political subdivision of the state of Washington, or by the Congress; or (ii) the adoption or rejection of a rule, standard, rate, or other legislative enactment of a state agency;

(b) Making contributions reportable under chapter 42.17 RCW; or

(c) Providing a: (i) Gift; (ii) honoraria; or (iii) travel, lodging, meals, or entertainment to a public officer or employee."

(2) The sponsoring organization must submit an annual financial report by September 30th of each year to the department detailing actual revenues and expenditures of the revenues received from sales of the special license plate. Consistent with the agreement under subsection (1) of this section, the sponsoring organization must expend the revenues generated from the sale of the special license plate series for the benefit of the public, and it must be spent within this state. Disbursement of the revenue generated from the sale of the special license plate to the sponsoring organization is contingent upon the organization meeting all reporting and review requirements as required by the department.

(3) If the sponsoring organization ceases to exist or the purpose of the special license plate series ceases to exist, revenues generated from the sale of the special license plates must be deposited into the motor vehicle account.

(4) A sponsoring organization may not seek to redesign its plate series until all of the inventory is sold or purchased by the organization itself. All cost for redesign of a plate series must be paid by the sponsoring organization. [2003 c 196 § 303.]

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.775 Special license plates—Nonreviewed plates. (1) A special license plate series created by the legislature after January 1, 2004, that has not been reviewed and approved by the special license plate review board is subject to the following requirements:

(a) The organization sponsoring the license plate series shall, within thirty days of enactment of the legislation creating the plate series, submit prepayment of all start-up costs associated with the creation and implementation of the special license plate in an amount determined by the department. The prepayment will be credited to the motor vehicle fund.

The creation and implementation of the plate series may not commence until payment is received by the department.

(b) If the sponsoring organization is not able to meet the prepayment requirements in (a) of this subsection and can demonstrate this fact to the satisfaction of the department, the revenues generated from the sale of the special license plates must be deposited in the motor vehicle account until the department determines that the state's portion of the implementation costs have been fully reimbursed. When it is determined that the state has been fully reimbursed the department must notify the treasurer to commence distribution of the revenue according to statutory provisions.

(c) The sponsoring organization must provide a proposed license plate design to the department within thirty days of enactment of the legislation creating the plate series.

(2) The state must be reimbursed for its portion of the implementation costs within two years from the date the new plate series goes on sale to the public. If the reimbursement does not occur within the two-year time frame, the special license plate series must be placed in probationary status for a period of one year from that date. If the state is still not fully reimbursed for its implementation costs after the one-year probation, the plate series must be discontinued immediately. Those plates issued before discontinuation are valid until replaced under RCW 46.16.233.

(3) If the sponsoring organization ceases to exist or the purpose of the special plate series ceases to exist, revenues generated from the sale of the special license plates must be deposited into the motor vehicle account.

(4) A sponsoring organization may not seek to redesign their plate series until all of the existing inventory is sold or purchased by the organization itself. All cost for redesign of a plate series must be paid by the sponsoring organization. [2003 c 196 § 304.]

Part headings not law—2003 c 196: See note following RCW 46.16.700.

Chapter 46.20 RCW

DRIVERS' LICENSES—IDENTICARDS

Sections

46.20.0921	Violations—Penalty.
46.20.1131	Information for organ donor registry.
46.20.265	Juvenile driving privileges—Revocation for alcohol or drug violations.
46.20.311	Duration of license sanctions—Reissuance or renewal.
46.20.500	Special endorsement—Exceptions. (<i>Effective until January 1, 2004.</i>)
46.20.500	Special endorsement—Exceptions. (<i>Effective January 1, 2004.</i>)
46.20.505	Endorsement fees, amount and distribution. (<i>Effective January 1, 2004.</i>)
46.20.515	Examination—Emphasis—Waiver. (<i>Effective January 1, 2004.</i>)
46.20.720	Drivers convicted of alcohol offenses.

46.20.0921 Violations—Penalty. (1) It is a misdemeanor for any person:

(a) To display or cause or permit to be displayed or have in his or her possession any fictitious or fraudulently altered driver's license or identicard;

(b) To lend his or her driver's license or identicard to any other person or knowingly permit the use thereof by another;

(c) To display or represent as one's own any driver's license or identicard not issued to him or her;

(d) Willfully to fail or refuse to surrender to the department upon its lawful demand any driver's license or identicard which has been suspended, revoked or canceled;

(e) To use a false or fictitious name in any application for a driver's license or identicard or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application;

(f) To permit any unlawful use of a driver's license or identicard issued to him or her.

(2) It is a class C felony for any person to sell or deliver a stolen driver's license or identicard.

(3) It is unlawful for any person to manufacture, sell, or deliver a forged, fictitious, counterfeit, fraudulently altered, or unlawfully issued driver's license or identicard, or to manufacture, sell, or deliver a blank driver's license or identicard except under the direction of the department. A violation of this subsection is:

(a) A class C felony if committed (i) for financial gain or (ii) with intent to commit forgery, theft, or identity theft; or

(b) A gross misdemeanor if the conduct does not violate (a) of this subsection.

(4) Notwithstanding subsection (3) of this section, it is a misdemeanor for any person under the age of twenty-one to manufacture or deliver fewer than four forged, fictitious, counterfeit, or fraudulently altered driver's licenses or identicards for the sole purpose of misrepresenting a person's age.

(5) In a proceeding under subsection (2), (3), or (4) of this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality. [2003 c 214 § 1; 1990 c 210 § 3; 1981 c 92 § 1; 1965 ex.s. c 121 § 41. Formerly RCW 46.20.336.]

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

46.20.1131 Information for organ donor registry. The department shall electronically transfer the information of all persons who upon application for a driver's license or identicard volunteer to donate organs or tissue to a registry created in RCW 68.50.635, and any subsequent changes to the applicant's donor status when the applicant renews a driver's license or identicard or applies for a new driver's license or identicard. [2003 c 94 § 5.]

Findings—2003 c 94: See note following RCW 68.50.530.

46.20.265 Juvenile driving privileges—Revocation for alcohol or drug violations. (1) In addition to any other authority to revoke driving privileges under this chapter, the department shall revoke all driving privileges of a juvenile when the department receives notice from a court pursuant to RCW 9.41.040(5), 13.40.265, 66.44.365, 69.41.065, 69.50.420, 69.52.070, or a substantially similar municipal ordinance adopted by a local legislative authority, or from a diversion unit pursuant to RCW 13.40.265. The revocation shall be imposed without hearing.

(2) The driving privileges of the juvenile revoked under subsection (1) of this section shall be revoked in the following manner:

(a) Upon receipt of the first notice, the department shall impose a revocation for one year, or until the juvenile reaches seventeen years of age, whichever is longer.

(b) Upon receipt of a second or subsequent notice, the department shall impose a revocation for two years or until the juvenile reaches eighteen years of age, whichever is longer.

(c) Each offense for which the department receives notice shall result in a separate period of revocation. All periods of revocation imposed under this section that could otherwise overlap shall run consecutively up to the juvenile's twenty-first birthday, and no period of revocation imposed under this section shall begin before the expiration of all other periods of revocation imposed under this section or other law. Periods of revocation imposed consecutively under this section shall not extend beyond the juvenile's twenty-first birthday.

(3)(a) If the department receives notice from a court that the juvenile's privilege to drive should be reinstated, the department shall immediately reinstate any driving privileges that have been revoked under this section if the minimum term of revocation as specified in RCW 13.40.265(1)(c), 66.44.365(3), 69.41.065(3), 69.50.420(3), 69.52.070(3), or similar ordinance has expired, and subject to subsection (2)(c) of this section.

(b) The juvenile may seek reinstatement of his or her driving privileges from the department when the juvenile reaches the age of twenty-one. A notice from the court reinstating the juvenile's driving privilege shall not be required if reinstatement is pursuant to this subsection.

(4)(a) If the department receives notice pursuant to RCW 13.40.265(2)(b) from a diversion unit that a juvenile has completed a diversion agreement for which the juvenile's driving privileges were revoked, the department shall reinstate any driving privileges revoked under this section as provided in (b) of this subsection, subject to subsection (2)(c) of this section.

(b) If the diversion agreement was for the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of ninety days after the date the juvenile turns sixteen or ninety days after the juvenile entered into a diversion agreement for the offense. If the diversion agreement was for the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of the date the juvenile turns seventeen or one year after the juvenile entered into the second or subsequent diversion agreement. [2003 c 20 § 1; 1998 c 41 § 2; 1994 sp.s. c 7 § 439; 1991 c 260 § 1; 1989 c 271 § 117; 1988 c 148 § 7.]

Intent—Construction—1998 c 41: "It is the intent and purpose of this act to clarify procedural issues and make technical corrections to statutes relating to drivers' licenses. This act should not be construed as changing existing public policy." [1998 c 41 § 1.]

Effective date—1998 c 41: "This act takes effect July 1, 1998." [1998 c 41 § 15.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Severability—1989 c 271: See note following RCW 9.94A.510.

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

46.20.311 Duration of license sanctions—Reissuance or renewal. (1)(a) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as specifically permitted under RCW 46.20.267, 46.20.342, or other provision of law. Except for a suspension under RCW 46.20.267, 46.20.289, 46.20.291(5), 46.61.740, or 74.20A.320, whenever the license or driving privilege of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the suspension shall remain in effect until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reinstatement until enrollment and participation in an approved program has been established and the person is otherwise qualified. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, and the person is required pursuant to RCW 46.20.720 to drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device, the department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned and/or operated by the person seeking reinstatement. Whenever the license or driving privilege of any person is suspended as a result of certification of noncompliance with a child support order under chapter 74.20A RCW or a residential or visitation order, the suspension shall remain in effect until the person provides a release issued by the department of social and health services stating that the person is in compliance with the order.

(b)(i) The department shall not issue to the person a new, duplicate, or renewal license until the person pays a reissue fee of twenty dollars.

(ii) If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, or is the result of administrative action under RCW 46.20.308, the reissue fee shall be one hundred fifty dollars.

(2)(a) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation was for a cause which has been removed, is not entitled to have the license or privilege renewed or restored until: (i) After the expiration of one year from the date the license or privilege to drive was revoked; (ii) after the expiration of the applicable revocation period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the expiration of two years for persons convicted of vehicular homicide; or (iv) after the expiration of the applicable revocation period provided by RCW 46.20.265.

(b)(i) After the expiration of the appropriate period, the person may make application for a new license as provided by law together with a reissue fee in the amount of twenty dollars.

(ii) If the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one hundred fifty dollars. If the revocation is the result of a violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reissuance of a license, permit, or privilege to drive until enrollment and participation in an approved program has been established and the person is otherwise qualified. If the revocation is the result of a violation of RCW 46.61.502 or 46.61.504, and the person is required pursuant to RCW 46.20.720 to drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device, the department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned and/or operated by the person applying for a new license.

(c) Except for a revocation under RCW 46.20.265, the department shall not then issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the department shall not issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant that person the privilege of driving a motor vehicle on the public highways.

(3)(a) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue to the person any new or renewal license until the person pays a reissue fee of twenty dollars.

(b) If the suspension is the result of a violation of the laws of this or any other state, province, or other jurisdiction involving (i) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (ii) the refusal to submit to a chemical test of the driver's blood alcohol content, the reissue fee shall be one hundred fifty dollars. [2003 c 366 § 2; 2001 c 325 § 2; 2000 c 115 § 7; 1998 c 212 § 1; 1997 c 58 § 807; 1995 c 332 § 11; 1994 c 275 § 27; 1993 c 501 § 5; 1990 c 250 § 45; 1988 c 148 § 9. Prior: 1985 c 407 § 4; 1985 c 211 § 1; 1984 c 258 § 325; 1983 c 165 § 18; 1983 c 165 § 17; 1982 c 212 § 5; 1981 c 91 § 1; 1979 ex.s. c 136 § 60; 1973 1st ex.s. c 36 § 1; 1969 c 1 § 2 (Initiative Measure No. 242, approved November 5, 1968); 1967 c 167 § 5; 1965 ex.s. c 121 § 27.]

Sunset Act application: See note following RCW 46.20.075.

Finding—2000 c 115: See note following RCW 46.20.075.

Effective date—2000 c 115 §§ 1-10: See note following RCW 46.20.075.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal

requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

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

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

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

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

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

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

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

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

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

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

46.20.500 Special endorsement—Exceptions. (Effective until January 1, 2004.) (1) No person may drive a motorcycle or a motor-driven cycle unless such person has a valid driver's license specially endorsed by the director to enable the holder to drive such vehicles.

(2) However, a person sixteen years of age or older, holding a valid driver's license of any class issued by the state of the person's residence, may operate a moped without taking any special examination for the operation of a moped.

(3) No driver's license is required for operation of an electric-assisted bicycle if the operator is at least sixteen years of age. Persons under sixteen years of age may not operate an electric-assisted bicycle.

(4) No driver's license is required to operate an electric personal assistive mobility device or a power wheelchair.

(5) No driver's license is required to operate a motorized foot scooter. Motorized foot scooters may not be operated at any time from a half hour after sunset to a half hour before sunrise without reflectors of a type approved by the state patrol. [2003 c 353 § 9; 2003 c 141 § 7; 2002 c 247 § 6; 1999 c 274 § 8; 1997 c 328 § 3; 1982 c 77 § 1; 1979 ex.s. c 213 § 6; 1967 c 232 § 1.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Reviser's note: This section was amended by 2003 c 141 § 7 and by 2003 c 353 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 353: See note following RCW 46.04.320.

Legislative review—2002 c 247: See note following RCW 46.04.1695.

Severability—1982 c 77: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 77 § 10.]

Mopeds

operation and safety standards: RCW 46.61.710, 46.61.720.

registration: RCW 46.16.630.

46.20.500 Special endorsement—Exceptions. (Effective January 1, 2004.) (1) No person may drive either a two-wheeled or a three-wheeled motorcycle, or a motor-driven cycle unless such person has a valid driver's license specially

endorsed by the director to enable the holder to drive such vehicles.

(2) However, a person sixteen years of age or older, holding a valid driver's license of any class issued by the state of the person's residence, may operate a moped without taking any special examination for the operation of a moped.

(3) No driver's license is required for operation of an electric-assisted bicycle if the operator is at least sixteen years of age. Persons under sixteen years of age may not operate an electric-assisted bicycle.

(4) No driver's license is required to operate an electric personal assistive mobility device or a power wheelchair.

(5) No driver's license is required to operate a motorized foot scooter. Motorized foot scooters may not be operated at any time from a half hour after sunset to a half hour before sunrise without reflectors of a type approved by the state patrol. [2003 c 353 § 9; 2003 c 141 § 7; 2003 c 41 § 1; 2002 c 247 § 6; 1999 c 274 § 8; 1997 c 328 § 3; 1982 c 77 § 1; 1979 ex.s. c 213 § 6; 1967 c 232 § 1.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Reviser's note: This section was amended by 2003 c 41 § 1, 2003 c 141 § 7, and by 2003 c 353 § 9, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 353: See note following RCW 46.04.320.

Short title—2003 c 41: "This act shall be known as the Monty Lish Memorial Act." [2003 c 41 § 6.]

Effective date—2003 c 41: "This act takes effect January 1, 2004." [2003 c 41 § 7.]

Legislative review—2002 c 247: See note following RCW 46.04.1695.

Severability—1982 c 77: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 77 § 10.]

Mopeds

operation and safety standards: RCW 46.61.710, 46.61.720.
registration: RCW 46.16.630.

46.20.505 Endorsement fees, amount and distribution. (*Effective January 1, 2004.*) Every person applying for a special endorsement of a driver's license authorizing such person to drive a two or three-wheeled motorcycle or a motor-driven cycle shall pay a fee of five dollars, which is not refundable. In addition, the endorsement fee for the initial motorcycle endorsement shall not exceed ten dollars, and the subsequent renewal endorsement fee shall not exceed twenty-five dollars, unless the endorsement is renewed or extended for a period other than five years, in which case the subsequent renewal endorsement fee shall not exceed five dollars for each year that the endorsement is renewed or extended. The initial and renewal endorsement fees shall be deposited in the motorcycle safety education account of the highway safety fund. [2003 c 41 § 2; 2002 c 352 § 16; 2001 c 104 § 1. Prior: 1999 c 308 § 5; 1999 c 274 § 9; 1993 c 115 § 1; 1989 c 203 § 2; 1988 c 227 § 5; 1987 c 454 § 2; 1985 ex.s. c 1 § 8; 1982 c 77 § 2; 1979 c 158 § 153; 1967 ex.s. c 145 § 50.]

Short title—Effective date—2003 c 41: See notes following RCW 46.20.500.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—1999 c 308: See note following RCW 46.20.120.

Severability—1988 c 227: See RCW 46.81A.900.

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

Severability—1982 c 77: See note following RCW 46.20.500.

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

Motorcycle safety education account: RCW 46.68.065.

46.20.515 Examination—Emphasis—Waiver. (*Effective January 1, 2004.*) The motorcycle endorsement examination must emphasize maneuvers necessary for on-street operation, including emergency braking and turning as may be required to avoid an impending collision. The examination for a two-wheeled motorcycle endorsement and the examination for a three-wheeled motorcycle endorsement must be separate and distinct examinations emphasizing the skills and maneuvers necessary to operate each type of motorcycle. The department may waive all or part of the examination for persons who satisfactorily complete the voluntary motorcycle operator training and education program authorized under RCW 46.20.520 or who satisfactorily complete a private motorcycle skills education course that has been certified by the department under RCW 46.81A.020. [2003 c 41 § 3; 2002 c 197 § 1; 2001 c 104 § 2; 1999 c 274 § 11; 1982 c 77 § 4.]

Short title—Effective date—2003 c 41: See notes following RCW 46.20.500.

Severability—1982 c 77: See note following RCW 46.20.500.

46.20.720 Drivers convicted of alcohol offenses. (1) The court may order that after a period of suspension, revocation, or denial of driving privileges, and for up to as long as the court has jurisdiction, any person convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle may drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device.

(2)(a) The department shall require that, after any applicable period of suspension, revocation, or denial of driving privileges, a person may drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device if the person is convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and it is:

(i) The person's first conviction or a deferred prosecution under chapter 10.05 RCW and his or her alcohol concentration was at least 0.15, or by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration;

(ii) The person's second or subsequent conviction; or

(iii) The person's first conviction and the person has a previous deferred prosecution under chapter 10.05 RCW or it is a deferred prosecution under chapter 10.05 RCW and the person has a previous conviction.

(b) The department may waive the requirement for the use of such a device if it concludes that such devices are not reasonably available in the local area. Nothing in this section may be interpreted as entitling a person to more than one deferred prosecution.

(3) In the case of a person under subsection (1) of this section, the court shall establish a specific calibration setting at which the ignition interlock or other biological or technical device will prevent the motor vehicle from being started and the period of time that the person shall be subject to the restriction. In the case of a person under subsection (2) of

this section, the ignition interlock or other biological or technical device shall be calibrated to prevent the motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more, and the period of time of the restriction will be as follows:

(a) For a person (i) who is subject to RCW 46.61.5055 (1)(b), (2), or (3), or who is subject to a deferred prosecution program under chapter 10.05 RCW; and (ii) who has not previously been restricted under this section, a period of one year;

(b) For a person who has previously been restricted under (a) of this subsection, a period of five years;

(c) For a person who has previously been restricted under (b) of this subsection, a period of ten years.

For purposes of this section, "convicted" means being found guilty of an offense or being placed on a deferred prosecution program under chapter 10.05 RCW. [2003 c 366 § 1; 2001 c 247 § 1; 1999 c 331 § 3; 1998 c 210 § 2; 1997 c 229 § 8; 1994 c 275 § 22; 1987 c 247 § 2.]

Effective date—1999 c 331: See note following RCW 9.94A.525.

Short title—1998 c 210: "This act may be known and cited as the Mary Johnsen Act." [1998 c 210 § 1.]

Finding—Intent—1998 c 210: "The legislature finds that driving is a privilege and that the state may restrict that privilege in the interests of public safety. One such reasonable restriction is requiring certain individuals, if they choose to drive, to drive only vehicles equipped with ignition interlock devices. The legislature further finds that the costs of these devices are minimal and are affordable. It is the intent of the legislature that these devices be paid for by the drivers using them and that neither the state nor entities of local government provide any public funding for this purpose." [1998 c 210 § 7.]

Effective date—1998 c 210: "This act takes effect January 1, 1999." [1998 c 210 § 9.]

Effective date—1997 c 229: See note following RCW 10.05.090.

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

Chapter 46.25 RCW

UNIFORM COMMERCIAL DRIVER'S LICENSE ACT

Sections

46.25.055	Medical examiner's certificate—Required.
46.25.057	Medical examiner's certificate—Failure to carry—Penalty.
46.25.070	Application—Change of address—Residency.

46.25.055 Medical examiner's certificate—Required.

A person may not drive a commercial motor vehicle unless he or she is physically qualified to do so and, except as provided in 49 C.F.R. Sec. 391.67, has on his or her person the original, or a photographic copy, of a medical examiner's certificate that he or she is physically qualified to drive a commercial motor vehicle. [2003 c 195 § 3.]

Findings—2003 c 195: See note following RCW 46.25.070.

46.25.057 Medical examiner's certificate—Failure to carry—Penalty. (1) It is a traffic infraction for a licensee under this chapter to drive a commercial vehicle without having on his or her person the original, or a photographic copy, of a medical examiner's certificate that he or she is physically qualified to drive a commercial motor vehicle.

(2) A person who violates this section is subject to a penalty of two hundred fifty dollars. If the person appears in person before the court or submits by mail written proof that he

or she had, at the time the infraction took place, the medical examiner's certificate, the court shall reduce the penalty to fifty dollars. [2003 c 195 § 4.]

Findings—2003 c 195: See note following RCW 46.25.070.

46.25.070 Application—Change of address—Residency. (1) The application for a commercial driver's license or commercial driver's instruction permit must include the following:

(a) The full name and current mailing and residential address of the person;

(b) A physical description of the person, including sex, height, weight, and eye color;

(c) Date of birth;

(d) The applicant's Social Security number;

(e) The person's signature;

(f) Certifications including those required by 49 C.F.R. part 383.71(a);

(g) Any other information required by the department; and

(h) A consent to release driving record information to parties identified in chapter 46.52 RCW and this chapter.

(2) When a licensee changes his or her name, mailing address, or residence address, the person shall notify the department as provided in RCW 46.20.205.

(3) No person who has been a resident of this state for thirty days may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction. [2003 c 195 § 2; 1991 c 73 § 2; 1989 c 178 § 9.]

Findings—2003 c 195: "The legislature finds that current economic conditions impose severe hardships on many commercial vehicle drivers. The legislature finds that commercial drivers who may not currently be working may not be able to afford the expense of a required physical in order to maintain their commercial driver's license. The legislature finds that Washington's commercial driver's license statutes should be harmonized with federal requirements, which require proof of a physical capacity to drive a commercial vehicle, along with a valid commercial driver's license, but do not link the two requirements. The legislature finds that allowing commercial drivers to delay getting a physical until they are actually driving a commercial vehicle will prevent the imposition of unnecessary expense and hardship on Washington's commercial vehicle drivers." [2003 c 195 § 1.]

Chapter 46.30 RCW

MANDATORY LIABILITY INSURANCE

Sections

46.30.020	Liability insurance or other financial responsibility required—Violations—Exceptions.
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46.30.020 Liability insurance or other financial responsibility required—Violations—Exceptions. (1)(a) No person may operate a motor vehicle subject to registration under chapter 46.16 RCW in this state unless the person is insured under a motor vehicle liability policy with liability limits of at least the amounts provided in RCW 46.29.090, is self-insured as provided in RCW 46.29.630, is covered by a certificate of deposit in conformance with RCW 46.29.550, or is covered by a liability bond of at least the amounts provided in RCW 46.29.090. Written proof of financial responsibility for motor vehicle operation must be provided on the request of a law enforcement officer in the format specified under RCW 46.30.030.

(b) A person who drives a motor vehicle that is required to be registered in another state that requires drivers and owners of vehicles in that state to maintain insurance or financial responsibility shall, when requested by a law enforcement officer, provide evidence of financial responsibility or insurance as is required by the laws of the state in which the vehicle is registered.

(c) When asked to do so by a law enforcement officer, failure to display an insurance identification card as specified under RCW 46.30.030 creates a presumption that the person does not have motor vehicle insurance.

(d) Failure to provide proof of motor vehicle insurance is a traffic infraction and is subject to penalties as set by the supreme court under RCW 46.63.110 or community restitution.

(2) If a person cited for a violation of subsection (1) of this section appears in person before the court or a violations bureau and provides written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, the citation shall be dismissed and the court or violations bureau may assess court administrative costs of twenty-five dollars at the time of dismissal. In lieu of personal appearance, a person cited for a violation of subsection (1) of this section may, before the date scheduled for the person's appearance before the court or violations bureau, submit by mail to the court or violations bureau written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, in which case the citation shall be dismissed without cost, except that the court or violations bureau may assess court administrative costs of twenty-five dollars at the time of dismissal.

(3) The provisions of this chapter shall not govern:

(a) The operation of a motor vehicle registered under RCW 46.16.305(1), governed by RCW 46.16.020, or registered with the Washington utilities and transportation commission as common or contract carriers; or

(b) The operation of a motorcycle as defined in RCW 46.04.330, a motor-driven cycle as defined in RCW 46.04.332, or a moped as defined in RCW 46.04.304.

(4) RCW 46.29.490 shall not be deemed to govern all motor vehicle liability policies required by this chapter but only those certified for the purposes stated in chapter 46.29 RCW. [2003 c 221 § 1; 2002 c 175 § 35; 1991 sp.s. c 25 § 1; 1991 c 339 § 24; 1989 c 353 § 2.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Notice of liability insurance requirement: RCW 46.16.212.

Chapter 46.37 RCW

VEHICLE LIGHTING AND OTHER EQUIPMENT

Sections

46.37.530	Motorcycles, motor-driven cycles, mopeds, electric-assisted bicycles—Helmets, other equipment—Children—Rules.
46.37.640	Air bags—Definitions.
46.37.650	Air bags—Installation of previously deployed—Penalty.
46.37.660	Air bags—Replacement requirements.

46.37.530 Motorcycles, motor-driven cycles, mopeds, electric-assisted bicycles—Helmets, other equipment—Children—Rules. (1) It is unlawful:

(a) For any person to operate a motorcycle or motor-driven cycle not equipped with mirrors on the left and right sides of the motorcycle which shall be so located as to give the driver a complete view of the highway for a distance of at least two hundred feet to the rear of the motorcycle or motor-driven cycle: PROVIDED, That mirrors shall not be required on any motorcycle or motor-driven cycle over twenty-five years old originally manufactured without mirrors and which has been restored to its original condition and which is being ridden to or from or otherwise in conjunction with an antique or classic motorcycle contest, show, or other such assemblage: PROVIDED FURTHER, That no mirror is required on any motorcycle manufactured prior to January 1, 1931;

(b) For any person to operate a motorcycle or motor-driven cycle which does not have a windshield unless wearing glasses, goggles, or a face shield of a type conforming to rules adopted by the state patrol;

(c) For any person to operate or ride upon a motorcycle, motor-driven cycle, or moped on a state highway, county road, or city street unless wearing upon his or her head a motorcycle helmet except when the vehicle is an antique motor-driven cycle or automobile that is licensed as a motorcycle or when the vehicle is equipped with seat belts and roll bars approved by the state patrol. The motorcycle helmet neck or chin strap must be fastened securely while the motorcycle or motor-driven cycle is in motion. Persons operating electric-assisted bicycles shall comply with all laws and regulations related to the use of bicycle helmets;

(d) For any person to transport a child under the age of five on a motorcycle or motor-driven cycle;

(e) For any person to sell or offer for sale a motorcycle helmet that does not meet the requirements established by this section.

(2) The state patrol may adopt and amend rules, pursuant to the Administrative Procedure Act, concerning standards for glasses, goggles, and face shields.

(3) For purposes of this section, "motorcycle helmet" means a protective covering for the head consisting of a hard outer shell, padding adjacent to and inside the outer shell, and a neck or chin strap type retention system, with a sticker indicating that the motorcycle helmet meets standards established by the United States Department of Transportation. [2003 c 197 § 1; 1997 c 328 § 4; 1990 c 270 § 7. Prior: 1987 c 454 § 1; 1987 c 330 § 732; 1986 c 113 § 8; 1982 c 77 § 7; 1977 ex.s. c 355 § 55; 1971 ex.s. c 150 § 1; 1969 c 42 § 1; 1967 c 232 § 4.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Short title—1990 c 270: See RCW 43.70.440.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1982 c 77: See note following RCW 46.20.500.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Maximum height for handlebars: RCW 46.61.611.

Riding on motorcycles: RCW 46.61.610.

46.37.640 Air bags—Definitions. (1) "Air bag" means an inflatable restraint system or portion of an inflatable restraint system installed in a motor vehicle.

(2) "Previously deployed air bag" means an inflatable restraint system or portion of the system that has been acti-

vated or inflated as a result of a collision or other incident involving the vehicle.

(3) "Nondeployed salvage air bag" means an inflatable restraint system that has not been previously activated or inflated as a result of a collision or other incident involving the vehicle. [2003 c 33 § 1.]

46.37.650 Air bags—Installation of previously deployed—Penalty. (1) A person is guilty of a gross misdemeanor if he or she knew or reasonably should have known that an air bag he or she installs or reinstalls in a vehicle for compensation, or distributes as an auto part, is a previously deployed air bag that is part of an inflatable restraint system.

(2) A person found guilty under subsection (1) of this section shall be punished by a fine of not more than five thousand dollars or by confinement in the county jail for not more than one year, or both. [2003 c 33 § 2.]

46.37.660 Air bags—Replacement requirements. Whenever an air bag that is part of a previously deployed inflatable restraint system is replaced by either a new air bag that is part of an inflatable restraint system or a nondeployed salvage air bag that is part of an inflatable restraint system, the air bag must conform to the original equipment manufacturer requirements and the installer must verify that the self-diagnostic system for the inflatable restraint system indicates that the entire inflatable restraint system is operating properly. [2003 c 33 § 3.]

Chapter 46.44 RCW SIZE, WEIGHT, LOAD

Sections

46.44.170	Mobile home or park model trailer movement special permit and decal—Responsibility for taxes—License plates—Rules.
46.44.175	Penalties—Hearing. (<i>Effective July 1, 2004.</i>)
46.44.180	Operation of mobile home pilot vehicle without insurance unlawful—Amounts—Exception—Penalty. (<i>Effective July 1, 2004.</i>)

46.44.170 Mobile home or park model trailer movement special permit and decal—Responsibility for taxes—License plates—Rules. (1) Any person moving a mobile home as defined in RCW 46.04.302 or a park model trailer as defined in RCW 46.04.622 upon public highways of the state must obtain a special permit from the department of transportation and local authorities pursuant to RCW 46.44.090 and 46.44.093 and shall pay the proper fee as prescribed by RCW 46.44.0941 and 46.44.096.

(2) A special permit issued as provided in subsection (1) of this section for the movement of any mobile home or a park model trailer that is assessed for purposes of property taxes shall not be valid until the county treasurer of the county in which the mobile home or park model trailer is located shall endorse or attach his or her certificate that all property taxes which are a lien or which are delinquent, or both, upon the mobile home or park model trailer being moved have been satisfied. Further, any mobile home or park model trailer required to have a special movement permit under this section shall display an easily recognizable decal.

However, endorsement or certification by the county treasurer and the display of the decal is not required:

(a) When a mobile home or park model trailer is to enter the state or is being moved from a manufacturer or distributor to a retail sales outlet or directly to the purchaser's designated location or between retail and sales outlets; or

(b) When a signed affidavit of destruction is filed with the county assessor and the mobile home or park model trailer is being moved to a disposal site by a landlord as defined in RCW 59.20.030 after (i) the mobile home or park model trailer has been abandoned as defined in RCW 59.20.030; or (ii) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the mobile home or park model trailer. The mobile home or park model trailer will be removed from the tax rolls and, upon notification by the assessor, any outstanding taxes on the destroyed mobile home will be removed by the county treasurer.

(3) If the landlord of a mobile home park takes ownership of a mobile home or park model trailer with the intent to resell or rent the same under RCW 59.20.030 after (a) the mobile home or park model trailer has been abandoned as defined in RCW 59.20.030; or (b) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the mobile home or park model trailer, the outstanding taxes become the responsibility of the landlord.

(4) It is the responsibility of the owner of the mobile home or park model trailer subject to property taxes or the agent to obtain the endorsement and decal from the county treasurer before a mobile home or park model trailer is moved.

(5) This section does not prohibit the issuance of vehicle license plates for a mobile home or park model trailer subject to property taxes, but plates shall not be issued unless the mobile home or park model trailer subject to property taxes for which plates are sought has been listed for property tax purposes in the county in which it is principally located and the appropriate fee for the license has been paid.

(6) The department of transportation and local authorities are authorized to adopt reasonable rules for implementing the provisions of this section. The department of transportation shall adopt rules specifying the design, reflective characteristics, annual coloration, and for the uniform implementation of the decal required by this section. [2003 c 61 § 1; 2002 c 168 § 6; 1986 c 211 § 4. Prior: 1985 c 395 § 1; 1985 c 22 § 1; 1980 c 152 § 1; 1977 ex.s. c 22 § 2.]

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

46.44.175 Penalties—Hearing. (*Effective July 1, 2004.*) (1) Failure of any person or agent acting for a person who causes to be moved or moves a mobile home as defined in RCW 46.04.302 upon public highways of this state and failure to comply with any of the provisions of RCW 46.44.170 and 46.44.173 is a traffic infraction for which a penalty of not less than one hundred dollars or more than five hundred dollars shall be assessed. In addition to the above penalty, the department of transportation or local authority may withhold issuance of a special permit or suspend a continuous special permit as provided by RCW 46.44.090 and 46.44.093 for a period of not less than thirty days.

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

(3) Any person or agent who is denied a special permit or whose special permit is suspended may upon request receive a hearing before the department of transportation or the local authority having jurisdiction. The department or the local authority after such hearing may revise its previous action. [2003 c 53 § 239; 1995 c 38 § 11; 1994 c 301 § 15; 1985 c 22 § 2; 1979 ex.s. c 136 § 78; 1977 ex.s. c 22 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

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

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

46.44.180 Operation of mobile home pilot vehicle without insurance unlawful—Amounts—Exception—Penalty. (Effective July 1, 2004.) (1) It is unlawful for a person, other than an employee of a dealer or other principal licensed to transport mobile homes within this state acting within the course of employment with the principal, to operate a pilot vehicle accompanying a mobile home, as defined in RCW 46.04.302, being transported on the public highways of this state, without maintaining insurance for the pilot vehicle in the minimum amounts of:

(a) One hundred thousand dollars for bodily injury to or death of one person in any one accident;

(b) Three hundred thousand dollars for bodily injury to or death of two or more persons in any one accident; and

(c) Fifty thousand dollars for damage to or destruction of property of others in any one accident.

(2) Satisfactory evidence of the insurance shall be carried at all times by the operator of the pilot vehicle, which evidence shall be displayed upon demand by a police officer.

(3) Failure to maintain the insurance as required by this section is a gross misdemeanor.

(4) Failure to carry or disclose the evidence of the insurance as required by this section is a misdemeanor. [2003 c 53 § 240; 1980 c 153 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 46.52 RCW

ACCIDENTS—REPORTS— ABANDONED VEHICLES

Sections

- 46.52.010 Duty on striking unattended car or other property—Penalty. (Effective July 1, 2004.)
- 46.52.090 Reports of major repairs, etc.—Violations, penalties—Rules—Exceptions for older vehicles. (Effective July 1, 2004.)
- 46.52.130 Abstract of driving record—Access—Fees—Penalty.

46.52.010 Duty on striking unattended car or other property—Penalty. (Effective July 1, 2004.) (1) The operator of any vehicle which collided with any other vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of

such vehicle of the name and address of the operator and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice, giving the name and address of the operator and of the owner of the vehicle striking such other vehicle.

(2) The driver of any vehicle involved in an accident resulting only in damage to property fixed or placed upon or adjacent to any public highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of the name and address of the operator and owner of the vehicle striking such property, or shall leave in a conspicuous place upon the property struck a written notice, giving the name and address of the operator and of the owner of the vehicle so striking the property, and such person shall further make report of such accident as in the case of other accidents upon the public highways of this state.

(3) Any person violating this section is guilty of a misdemeanor. [2003 c 53 § 241; 1979 ex.s. c 136 § 79; 1961 c 12 § 46.52.010. Prior: 1937 c 189 § 133; RRS § 6360-133; 1927 c 309 § 50, part; RRS § 6362-50, part.]

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

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

Arrest of person violating duty on striking unattended vehicle or other property: RCW 10.31.100.

46.52.090 Reports of major repairs, etc.—Violations, penalties—Rules—Exceptions for older vehicles. (Effective July 1, 2004.) (1) Any person, firm, corporation, or association engaged in the business of repairs of any kind to vehicles or any person, firm, corporation, or association which may at any time engage in any kind of major repair, restoration, or substantial alteration to a vehicle required to be licensed or registered under this title shall maintain verifiable records regarding the source of used major component parts used in such repairs, restoration, or alteration. Satisfactory records include but are not limited to personal identification of the seller if such parts were acquired from other than a vehicle wrecker licensed under chapter 46.80 RCW, signed work orders, and bills of sale signed by the seller whose identity and address has been verified describing parts acquired, and the make, model, and vehicle identification number of a vehicle from which the following parts are removed: (a) Engines and short blocks, (b) frames, (c) transmissions and transfer cases, (d) cabs, (e) doors, (f) front or rear differentials, (g) front or rear clips, (h) quarter panels or fenders, (i) bumpers, (j) truck beds or boxes, (k) seats, and (l) hoods.

(2) The records required under subsection (1) of this section shall be kept for a period of four years and shall be made available for inspection by a law enforcement officer during ordinary business hours.

(3) It is a gross misdemeanor to: (a) Acquire a part without a substantiating bill of sale or invoice from the parts supplier or fail to comply with any rules adopted under this section; (b) fail to obtain the vehicle identification number for those parts requiring that it be obtained; or (c) fail to keep records for four years or to make such records available during normal business hours to a law enforcement officer.

(4) The chief of the Washington state patrol shall adopt rules for the purpose of regulating record-keeping and parts acquisition by vehicle repairers, restorers, rebuilders, or those who perform substantial vehicle alterations.

(5) The provisions of this section do not apply to major repair, restoration, or alteration of a vehicle thirty years of age or older. [2003 c 53 § 242; 1983 c 142 § 1; 1967 c 32 § 59; 1961 c 12 § 46.52.090. Prior: 1937 c 189 § 141; RRS § 6360-141.]

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

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

46.52.130 Abstract of driving record—Access—Fees—Penalty. (1) A certified abstract of the driving record shall be furnished only to:

- (a) The individual named in the abstract;
- (b) An employer or prospective employer or an agent acting on behalf of an employer or prospective employer, or a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults over sixty-five years of age, or physically or mentally disabled persons;
- (c) An employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs;
- (d) The insurance carrier that has insurance in effect covering the employer or a prospective employer;
- (e) The insurance carrier that has motor vehicle or life insurance in effect covering the named individual;
- (f) The insurance carrier to which the named individual has applied;
- (g) An alcohol/drug assessment or treatment agency approved by the department of social and health services, to which the named individual has applied or been assigned for evaluation or treatment; or
- (h) City and county prosecuting attorneys.

(2) City attorneys and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.

(3) The director, upon proper request, shall furnish a certified abstract covering the period of not more than the last three years to insurance companies.

(4) Upon proper request, the director shall furnish a certified abstract covering a period of not more than the last five years to state approved alcohol/drug assessment or treatment agencies, except that the certified abstract shall also include records of alcohol-related offenses as defined in RCW 46.01.260(2) covering a period of not more than the last ten years.

(5) Upon proper request, a certified abstract of the full driving record maintained by the department shall be furnished to a city or county prosecuting attorney, to the individual named in the abstract, to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual, or to a volunteer organization for which the named individual has submitted

an application for a position that could require the transportation of children under eighteen years of age, adults over sixty-five years of age, or physically or mentally disabled persons, or to an employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs.

(6) The abstract, whenever possible, shall include:

- (a) An enumeration of motor vehicle accidents in which the person was driving;
- (b) The total number of vehicles involved;
- (c) Whether the vehicles were legally parked or moving;
- (d) Whether the vehicles were occupied at the time of the accident;
- (e) Whether the accident resulted in any fatality;
- (f) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law;
- (g) The status of the person's driving privilege in this state; and
- (h) Any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

(7) Certified abstracts furnished to prosecutors and alcohol/drug assessment or treatment agencies shall also indicate whether a recorded violation is an alcohol-related offense as defined in RCW 46.01.260(2) that was originally charged as one of the alcohol-related offenses designated in RCW 46.01.260(2)(b)(i).

(8) The abstract provided to the insurance company shall exclude any information, except that related to the commission of misdemeanors or felonies by the individual, pertaining to law enforcement officers or fire fighters as defined in RCW 41.26.030, or any officer of the Washington state patrol, while driving official vehicles in the performance of occupational duty. The abstract provided to the insurance company shall include convictions for RCW 46.61.5249 and 46.61.525 except that the abstract shall report them only as negligent driving without reference to whether they are for first or second degree negligent driving. The abstract provided to the insurance company shall exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract shall show the deferred prosecution as well as the removal.

(9) The director shall collect for each abstract the sum of five dollars, which shall be deposited in the highway safety fund.

(10) Any insurance company or its agent receiving the certified abstract shall use it exclusively for its own underwriting purposes and shall not divulge any of the information contained in it to a third party. No policy of insurance may be canceled, nonrenewed, denied, or have the rate increased on the basis of such information unless the policyholder was determined to be at fault. No insurance company or its agent for underwriting purposes relating to the operation of commercial motor vehicles may use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment, nor may any insurance company or its agent for underwriting purposes relating to the operation of noncommercial motor vehicles

use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

(11) Any employer or prospective employer or an agent acting on behalf of an employer or prospective employer, or a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults over sixty-five years of age, or physically or mentally disabled persons, receiving the certified abstract shall use it exclusively for his or her own purpose to determine whether the licensee should be permitted to operate a commercial vehicle or school bus, or operate a vehicle for a volunteer organization for purposes of transporting children under eighteen years of age, adults over sixty-five years of age, or physically or mentally disabled persons, upon the public highways of this state and shall not divulge any information contained in it to a third party.

(12) Any employee or agent of a transit authority receiving a certified abstract for its vanpool program shall use it exclusively for determining whether the volunteer licensee meets those insurance and risk management requirements necessary to drive a vanpool vehicle. The transit authority may not divulge any information contained in the abstract to a third party.

(13) Any alcohol/drug assessment or treatment agency approved by the department of social and health services receiving the certified abstract shall use it exclusively for the purpose of assisting its employees in making a determination as to what level of treatment, if any, is appropriate. The agency, or any of its employees, shall not divulge any information contained in the abstract to a third party.

(14) Release of a certified abstract of the driving record of an employee, prospective employee, or prospective volunteer requires a statement signed by: (a) The employee, prospective employee, or prospective volunteer that authorizes the release of the record, and (b) the employer or volunteer organization attesting that the information is necessary to determine whether the licensee should be employed to operate a commercial vehicle or school bus, or operate a vehicle for a volunteer organization for purposes of transporting children under eighteen years of age, adults over sixty-five years of age, or physically or mentally disabled persons, upon the public highways of this state. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(15) Any negligent violation of this section is a gross misdemeanor.

(16) Any intentional violation of this section is a class C felony. [2003 c 367 § 1. Prior: 2002 c 352 § 20; 2002 c 221 § 1; 2001 c 309 § 1; 1998 c 165 § 11; 1997 c 66 § 12; prior: 1996 c 307 § 4; 1996 c 183 § 2; 1994 c 275 § 16; 1991 c 243 § 1; 1989 c 178 § 24; prior: 1987 1st ex.s c 9 § 2; 1987 c 397 § 2; 1987 c 181 § 1; 1986 c 74 § 1; 1985 ex.s. c 1 § 11; 1979 ex.s. c 136 § 84; 1977 ex.s. c 356 § 2; 1977 ex.s. c 140 § 1; 1973 1st ex.s. c 37 § 1; 1969 ex.s. c 40 § 3; 1967 c 174 § 2; 1967 c 32 § 63; 1963 c 169 § 65; 1961 ex.s. c 21 § 27.]

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

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—1998 c 165 §§ 8-14: See note following RCW 46.52.070.

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Short title—1998 c 165: See note following RCW 43.59.010.

Effective date—1996 c 183: See note following RCW 46.52.030.

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

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

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Intent—1987 c 397: See note following RCW 46.61.410.

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

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

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

Severability—1963 c 169: See RCW 46.29.910.

Abstract of driving record to be furnished: RCW 46.29.050.

Use of highway safety fund to defray cost of furnishing and maintaining driving records: RCW 46.68.060.

Chapter 46.55 RCW

TOWING AND IMPOUNDMENT

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

Sections

46.55.020	Registration required—Penalty. (<i>Effective July 1, 2004.</i>)
46.55.113	Removal by police officer.
46.55.120	Redemption of vehicles—Sale of unredeemed property—Improper impoundment.

46.55.020 Registration required—Penalty. (*Effective July 1, 2004.*) (1) A person shall not engage in or offer to engage in the activities of a registered tow truck operator without a current registration certificate from the department of licensing authorizing him or her to engage in such activities.

(2) Any person engaging in or offering to engage in the activities of a registered tow truck operator without the registration certificate required by this chapter is guilty of a gross misdemeanor.

(3) A registered operator who engages in a business practice that is prohibited under this chapter may be issued a notice of traffic infraction under chapter 46.63 RCW and is also subject to the civil penalties that may be imposed by the department under this chapter.

(4) A person found to have committed an offense that is a traffic infraction under this chapter is subject to a monetary penalty of at least two hundred fifty dollars.

(5) All traffic infractions issued under this chapter shall be under the jurisdiction of the district court in whose jurisdiction they were issued. [2003 c 53 § 243; 1989 c 111 § 2; 1985 c 377 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

46.55.113 Removal by police officer. (1) Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502, 46.61.504, 46.20.342, or 46.20.345, the vehicle is subject to summary impoundment, pursuant to the terms and conditions of an applicable local ordinance or state agency rule at the direction of a law enforcement officer.

(2) In addition, a police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt

removal to a place of safety under any of the following circumstances:

(a) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

(b) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(c) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

(d) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(e) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(f) Whenever a vehicle without a special license plate, card, or decal indicating that the vehicle is being used to transport a disabled person under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;

(g) Upon determining that a person is operating a motor vehicle without a valid driver's license in violation of RCW 46.20.005 or with a license that has been expired for ninety days or more;

(h) When a vehicle is illegally occupying a truck, commercial loading zone, restricted parking zone, bus, loading, hooded-meter, taxi, street construction or maintenance, or other similar zone where, by order of the director of transportation or chiefs of police or fire or their designees, parking is limited to designated classes of vehicles or is prohibited during certain hours, on designated days or at all times, if the zone has been established with signage for at least twenty-four hours and where the vehicle is interfering with the proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone.

(3) When an arrest is made for a violation of RCW 46.20.342, if the vehicle is a commercial vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection or RCW 46.55.120(1)(a)(ii).

(4) Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator. [2003 c 178 § 1; 2003 c 177 § 1; 1998 c 203 § 4; 1997 c 66 § 7; 1996 c 89 § 1; 1994 c 275 § 32; 1987 c 311 § 10. Formerly RCW 46.61.565.]

Reviser's note: This section was amended by 2003 c 177 § 1 and by 2003 c 178 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—1998 c 203: See note following RCW 46.55.105.

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

46.55.120 Redemption of vehicles—Sale of unredeemed property—Improper impoundment. (1) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department, or one who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle or items of personal property registered or titled with the department. In addition, a vehicle impounded because the operator is in violation of RCW 46.20.342(1)(c) shall not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency. If the department's records show that the operator has been convicted of a violation of RCW 46.20.342 or a similar local ordinance within the past five years, the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. A vehicle impounded because the operator is arrested for a violation of RCW 46.20.342 may be released only pursuant to a written order from the agency that ordered the vehicle impounded or from the court having jurisdiction. An agency may issue a written order to release pursuant to a provision of an applicable state agency rule or local ordinance authorizing release on the basis of the following:

(i) Economic or personal hardship to the spouse of the operator, taking into consideration public safety factors, including the operator's criminal history and driving record; or

(ii) The owner of the vehicle was not the driver, the owner did not know that the driver's license was suspended or revoked, and the owner has not received a prior release under this subsection or RCW 46.55.113(3).

In order to avoid discriminatory application, other than for the reasons for release set forth in (a)(i) and (ii) of this subsection, an agency shall, under a provision of an applicable state agency rule or local ordinance, deny release in all other circumstances without discretion.

If a vehicle is impounded because the operator is in violation of RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. However, if the department's records show that the operator has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a similar local ordinance within the past five years, the vehicle may be held at the written direction of the agency ordering the vehicle

impounded for up to sixty days, and for up to ninety days if the operator has two or more such prior offenses. If a vehicle is impounded because the operator is arrested for a violation of RCW 46.20.342, the vehicle may not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency.

(b) If the vehicle is directed to be held for a suspended license impound, a person who desires to redeem the vehicle at the end of the period of impound shall within five days of the impound at the request of the tow truck operator pay a security deposit to the tow truck operator of not more than one-half of the applicable impound storage rate for each day of the proposed suspended license impound. The tow truck operator shall credit this amount against the final bill for removal, towing, and storage upon redemption. The tow truck operator may accept other sufficient security in lieu of the security deposit. If the person desiring to redeem the vehicle does not pay the security deposit or provide other security acceptable to the tow truck operator, the tow truck operator may process and sell at auction the vehicle as an abandoned vehicle within the normal time limits set out in RCW 46.55.130(1). The security deposit required by this section may be paid and must be accepted at any time up to twenty-four hours before the beginning of the auction to sell the vehicle as abandoned. The registered owner is not eligible to purchase the vehicle at the auction, and the tow truck operator shall sell the vehicle to the highest bidder who is not the registered owner.

(c) Notwithstanding (b) of this subsection, a rental car business may immediately redeem a rental vehicle it owns by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound.

(d) Notwithstanding (b) of this subsection, a motor vehicle dealer or lender with a perfected security interest in the vehicle may redeem or lawfully repossess a vehicle immediately by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound. A motor vehicle dealer or lender with a perfected security interest in the vehicle may not knowingly and intentionally engage in collusion with a registered owner to repossess and then return or resell a vehicle to the registered owner in an attempt to avoid a suspended license impound. However, this provision does not preclude a vehicle dealer or a lender with a perfected security interest in the vehicle from repossessing the vehicle and then selling, leasing, or otherwise disposing of it in accordance with chapter 62A.9A RCW, including providing redemption rights to the debtor under RCW 62A.9A-623. If the debtor is the registered owner of the vehicle, the debtor's right to redeem the vehicle under chapter 62A.9A RCW is conditioned upon the debtor obtaining and providing proof from the impounding authority or court having jurisdiction that any fines, penalties, and forfeitures owed by the registered owner, as a result of the suspended license impound, have been paid, and proof of the payment must be tendered to the vehicle dealer or lender at the time the debtor tenders all other obligations required to redeem the vehicle. Vehicle dealers or lenders are not liable for damages if they rely in good faith on an order from the

impounding agency or a court in releasing a vehicle held under a suspended license impound.

(e) The vehicle or other item of personal property registered or titled with the department shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle, with credit being given for the amount of any security deposit paid under (b) of this subsection. In addition, if a vehicle is impounded because the operator was arrested for a violation of RCW 46.20.342 or 46.20.345 and was being operated by the registered owner when it was impounded under local ordinance or agency rule, it must not be released to any person until the registered owner establishes with the agency that ordered the vehicle impounded or the court having jurisdiction that any penalties, fines, or forfeitures owed by him or her have been satisfied. Registered tow truck operators are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards issued by financial institutions, or personal checks drawn on Washington state branches of financial institutions if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. If the towing firm cannot determine through the customer's bank or a check verification service that the presented check would be paid by the bank or guaranteed by the service, the towing firm may refuse to accept the check. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

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

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

nity was provided for in subsection (2)(a) of this section and more than five days before the date of the auction. At the time of the filing of the hearing request, the petitioner shall pay to the court clerk a filing fee in the same amount required for the filing of a suit in district court. If the hearing request is not received by the court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the court shall proceed to hear and determine the validity of the impoundment.

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

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper. The court may consider a written report made under oath by the officer who authorized the impoundment in lieu of the officer's personal appearance at the hearing.

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

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

(e) If the impoundment is determined to be in violation of this chapter, then the registered and legal owners of the vehicle or other item of personal property registered or titled with the department shall bear no impoundment, towing, or storage fees, and any security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the registered tow truck operator against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment in favor of the registered and legal owners of the vehicle, or other item of personal property registered or titled with the department, for the amount of the filing fee required by law for the impound hearing petition as well as reasonable damages for loss of the use of the vehicle during the time the same was impounded, for not less than fifty dollars per day, against the person or agency authorizing the impound. However, if an impoundment arising from an alleged violation of RCW 46.20.342 or 46.20.345 is determined to be in violation of this chapter, then the law enforcement officer directing the impoundment and the government employing the officer are not liable for damages if the officer relied in good faith and without gross negligence on the records of the department in ascertaining that the operator of

the vehicle had a suspended or revoked driver's license. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO:
 YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the Court located at in the sum of \$., in an action entitled, Case No. YOU ARE FURTHER NOTIFIED that attorneys fees and costs will be awarded against you under RCW . . . if the judgment is not paid within 15 days of the date of this notice. DATED this day of, (year) . . .
 Signature
 Typed name and address
 of party mailing notice

(4) Any impounded abandoned vehicle or item of personal property registered or titled with the department that is not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(3) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle or item of personal property registered or titled with the department may be redeemed at any time before the start of the auction upon payment of the applicable towing and storage fees. [2003 c 177 § 2; 2000 c 193 § 1. Prior: 1999 c 398 § 7; 1999 c 327 § 5; 1998 c 203 § 5; 1996 c 89 § 2; 1995 c 360 § 7; 1993 c 121 § 3; 1989 c 111 § 11; 1987 c 311 § 12; 1985 c 377 § 12.]

Findings—Intent—1999 c 327: See note following RCW 9A.88.130.
Finding—1998 c 203: See note following RCW 46.55.105.

**Chapter 46.61 RCW
 RULES OF THE ROAD**

Sections	
46.61.015	Obedience to police officers, flaggers, or fire fighters—Penalty. (<i>Effective July 1, 2004.</i>)
46.61.020	Refusal to give information to or cooperate with officer—Penalty. (<i>Effective July 1, 2004.</i>)
46.61.024	Attempting to elude police vehicle—Defense—License revocation.
46.61.419	Private roads—Speed enforcement.
46.61.440	Maximum speed limit when passing school or playground crosswalks—Penalty, disposition of proceeds.
46.61.5055	Alcohol violators—Penalty schedule.
46.61.645	Throwing materials on highway prohibited—Removal.
46.61.685	Leaving children unattended in standing vehicle with motor running—Penalty. (<i>Effective July 1, 2004.</i>)
46.61.687	Child passenger restraint required—Conditions—Exceptions—Penalty for violation—Dismissal—Noncompliance not negligence.
46.61.688	Safety belts, use required—Penalties—Exemptions.
46.61.710	Mopeds, EPAMDs, electric-assisted bicycles, motorized foot scooters—General requirements and operation.
46.61.725	Neighborhood electric vehicles.

46.61.015 Obedience to police officers, flaggers, or fire fighters—Penalty. (*Effective July 1, 2004.*) (1) No person shall willfully fail or refuse to comply with any lawful

order or direction of any duly authorized flagger or any police officer or fire fighter invested by law with authority to direct, control, or regulate traffic.

(2) A violation of this section is a misdemeanor. [2003 c 53 § 244; 2000 c 239 § 4; 1995 c 50 § 1; 1975 c 62 § 17; 1965 ex.s. c 155 § 3.]

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

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Captions not law—2000 c 239: See note following RCW 49.17.350.

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

46.61.020 Refusal to give information to or cooperate with officer—Penalty. (Effective July 1, 2004.) (1) It is unlawful for any person while operating or in charge of any vehicle to refuse when requested by a police officer to give his or her name and address and the name and address of the owner of such vehicle, or for such person to give a false name and address, and it is likewise unlawful for any such person to refuse or neglect to stop when signaled to stop by any police officer or to refuse upon demand of such police officer to produce his or her certificate of license registration of such vehicle, his or her insurance identification card, or his or her vehicle driver's license or to refuse to permit such officer to take any such license, card, or certificate for the purpose of examination thereof or to refuse to permit the examination of any equipment of such vehicle or the weighing of such vehicle or to refuse or neglect to produce the certificate of license registration of such vehicle, insurance card, or his or her vehicle driver's license when requested by any court. Any police officer shall on request produce evidence of his or her authorization as such.

(2) A violation of this section is a misdemeanor. [2003 c 53 § 245; 1995 c 50 § 2; 1989 c 353 § 6; 1967 c 32 § 65; 1961 c 12 § 46.56.190. Prior: 1937 c 189 § 126; RRS § 6360-126; 1927 c 309 § 38; RRS § 6362-38. Formerly RCW 46.56.190.]

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

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

46.61.024 Attempting to elude police vehicle—Defense—License revocation. (1) Any driver of a motor vehicle who willfully fails or refuses to immediately bring his vehicle to a stop and who drives his vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and the vehicle shall be equipped with lights and sirens.

(2) It is an affirmative defense to this section which must be established by a preponderance of the evidence that: (a) A reasonable person would not believe that the signal to stop was given by a police officer; and (b) driving after the signal to stop was reasonable under the circumstances.

(3) The license or permit to drive or any nonresident driving privilege of a person convicted of a violation of this

section shall be revoked by the department of licensing. [2003 c 101 § 1; 1983 c 80 § 1; 1982 1st ex.s. c 47 § 25; 1979 ex.s. c 75 § 1.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

46.61.419 Private roads—Speed enforcement. State, local, or county law enforcement personnel may enforce speeding violations under RCW 46.61.400 on private roads within a community organized under chapter 64.38 RCW if:

(1) A majority of the homeowner's association's board of directors votes to authorize the issuance of speeding infractions on its private roads, and declares a speed limit not lower than twenty miles per hour;

(2) A written agreement regarding the speeding enforcement is signed by the homeowner's association president and the chief law enforcement official of the city or county within whose jurisdiction the private road is located;

(3) The homeowner's association has provided written notice to all of the homeowners describing the new authority to issue speeding infractions; and

(4) Signs have been posted declaring the speed limit at all vehicle entrances to the community. [2003 c 193 § 1.]

46.61.440 Maximum speed limit when passing school or playground crosswalks—Penalty, disposition of proceeds. (1) Subject to RCW 46.61.400(1), and except in those instances where a lower maximum lawful speed is provided by this chapter or otherwise, it shall be unlawful for the operator of any vehicle to operate the same at a speed in excess of twenty miles per hour when operating any vehicle upon a highway either inside or outside an incorporated city or town when passing any marked school or playground crosswalk when such marked crosswalk is fully posted with standard school speed limit signs or standard playground speed limit signs. The speed zone at the crosswalk shall extend three hundred feet in either direction from the marked crosswalk.

(2) A county or incorporated city or town may create a school or playground speed zone on a highway bordering a marked school or playground, in which zone it is unlawful for a person to operate a vehicle at a speed in excess of twenty miles per hour. The school or playground speed zone may extend three hundred feet from the border of the school or playground property; however, the speed zone may only include area consistent with active school or playground use.

(3) A person found to have committed any infraction relating to speed restrictions within a school or playground speed zone shall be assessed a monetary penalty equal to twice the penalty assessed under RCW 46.63.110. This penalty may not be waived, reduced, or suspended.

(4) The school zone safety account is created in the custody of the state treasurer. Fifty percent of the moneys collected under subsection (3) of this section shall be deposited into the account. Expenditures from the account may be used only by the Washington traffic safety commission solely to fund projects in local communities to improve school zone safety, pupil transportation safety, and student safety in school bus loading and unloading areas. Only the director of the traffic safety commission or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but

no appropriation is required for expenditures until July 1, 1999, after which date moneys in the account may be spent only after appropriation. [2003 c 192 § 1; 1997 c 80 § 2; 1996 c 114 § 1; 1975 c 62 § 34; 1963 c 16 § 5; 1961 c 12 § 46.48.023. Prior: 1951 c 28 § 9; 1949 c 196 § 6, part; 1947 c 200 § 8, part; 1937 c 189 § 64, part; Rem. Supp. 1949 § 6360-64, part; 1927 c 309 § 3, part; 1923 c 181 § 6, part; 1921 c 96 § 27, part; 1917 c 155 § 16, part; 1915 c 142 § 24, part; RRS § 6362-3, part; 1909 c 249 § 279, part; Rem. & Bal. § 2531, part. Formerly RCW 46.48.023.]

Effective date—1996 c 114: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 20, 1996]." [1996 c 114 § 2.]

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

46.61.5055 Alcohol violators—Penalty schedule. (1) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

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

(i) By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

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

which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

(iii) By a court-ordered restriction under RCW 46.20.720.

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

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

(i) By imprisonment for not less than thirty days nor more than one year and sixty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

(iii) By a court-ordered restriction under RCW 46.20.720; or

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

(i) By imprisonment for not less than forty-five days nor more than one year and ninety days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the

time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

(iii) By a court-ordered restriction under RCW 46.20.720.

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

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

(i) By imprisonment for not less than ninety days nor more than one year and one hundred twenty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

(iii) By a court-ordered restriction under RCW 46.20.720; or

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

(i) By imprisonment for not less than one hundred twenty days nor more than one year and one hundred fifty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the

offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

(iii) By a court-ordered restriction under RCW 46.20.720.

(4) If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) In any case in which the installation and use of an interlock or other device is not mandatory under RCW 46.20.720 or other law, order the use of such a device for not less than sixty days following the restoration of the person's license, permit, or nonresident driving privileges; and

(b) In any case in which the installation and use of such a device is otherwise mandatory, order the use of such a device for an additional sixty days.

(5) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property; and

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers.

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

(7) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) If the person's alcohol concentration was at least 0.15, or if by reason of the person's refusal to take a test

offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years.

For purposes of this subsection, the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

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

(9)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock or other biological or technical device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

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

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

(10) A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-five days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-five days.

(11) An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(4).

(12) For purposes of this section:

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

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

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

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

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

(v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522; and

(b) "Within seven years" means that the arrest for a prior offense occurred within seven years of the arrest for the current offense. [2003 c 103 § 1. Prior: 1999 c 324 § 5; 1999 c 274 § 6; 1999 c 5 § 1; prior: 1998 c 215 § 1; 1998 c 214 § 1; 1998 c 211 § 1; 1998 c 210 § 4; 1998 c 207 § 1; 1998 c 206 § 1; prior: 1997 c 229 § 11; 1997 c 66 § 14; 1996 c 307 § 3; 1995 1st sp.s. c 17 § 2; 1995 c 332 § 5.]

Severability—1999 c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 5 § 2.]

Effective date—1999 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 16, 1999]." [1999 c 5 § 3.]

Effective date—1998 c 214: "This act takes effect January 1, 1999." [1998 c 214 § 6.]

Effective date—1998 c 211: "This act takes effect January 1, 1999." [1998 c 211 § 7.]

Short title—Finding—Intent—Effective date—1998 c 210: See notes following RCW 46.20.720.

Effective date—1998 c 207: "This act takes effect January 1, 1999." [1998 c 207 § 12.]

Effective date—1997 c 229: See note following RCW 10.05.090.

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

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

46.61.645 Throwing materials on highway prohibited—Removal. (1) Any person who drops, or permits to be dropped or thrown, upon any highway any material shall immediately remove the same or cause it to be removed.

(2) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle. [2003 c 337 § 5; 1965 ex.s. c 155 § 77.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Findings—2003 c 337: See note following RCW 70.93.060.

Lighted material, disposal of: RCW 76.04.455.

Littering: Chapter 70.93 RCW.

46.61.685 Leaving children unattended in standing vehicle with motor running—Penalty. (*Effective July 1, 2004.*) (1) It is unlawful for any person, while operating or in charge of a vehicle, to park or willfully allow such vehicle to stand upon a public highway or in a public place with its motor running, leaving a minor child or children under the age of sixteen years unattended in the vehicle.

(2) Any person violating this section is guilty of a misdemeanor. Upon a second or subsequent conviction for a violation of this section, the department shall revoke the operator's license of such person. [2003 c 53 § 246; 1990 c 250 § 57; 1961 c 151 § 2. Formerly RCW 46.56.230.]

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

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

Leaving children unattended in parked automobile while entering tavern, etc.: RCW 9.91.060.

46.61.687 Child passenger restraint required—Conditions—Exceptions—Penalty for violation—Dismissal—Noncompliance not negligence. (1) Whenever a child who is less than sixteen years of age is being transported in a motor vehicle that is in operation and that is required by RCW 46.37.510 to be equipped with a safety belt system in a passenger seating position, or is being transported in a neighborhood electric vehicle that is in operation, the driver of the vehicle shall keep the child properly restrained as follows:

(a) If the child is less than six years old and/or sixty pounds and the passenger seating position equipped with a safety belt system allows sufficient space for installation, then the child will be restrained in a child restraint system that complies with standards of the United States department of transportation and that is secured in the vehicle in accordance with instructions of the manufacturer of the child restraint system;

(b) If the child is less than one year of age or weighs less than twenty pounds, the child shall be properly restrained in a rear-facing infant seat;

(c) If the child is more than one but less than four years of age or weighs less than forty pounds but at least twenty pounds, the child shall be properly restrained in a forward facing child safety seat restraint system;

(d) If the child is less than six but at least four years of age or weighs less than sixty pounds but at least forty pounds, the child shall be properly restrained in a child booster seat;

(e) If the child is six years of age or older or weighs more than sixty pounds, the child shall be properly restrained with the motor vehicle's safety belt properly adjusted and fastened around the child's body or an appropriately fitting booster seat; and

(f) Enforcement of (a) through (e) of this subsection is subject to a visual inspection by law enforcement to determine if the child restraint system in use is appropriate for the child's individual height, weight, and age. The visual inspection for usage of a forward facing child safety seat must ensure that the seat in use is equipped with a four-point shoulder harness system. The visual inspection for usage of a booster seat must ensure that the seat belt properly fits across the child's lap and the shoulder strap crosses the center of the child's chest. The visual inspection for the usage of a seat belt by a child must ensure that the lap belt properly fits across the child's lap and the shoulder strap crosses the center of the child's chest. In determining violations, consideration to the above criteria must be given in conjunction with the provisions of (a) through (e) of this subsection. The driver of a vehicle transporting a child who is under the age of six years old or weighs less than sixty pounds, when the vehicle is equipped with a passenger side air bag supplemental restraint system, and the air bag system is activated, shall transport the child in the back seat positions in the vehicle where it is practical to do so.

(2) A person violating subsection (1)(a) through (e) of this section may be issued a notice of traffic infraction under chapter 46.63 RCW. If the person to whom the notice was issued presents proof of acquisition of an approved child passenger restraint system or a child booster seat, as appropriate, within seven days to the jurisdiction issuing the notice and the person has not previously had a violation of this section dismissed, the jurisdiction shall dismiss the notice of traffic infraction.

(3) Failure to comply with the requirements of this section shall not constitute negligence by a parent or legal guardian; nor shall failure to use a child restraint system be admissible as evidence of negligence in any civil action.

(4) This section does not apply to: (a) For hire vehicles, (b) vehicles designed to transport sixteen or less passengers,

including the driver, operated by auto transportation companies, as defined in RCW 81.68.010, (c) vehicles providing customer shuttle service between parking, convention, and hotel facilities, and airport terminals, and (d) school buses.

(5) As used in this section "child booster seat" means a child passenger restraint system that meets the Federal Motor Vehicle Safety Standards set forth in 49 C.F.R. 571.213 that is designed to elevate a child to properly sit in a federally approved lap/shoulder belt system.

(6) The requirements of subsection (1)(a) through (e) of this section do not apply in any seating position where there is only a lap belt available and the child weighs more than forty pounds. [2003 c 353 § 5; 2000 c 190 § 2; 1994 c 100 § 1; 1993 c 274 § 1; 1987 c 330 § 745; 1983 c 215 § 2.]

Effective date—2003 c 353: See note following RCW 46.04.320.

Intent—2000 c 190: "The legislature recognizes that fewer than five percent of all drivers use child booster seats for children over the age of four years. The legislature also recognizes that seventy-one percent of deaths resulting from car accidents could be eliminated if every child under the age of sixteen used an appropriate child safety seat, booster seat, or seat belt. The legislature further recognizes the National Transportation Safety Board's recommendations that promote the use of booster seats to increase the safety of children under eight years of age. Therefore, it is the legislature's intent to decrease deaths and injuries to children by promoting safety education and injury prevention measures, as well as increasing public awareness on ways to maximize the protection of children in vehicles." [2000 c 190 § 1.]

Short title—2000 c 190: "This act may be known and cited as the Anton Skeen Act." [2000 c 190 § 5.]

Effective date—2000 c 190: "This act takes effect July 1, 2002." [2000 c 190 § 6.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1983 c 215: See note following RCW 46.37.505.

Standards for child passenger restraint systems: RCW 46.37.505.

46.61.688 Safety belts, use required—Penalties—Exemptions. (1) For the purposes of this section, the term "motor vehicle" includes:

(a) "Buses," meaning motor vehicles with motive power, except trailers, designed to carry more than ten passengers;

(b) "Multipurpose passenger vehicles," meaning motor vehicles with motive power, except trailers, designed to carry ten persons or less that are constructed either on a truck chassis or with special features for occasional off-road operation;

(c) "Neighborhood electric vehicle," meaning a self-propelled, electrically powered four-wheeled motor vehicle whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour and conforms to federal regulations under Title 49 C.F.R. Part 571.500;

(d) "Passenger cars," meaning motor vehicles with motive power, except multipurpose passenger vehicles, motorcycles, or trailers, designed for carrying ten passengers or less; and

(e) "Trucks," meaning motor vehicles with motive power, except trailers, designed primarily for the transportation of property.

(2) This section only applies to motor vehicles that meet the manual seat belt safety standards as set forth in federal motor vehicle safety standard 208 and to neighborhood electric vehicles. This section does not apply to a vehicle occupant for whom no safety belt is available when all designated

seating positions as required by federal motor vehicle safety standard 208 are occupied.

(3) Every person sixteen years of age or older operating or riding in a motor vehicle shall wear the safety belt assembly in a properly adjusted and securely fastened manner.

(4) No person may operate a motor vehicle unless all child passengers under the age of sixteen years are either: (a) Wearing a safety belt assembly or (b) are securely fastened into an approved child restraint device.

(5) A person violating this section shall be issued a notice of traffic infraction under chapter 46.63 RCW. A finding that a person has committed a traffic infraction under this section shall be contained in the driver's abstract but shall not be available to insurance companies or employers.

(6) Failure to comply with the requirements of this section does not constitute negligence, nor may failure to wear a safety belt assembly be admissible as evidence of negligence in any civil action.

(7) This section does not apply to an operator or passenger who possesses written verification from a licensed physician that the operator or passenger is unable to wear a safety belt for physical or medical reasons.

(8) The state patrol may adopt rules exempting operators or occupants of farm vehicles, construction equipment, and vehicles that are required to make frequent stops from the requirement of wearing safety belts. [2003 c 353 § 4; 2002 c 328 § 2; (2002 c 328 § 1 expired July 1, 2002); 2000 c 190 § 3; 1990 c 250 § 58; 1986 c 152 § 1.]

Effective date—2003 c 353: See note following RCW 46.04.320.

Expiration date—2002 c 328 § 1: "Section 1 of this act expires July 1, 2002." [2002 c 328 § 3.]

Effective date—2002 c 328 § 2: "Section 2 of this act takes effect July 1, 2002." [2002 c 328 § 4.]

Intent—Short title—Effective date—2000 c 190: See notes following RCW 46.61.687.

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

Study of effectiveness—1986 c 152: "The traffic safety commission shall undertake a study of the effectiveness of section 1 of this act and shall report its finding to the legislative transportation committee by January 1, 1989." [1986 c 152 § 3.]

Physicians—Immunity from liability regarding safety belts: RCW 4.24.235.

Seat belts and shoulder harnesses, required equipment: RCW 46.37.510.

46.61.710 Mopeds, EPAMDs, electric-assisted bicycles, motorized foot scooters—General requirements and operation. (1) No person shall operate a moped upon the highways of this state unless the moped has been assigned a moped registration number and displays a moped permit in accordance with the provisions of RCW 46.16.630.

(2) Notwithstanding any other provision of law, a moped may not be operated on a bicycle path or trail, bikeway, equestrian trail, or hiking or recreational trail.

(3) Operation of a moped, electric personal assistive mobility device, or an electric-assisted bicycle on a fully controlled limited access highway is unlawful. Operation of a moped or an electric-assisted bicycle on a sidewalk is unlawful.

(4) Removal of any muffling device or pollution control device from a moped is unlawful.

(5) Subsections (1), (2), and (4) of this section do not apply to electric-assisted bicycles. Electric-assisted bicycles and motorized foot scooters may have access to highways of the state to the same extent as bicycles. Subject to subsection (6) of this section, electric-assisted bicycles and motorized foot scooters may be operated on a multipurpose trail or bicycle lane, but local jurisdictions may restrict or otherwise limit the access of electric-assisted bicycles and motorized foot scooters, and state agencies may regulate the use of motorized foot scooters on facilities and properties under their jurisdiction and control.

(6) Subsections (1) and (4) of this section do not apply to motorized foot scooters. Subsection (2) of this section applies to motorized foot scooters when the bicycle path, trail, bikeway, equestrian trail, or hiking or recreational trail was built or is maintained with federal highway transportation funds. Additionally, any new trail or bicycle path or readily identifiable existing trail or bicycle path not built or maintained with federal highway transportation funds may be used by persons operating motorized foot scooters only when appropriately signed.

(7) A person operating an electric personal assistive mobility device (EPAMD) shall obey all speed limits and shall yield the right-of-way to pedestrians and human-powered devices at all times. An operator must also give an audible signal before overtaking and passing a pedestrian. Except for the limitations of this subsection, persons operating an EPAMD have all the rights and duties of a pedestrian.

(8) The use of an EPAMD may be regulated in the following circumstances:

(a) A municipality and the department of transportation may prohibit the operation of an EPAMD on public highways within their respective jurisdictions where the speed limit is greater than twenty-five miles per hour;

(b) A municipality may restrict the speed of an EPAMD in locations with congested pedestrian or nonmotorized traffic and where there is significant speed differential between pedestrians or nonmotorized traffic and EPAMD operators. The areas in this subsection must be designated by the city engineer or designee of the municipality. Municipalities shall not restrict the speed of an EPAMD in the entire community or in areas in which there is infrequent pedestrian traffic;

(c) A state agency or local government may regulate the operation of an EPAMD within the boundaries of any area used for recreation, open space, habitat, trails, or conservation purposes. [2003 c 353 § 10; 2002 c 247 § 7; 1997 c 328 § 5; 1979 ex.s. c 213 § 8.]

Effective date—2003 c 353: See note following RCW 46.04.320.

Legislative review—2002 c 247: See note following RCW 46.04.1695.

46.61.725 Neighborhood electric vehicles. (1) Absent prohibition by local authorities authorized under this section and except as prohibited elsewhere in this section, a person may operate a neighborhood electric vehicle upon a highway of this state having a speed limit of thirty-five miles per hour or less if:

(a) The person does not operate a neighborhood electric vehicle upon state highways that are listed in chapter 47.17 RCW;

(b) The person does not operate a neighborhood electric vehicle upon a highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates in compliance with chapter 46.16 RCW;

(c) The person does not operate a neighborhood electric vehicle upon a highway of this state without first obtaining a valid driver's license issued to Washington residents in compliance with chapter 46.20 RCW;

(d) The person does not operate a neighborhood electric vehicle subject to registration under chapter 46.16 RCW on a highway of this state unless the person is insured under a motor vehicle liability policy in compliance with chapter 46.30 RCW; and

(e) The person operating a neighborhood electric vehicle does not cross a roadway with a speed limit in excess of thirty-five miles per hour, unless the crossing begins and ends on a roadway with a speed limit of thirty-five miles per hour or less and occurs at an intersection of approximately ninety degrees, except that the operator of a neighborhood electric vehicle must not cross an uncontrolled intersection of streets and highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities provided elsewhere in this section.

(2) Any person who violates this section commits a traffic infraction.

(3) This section does not prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of their police power, from regulating the operation of neighborhood electric vehicles on streets and highways under their jurisdiction by resolution or ordinance of the governing body, if the regulation is consistent with the provisions of this title, except that:

(a) Local authorities may not authorize the operation of neighborhood electric vehicles on streets and highways that are part of the state highway system subject to the provisions of Title 47 RCW;

(b) Local authorities may not prohibit the operation of neighborhood electric vehicles upon highways of this state having a speed limit of twenty-five miles per hour or less; and

(c) Local authorities are prohibited from establishing any requirements for the registration and licensing of neighborhood electric vehicles. [2003 c 353 § 3.]

Effective date—2003 c 353: See note following RCW 46.04.320.

Chapter 46.63 RCW

DISPOSITION OF TRAFFIC INFRACTIONS

Sections

46.63.020	Violations as traffic infractions—Exceptions.
46.63.110	Monetary penalties.

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

violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

- (1) RCW 46.09.120(2) relating to the operation of a non-highway vehicle while under the influence of intoxicating liquor or a controlled substance;
- (2) RCW 46.09.130 relating to operation of nonhighway vehicles;
- (3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;
- (4) RCW 46.10.130 relating to the operation of snowmobiles;
- (5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;
- (6) RCW 46.16.010 relating to initial registration of motor vehicles;
- (7) RCW 46.16.011 relating to permitting unauthorized persons to drive;
- (8) RCW 46.16.160 relating to vehicle trip permits;
- (9) RCW 46.16.381(2) relating to knowingly providing false information in conjunction with an application for a special placard or license plate for disabled persons' parking;
- (10) RCW 46.20.005 relating to driving without a valid driver's license;
- (11) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;
- (12) RCW 46.20.0921 relating to the unlawful possession and use of a driver's license;
- (13) RCW 46.20.342 relating to driving with a suspended or revoked license or status;
- (14) RCW 46.20.345 relating to the operation of a motor vehicle with a suspended or revoked license;
- (15) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;
- (16) RCW 46.20.740 relating to operation of a motor vehicle without an ignition interlock device in violation of a license notation that the device is required;
- (17) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;
- (18) RCW 46.25.170 relating to commercial driver's licenses;
- (19) Chapter 46.29 RCW relating to financial responsibility;
- (20) RCW 46.30.040 relating to providing false evidence of financial responsibility;
- (21) RCW 46.37.435 relating to wrongful installation of sunscreening material;
- (22) RCW 46.37.650 relating to the sale, resale, distribution, or installation of a previously deployed air bag;
- (23) RCW 46.44.180 relating to operation of mobile home pilot vehicles;
- (24) RCW 46.48.175 relating to the transportation of dangerous articles;
- (25) RCW 46.52.010 relating to duty on striking an unattended car or other property;
- (26) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (27) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;
- (28) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;
- (29) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;
- (30) RCW 46.55.035 relating to prohibited practices by tow truck operators;
- (31) RCW 46.61.015 relating to obedience to police officers, flaggers, or fire fighters;
- (32) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;
- (33) RCW 46.61.022 relating to failure to stop and give identification to an officer;
- (34) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;
- (35) RCW 46.61.500 relating to reckless driving;
- (36) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;
- (37) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;
- (38) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
- (39) RCW 46.61.522 relating to vehicular assault;
- (40) RCW 46.61.5249 relating to first degree negligent driving;
- (41) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;
- (42) RCW 46.61.530 relating to racing of vehicles on highways;
- (43) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;
- (44) RCW 46.61.740 relating to theft of motor vehicle fuel;
- (45) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;
- (46) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;
- (47) Chapter 46.65 RCW relating to habitual traffic offenders;
- (48) RCW 46.68.010 relating to false statements made to obtain a refund;
- (49) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;
- (50) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;
- (51) RCW 46.72A.060 relating to limousine carrier insurance;
- (52) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;
- (53) RCW 46.72A.080 relating to false advertising by a limousine carrier;
- (54) Chapter 46.80 RCW relating to motor vehicle wreckers;
- (55) Chapter 46.82 RCW relating to driver's training schools;
- (56) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

(57) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW. [2003 c 33 § 4; 2001 c 325 § 4; 1999 c 86 § 6; 1998 c 294 § 3. Prior: 1997 c 229 § 13; 1997 c 66 § 8; prior: 1996 c 307 § 6; 1996 c 287 § 7; 1996 c 93 § 3; 1996 c 87 § 21; 1996 c 31 § 3; prior: 1995 1st sp.s. c 16 § 1; 1995 c 332 § 16; 1995 c 256 § 25; prior: 1994 c 275 § 33; 1994 c 141 § 2; 1993 c 501 § 8; 1992 c 32 § 4; 1991 c 339 § 27; prior: 1990 c 250 § 59; 1990 c 95 § 3; prior: 1989 c 353 § 8; 1989 c 178 § 27; 1989 c 111 § 20; prior: 1987 c 388 § 11; 1987 c 247 § 6; 1987 c 244 § 55; 1987 c 181 § 2; 1986 c 186 § 3; prior: 1985 c 377 § 28; 1985 c 353 § 2; 1985 c 302 § 7; 1983 c 164 § 6; 1982 c 10 § 12; prior: 1981 c 318 § 2; 1981 c 19 § 1; 1980 c 148 § 7; 1979 ex.s. c 136 § 2.]

Effective date—1997 c 229: See note following RCW 10.05.090.

Effective date—1995 1st sp.s. c 16: "This act shall take effect September 1, 1995." [1995 1st sp.s. c 16 § 2.]

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

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

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

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

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

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

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

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

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

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

Severability—1981 c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 19 § 7.]

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

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

46.63.110 Monetary penalties. (1) A person found to have committed a traffic infraction shall be assessed a monetary penalty. No penalty may exceed two hundred and fifty dollars for each offense unless authorized by this chapter or title.

(2) The monetary penalty for a violation of RCW 46.55.105(2) is two hundred fifty dollars for each offense. No penalty assessed under this subsection (2) may be reduced.

(3) The supreme court shall prescribe by rule a schedule of monetary penalties for designated traffic infractions. This rule shall also specify the conditions under which local courts may exercise discretion in assessing fines and penalties for traffic infractions. The legislature respectfully requests the supreme court to adjust this schedule every two years for inflation.

(4) There shall be a penalty of twenty-five dollars for failure to respond to a notice of traffic infraction except where the infraction relates to parking as defined by local law, ordinance, regulation, or resolution or failure to pay a monetary penalty imposed pursuant to this chapter. A local legislative body may set a monetary penalty not to exceed

twenty-five dollars for failure to respond to a notice of traffic infraction relating to parking as defined by local law, ordinance, regulation, or resolution. The local court, whether a municipal, police, or district court, shall impose the monetary penalty set by the local legislative body.

(5) Monetary penalties provided for in chapter 46.70 RCW which are civil in nature and penalties which may be assessed for violations of chapter 46.44 RCW relating to size, weight, and load of motor vehicles are not subject to the limitation on the amount of monetary penalties which may be imposed pursuant to this chapter.

(6) Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time the court may, in its discretion, grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment the court shall notify the department of the failure to pay the penalty, and the department shall suspend the person's driver's license or driving privilege until the penalty has been paid and the penalty provided in subsection (4) of this section has been paid.

(7) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction shall be assessed a fee of five dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the emergency medical services and trauma care system trust account under RCW 70.168.040.

(8)(a) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction other than of RCW 46.61.527 shall be assessed an additional penalty of twenty dollars. The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent. If a community restitution program for offenders is available in the jurisdiction, the court shall allow offenders to offset all or a part of the penalty due under this subsection (8) by participation in the community restitution program.

(b) Eight dollars and fifty cents of the additional penalty under (a) of this subsection shall be remitted to the state treasurer. The remaining revenue from the additional penalty must be remitted under chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted under this subsection to the state treasurer must be deposited as provided in RCW 43.08.250. The balance of the revenue received by the county or city treasurer under this subsection must be deposited into the county or city current expense fund. Moneys retained by the city or county under this subsection shall constitute reimbursement for any liabilities under RCW 43.135.060. [2003 c 380 § 2. Prior: 2002 c 279 § 15; 2002 c 175 § 36; 2001 c 289 § 2; 1997 c 331 § 3; 1993 c 501 § 11; 1986 c 213 § 2; 1984 c 258 § 330; prior: 1982 1st ex.s. c 14 § 4; 1982 1st ex.s. c 12 § 1; 1982 c 10 § 13; prior: 1981 c 330 § 7; 1981 c 19 § 6; 1980 c 128 § 4; 1979 ex.s. c 136 § 13.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Effective date—2002 c 175: See note following RCW 7.80.130.

Effective date—1997 c 331: See note following RCW 70.168.135.

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

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

Effective date—Severability—1982 1st ex.s. c 14: See notes following RCW 46.63.060.

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

Severability—1981 c 330: See note following RCW 3.62.060.

Severability—1981 c 19: See note following RCW 46.63.020.

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

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

Additional statutory assessments: RCW 3.62.090.

Chapter 46.64 RCW ENFORCEMENT

Sections

- 46.64.010 Traffic citations—Record of—Cancellation prohibited—Penalty—Citation audit. (*Effective July 1, 2004.*)
- 46.64.040 Nonresident's use of highways—Resident leaving state—Secretary of state as attorney in fact.

46.64.010 Traffic citations—Record of—Cancellation prohibited—Penalty—Citation audit. (*Effective July 1, 2004.*) (1) Every traffic enforcement agency in this state shall provide in appropriate form traffic citations containing notices to appear which shall be issued in books with citations in quadruplicate and meeting the requirements of this section. The chief administrative officer of every such traffic enforcement agency shall be responsible for the issuance of such books and shall maintain a record of every such book and each citation contained therein issued to individual members of the traffic enforcement agency and shall require and retain a receipt for every book so issued.

(2) Every traffic enforcement officer upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any city or town shall deposit the original or a copy of such traffic citation with a court having competent jurisdiction over the alleged offense or with its traffic violations bureau. Upon the deposit of the original or a copy of such traffic citation with a court having competent jurisdiction over the alleged offense or with its traffic violations bureau as aforesaid, the original or copy of such traffic citation may be disposed of only by trial in the court or other official action by a judge of the court, including forfeiture of the bail or by the deposit of sufficient bail with or payment of a fine to the traffic violations bureau by the person to whom such traffic citation has been issued by the traffic enforcement officer.

(3) It shall be unlawful and official misconduct for any traffic enforcement officer or other officer or public employee to dispose of a traffic citation or copies thereof or of the record of the issuance of the same in a manner other than as required in this section.

(4) The chief administrative officer of every traffic enforcement agency shall require the return to him or her of a copy of every traffic citation issued by an officer under his or her supervision to an alleged violator of any traffic law or ordinance and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator. Such chief administrative officer shall also maintain or cause to be maintained in connection with every traffic citation issued by an officer under

his or her supervision a record of the disposition of the charge by the court or its traffic violations bureau in which the original or copy of the traffic citation was deposited.

(5) Any person who cancels or solicits the cancellation of any traffic citation, in any manner other than as provided in this section, is guilty of a misdemeanor.

(6) Every record of traffic citations required in this section shall be audited monthly by the appropriate fiscal officer of the government agency to which the traffic enforcement agency is responsible. [2003 c 53 § 247; 1961 c 12 § 46.64.010. Prior: 1949 c 196 § 16; 1937 c 189 § 145; Rem. Supp. 1949 § 6360-145.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

46.64.040 Nonresident's use of highways—Resident leaving state—Secretary of state as attorney in fact. The acceptance by a nonresident of the rights and privileges conferred by law in the use of the public highways of this state, as evidenced by his or her operation of a vehicle thereon, or the operation thereon of his or her vehicle with his or her consent, express or implied, shall be deemed equivalent to and construed to be an appointment by such nonresident of the secretary of state of the state of Washington to be his or her true and lawful attorney upon whom may be served all lawful summons and processes against him or her growing out of any accident, collision, or liability in which such nonresident may be involved while operating a vehicle upon the public highways, or while his or her vehicle is being operated thereon with his or her consent, express or implied, and such operation and acceptance shall be a signification of the nonresident's agreement that any summons or process against him or her which is so served shall be of the same legal force and validity as if served on the nonresident personally within the state of Washington. Likewise each resident of this state who, while operating a motor vehicle on the public highways of this state, is involved in any accident, collision, or liability and thereafter at any time within the following three years cannot, after a due and diligent search, be found in this state appoints the secretary of state of the state of Washington as his or her lawful attorney for service of summons as provided in this section for nonresidents. Service of such summons or process shall be made by leaving two copies thereof with a fee established by the secretary of state by rule with the secretary of state of the state of Washington, or at the secretary of state's office, and such service shall be sufficient and valid personal service upon said resident or nonresident: **PROVIDED,** That notice of such service and a copy of the summons or process is forthwith sent by registered mail with return receipt requested, by plaintiff to the defendant at the last known address of the said defendant, and the plaintiff's affidavit of compliance herewith are appended to the process, together with the affidavit of the plaintiff's attorney that the attorney has with due diligence attempted to serve personal process upon the defendant at all addresses known to him or her of defendant and further listing in his or her affidavit the addresses at which he or she attempted to have process served. However, if process is forwarded by registered mail and defendant's endorsed receipt is received and entered as a part of the return of process then the foregoing affidavit of plaintiff's attorney need only show that the defendant

received personal delivery by mail: PROVIDED FURTHER, That personal service outside of this state in accordance with the provisions of law relating to personal service of summons outside of this state shall relieve the plaintiff from mailing a copy of the summons or process by registered mail as hereinbefore provided. The secretary of state shall forthwith send one of such copies by mail, postage prepaid, addressed to the defendant at the defendant's address, if known to the secretary of state. The court in which the action is brought may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action. The fee paid by the plaintiff to the secretary of state shall be taxed as part of his or her costs if he or she prevails in the action. The secretary of state shall keep a record of all such summons and processes, which shall show the day of service. [2003 c 223 § 1; 1993 c 269 § 16; 1982 c 35 § 197; 1973 c 91 § 1; 1971 ex.s. c 69 § 1; 1961 c 12 § 46.64.040. Prior: 1959 c 121 § 1; 1957 c 75 § 1; 1937 c 189 § 129; RRS § 6360-129.]

Rules of court: Cf. CR 12(a).

Effective date—1993 c 269: See note following RCW 23.86.070.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Deposit of fees in secretary of state's revolving fund: RCW 43.07.130.

Chapter 46.68 RCW

DISPOSITION OF REVENUE

Sections

46.68.010	Erroneous payments—Refunds, underpayments—Penalty for false statements. (<i>Effective July 1, 2004.</i>)
46.68.020	Disposition of fees for certificates of ownership.
46.68.035	Disposition of combined vehicle licensing fees.
46.68.090	Distribution of statewide fuel taxes.
46.68.110	Distribution of amount allocated to cities and towns.
46.68.113	Preservation rating.
46.68.280	Transportation 2003 account (nickel account).

46.68.010 Erroneous payments—Refunds, underpayments—Penalty for false statements. (*Effective July 1, 2004.*) (1) Whenever any license fee, paid under the provisions of this title, has been erroneously paid, either wholly or in part, the payor is entitled to have refunded the amount so erroneously paid.

(2) A license fee is refundable in one or more of the following circumstances: (a) If the vehicle for which the renewal license was purchased was destroyed before the beginning date of the registration period for which the renewal fee was paid; (b) if the vehicle for which the renewal license was purchased was permanently removed from the state before the beginning date of the registration period for which the renewal fee was paid; (c) if the vehicle license was purchased after the owner has sold the vehicle; (d) if the vehicle is currently licensed in Washington and is subsequently licensed in another jurisdiction, in which case any full months of Washington fees between the date of license application in the other jurisdiction and the expiration of the Washington license are refundable; or (e) if the vehicle for which the renewal license was purchased is sold before the beginning date of the registration period for which the renewal fee was paid, and the payor returns the new, unused, never affixed license renewal tabs to the department before

the beginning of the registration period for which the registration was purchased.

(3) Upon the refund being certified to the state treasurer by the director as correct and being claimed in the time required by law the state treasurer shall mail or deliver the amount of each refund to the person entitled thereto. No claim for refund shall be allowed for such erroneous payments unless filed with the director within three years after such claimed erroneous payment was made.

(4) If due to error a person has been required to pay a vehicle license fee under this title and an excise tax under Title 82 RCW that amounts to an overpayment of ten dollars or more, that person shall be entitled to a refund of the entire amount of the overpayment, regardless of whether a refund of the overpayment has been requested.

(5) If due to error the department or its agent has failed to collect the full amount of the license fee and excise tax due and the underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and fees.

(6) Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor. [2003 c 53 § 248; 1997 c 22 § 1; 1996 c 31 § 1; 1993 c 307 § 2; 1989 c 68 § 1; 1979 c 120 § 1; 1967 c 32 § 73; 1961 c 12 § 46.68.010. Prior: 1937 c 188 § 76; RRS § 6312-76.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

46.68.020 Disposition of fees for certificates of ownership. The director shall forward all fees for certificates of ownership or other moneys accruing under the provisions of chapter 46.12 RCW to the state treasurer, together with a proper identifying detailed report. The state treasurer shall credit such moneys as follows:

(1) The fees collected under *RCW 46.12.040(1) shall be credited to the multimodal transportation account in RCW 47.66.070.

(2)(a) Beginning July 27, 2003, and until July 1, 2008, the fees collected under RCW 46.12.080, 46.12.170, and 46.12.181 shall be credited as follows:

(i) 58.12 percent shall be credited to a segregated subaccount of the air pollution control account in RCW 70.94.015;

(ii) 15.71 percent shall be credited to the vessel response account created in RCW 90.56.335; and

(iii) The remainder shall be credited into the transportation 2003 account (nickel account).

(b) Beginning July 1, 2008, and thereafter, the fees collected under RCW 46.12.080, 46.12.170, and 46.12.181 shall be credited to the transportation 2003 account (nickel account).

(3) All other fees under chapter 46.12 RCW shall be credited to the motor vehicle account, unless specified otherwise. [2003 c 264 § 8; 2002 c 352 § 21; 1961 c 12 § 46.68.020. Prior: 1955 c 259 § 3; 1947 c 164 § 7; 1937 c 188 § 11; Rem. Supp. 1947 § 6312-11.]

***Reviser's note:** The section adding subsection numbers to RCW 46.12.040, 2003 c 264 § 6, was vetoed by the governor. Reference to the fee in the first paragraph of RCW 46.12.040 is apparently intended.

Effective dates—2002 c 352: See note following RCW 46.09.070.

46.68.035 Disposition of combined vehicle licensing fees. All proceeds from combined vehicle licensing fees received by the director for vehicles licensed under RCW 46.16.070 and 46.16.085 shall be forwarded to the state treasurer to be distributed into accounts according to the following method:

(1) The sum of two dollars for each vehicle shall be deposited into the multimodal transportation account, except that for each vehicle registered by a county auditor or agent to a county auditor pursuant to RCW 46.01.140, the sum of two dollars shall be credited to the current county expense fund.

(2) The remainder shall be distributed as follows:

(a) 21.963 percent shall be deposited into the state patrol highway account of the motor vehicle fund;

(b) 1.411 percent shall be deposited into the Puget Sound ferry operations account of the motor vehicle fund;

(c) 7.240 percent shall be deposited into the transportation 2003 account (nickel account); and

(d) The remaining proceeds shall be deposited into the motor vehicle fund. [2003 c 361 § 202; 2000 2nd sp.s. c 4 § 8; 1993 c 102 § 7; 1990 c 42 § 106; 1989 c 156 § 4; 1985 c 380 § 21.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective dates—2000 2nd sp.s. c 4 §§ 4-10: See note following RCW 43.89.010.

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

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

Application—1989 c 156: See note following RCW 46.16.070.

Effective date—1986 c 18; 1985 c 380: See RCW 46.87.901.

Severability—1985 c 380: See RCW 46.87.900.

46.68.090 Distribution of statewide fuel taxes. (1) All moneys that have accrued or may accrue to the motor vehicle fund from the motor vehicle fuel tax and special fuel tax shall be first expended for purposes enumerated in (a) and (b) of this subsection. The remaining net tax amount shall be distributed monthly by the state treasurer in accordance with subsections (2), (3), and (4) of this section.

(a) For payment of refunds of motor vehicle fuel tax and special fuel tax that has been paid and is refundable as provided by law;

(b) For payment of amounts to be expended pursuant to appropriations for the administrative expenses of the offices of state treasurer, state auditor, and the department of licensing of the state of Washington in the administration of the motor vehicle fuel tax and the special fuel tax, which sums shall be distributed monthly.

(2) All of the remaining net tax amount collected under RCW 82.36.025(1) and 82.38.030(1) shall be distributed as set forth in (a) through (j) of this section.

(a) For distribution to the motor vehicle fund an amount equal to 44.387 percent to be expended for highway purposes of the state as defined in RCW 46.68.130;

(b) For distribution to the special category C account, hereby created in the motor vehicle fund, an amount equal to 3.2609 percent to be expended for special category C projects. Special category C projects are category C projects

that, due to high cost only, will require bond financing to complete construction.

The following criteria, listed in order of priority, shall be used in determining which special category C projects have the highest priority:

(i) Accident experience;

(ii) Fatal accident experience;

(iii) Capacity to move people and goods safely and at reasonable speeds without undue congestion; and

(iv) Continuity of development of the highway transportation network.

Moneys deposited in the special category C account in the motor vehicle fund may be used for payment of debt service on bonds the proceeds of which are used to finance special category C projects under this subsection (2)(b);

(c) For distribution to the Puget Sound ferry operations account in the motor vehicle fund an amount equal to 2.3283 percent;

(d) For distribution to the Puget Sound capital construction account in the motor vehicle fund an amount equal to 2.3726 percent;

(e) For distribution to the urban arterial trust account in the motor vehicle fund an amount equal to 7.5597 percent;

(f) For distribution to the transportation improvement account in the motor vehicle fund an amount equal to 5.6739 percent and expended in accordance with RCW 47.26.086;

(g) For distribution to the cities and towns from the motor vehicle fund an amount equal to 10.6961 percent in accordance with RCW 46.68.110;

(h) For distribution to the counties from the motor vehicle fund an amount equal to 19.2287 percent: (i) Out of which there shall be distributed from time to time, as directed by the department of transportation, those sums as may be necessary to carry out the provisions of RCW 47.56.725; and (ii) less any amounts appropriated to the county road administration board to implement the provisions of RCW 47.56.725(4), with the balance of such county share to be distributed monthly as the same accrues for distribution in accordance with RCW 46.68.120;

(i) For distribution to the county arterial preservation account, hereby created in the motor vehicle fund an amount equal to 1.9565 percent. These funds shall be distributed by the county road administration board to counties in proportions corresponding to the number of paved arterial lane miles in the unincorporated area of each county and shall be used for improvements to sustain the structural, safety, and operational integrity of county arterials. The county road administration board shall adopt reasonable rules and develop policies to implement this program and to assure that a pavement management system is used;

(j) For distribution to the rural arterial trust account in the motor vehicle fund an amount equal to 2.5363 percent and expended in accordance with RCW 36.79.020.

(3) One hundred percent of the net tax amount collected under RCW 82.36.025(2) and 82.38.030(2) shall be distributed to the transportation 2003 account (nickel account).

(4) Nothing in this section or in RCW 46.68.130 may be construed so as to violate any terms or conditions contained in any highway construction bond issues now or hereafter authorized by statute and whose payment is by such statute pledged to be paid from any excise taxes on motor vehicle

fuel and special fuels. [2003 c 361 § 403. Prior: 1999 c 269 § 2; 1999 c 94 § 6; prior: 1994 c 225 § 2; 1994 c 179 § 3; 1991 c 342 § 56; 1990 c 42 § 102; 1983 1st ex.s. c 49 § 21; 1979 c 158 § 184; 1977 ex.s. c 317 § 8; 1967 c 32 § 74; 1961 ex.s. c 7 § 5; 1961 c 12 § 46.68.090; prior: 1943 c 115 § 3; 1939 c 181 § 2; Rem. Supp. 1943 § 6600-1d; 1937 c 208 §§ 2, part, 3, part.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Effective date—1994 c 225: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect May 1, 1994." [1994 c 225 § 4.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

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

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

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

Rural arterial trust account: RCW 36.79.020.

Urban arterial trust account: RCW 47.26.080.

46.68.110 Distribution of amount allocated to cities and towns. Funds credited to the incorporated cities and towns of the state as set forth in RCW 46.68.090(2)(g) shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such sums distributed under RCW 46.68.090(2)(g) shall be deducted monthly as such sums are credited and set aside for the use of the department of transportation for the supervision of work and expenditures of such incorporated cities and towns on the city and town streets thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: PROVIDED, That any moneys so retained and not expended shall be credited in the succeeding biennium to the incorporated cities and towns in proportion to deductions herein made;

(2) Thirty-three one-hundredths of one percent of such funds distributed under RCW 46.68.090(2)(g) shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the cities' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the cities in proportion to the deductions made;

(3) One percent of such funds distributed under RCW 46.68.090(2)(g) shall be deducted monthly, as such funds accrue, to be deposited in the urban arterial trust account, to implement the city hardship assistance program, as provided in RCW 47.26.164. However, any moneys so retained and not required to carry out the program as of July 1st of each odd-numbered year thereafter, shall be provided within sixty days to the treasurer and distributed in the manner prescribed in subsection (5) of this section;

(4) After making the deductions under subsections (1) through (3) of this section and RCW 35.76.050, 31.86 per-

cent of the fuel tax distributed to the cities and towns in RCW 46.68.090(2)(g) shall be allocated to the incorporated cities and towns in the manner set forth in subsection (5) of this section and subject to deductions in subsections (1), (2), and (3) of this section, subject to RCW 35.76.050, to be used exclusively for: The construction, improvement, chip sealing, seal-coating, and repair for arterial highways and city streets as those terms are defined in RCW 46.04.030 and 46.04.120; the maintenance of arterial highways and city streets for those cities with a population of less than fifteen thousand; or the payment of any municipal indebtedness which may be incurred in the construction, improvement, chip sealing, seal-coating, and repair of arterial highways and city streets; and

(5) The balance remaining to the credit of incorporated cities and towns after such deduction shall be apportioned monthly as such funds accrue among the several cities and towns within the state ratably on the basis of the population last determined by the office of financial management. [2003 c 361 § 404. Prior: 1999 c 269 § 3; 1999 c 94 § 9; 1996 c 94 § 1; prior: 1991 sp.s. c 15 § 46; 1991 c 342 § 59; 1989 1st ex.s. c 6 § 41; 1987 1st ex.s. c 10 § 37; 1985 c 460 § 32; 1979 c 151 § 161; 1975 1st ex.s. c 100 § 1; 1961 ex.s. c 7 § 7; 1961 c 12 § 46.68.110; prior: 1957 c 175 § 11; 1949 c 143 § 1; 1943 c 83 § 2; 1941 c 232 § 1; 1939 c 181 § 4; Rem. Supp. 1949 § 6600-3a; 1937 c 208 §§ 2, part, 3, part.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Construction—Severability—1991 sp.s. c 15: "The appropriations of moneys and the designation of funds and accounts by this and other acts of the 1991 legislature shall be construed in a manner consistent with legislation enacted by the 1985, 1987, and 1989 legislatures to conform state funds and accounts with generally accepted accounting principles. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 sp.s. c 15 § 69.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Severability—1989 1st ex.s. c 6: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 1st ex.s. c 6 § 75.]

Severability—1987 1st ex.s. c 10: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 10 § 60.]

Severability—1985 c 460: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 460 § 42.]

Expense of cost-audit examination of city and town street records payable from funds withheld under RCW 46.68.110(1): RCW 35.76.050.

Population determination, office of financial management: Chapter 43.62 RCW.

46.68.113 Preservation rating. During the 2003-2005 biennium, cities and towns shall provide to the transportation commission, or its successor entity, preservation rating information on at least seventy percent of the total city and town arterial network. Thereafter, the preservation rating information requirement shall increase in five percent increments in subsequent biennia. The rating system used by cities and

towns must be based upon the Washington state pavement rating method or an equivalent standard approved by the transportation commission or its successor entity. [2003 c 363 § 305.]

Finding—Intent—2003 c 363: See note following RCW 35.84.060.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

46.68.280 Transportation 2003 account (nickel account). (1) The transportation 2003 account (nickel account) is hereby created in the motor vehicle fund. Money in the account may be spent only after appropriation. Expenditures from the account must be used only for projects or improvements identified as transportation 2003 projects or improvements in the omnibus transportation budget and to pay the principal and interest on the bonds authorized for transportation 2003 projects or improvements. Upon completion of the projects or improvements identified as transportation 2003 projects or improvements, moneys deposited in this account must only be used to pay the principal and interest on the bonds authorized for transportation 2003 projects or improvements, and any funds in the account in excess of the amount necessary to make the principal and interest payments may be used for maintenance on the completed projects or improvements.

(2) The "nickel account" means the transportation 2003 account. [2003 c 361 § 601.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Chapter 46.70 RCW

DEALERS AND MANUFACTURERS

(Formerly: Unfair business practices—Dealers' licenses)

Sections

46.70.021 License required for dealers or manufacturers—Penalties.
(Effective July 1, 2004.)

46.70.180 Unlawful acts and practices.

46.70.021 License required for dealers or manufacturers—Penalties. (Effective July 1, 2004.) (1) It is unlawful for any person, firm, or association to act as a vehicle dealer or vehicle manufacturer, to engage in business as such, serve in the capacity of such, advertise himself, herself, or themselves as such, solicit sales as such, or distribute or transfer vehicles for resale in this state, without first obtaining and holding a current license as provided in this chapter, unless the title of the vehicle is in the name of the seller.

(2) It is unlawful for any person other than a licensed vehicle dealer to display a vehicle for sale unless the registered owner or legal owner is the displayer or holds a notarized power of attorney.

(3)(a) Except as provided in (b) of this subsection, a person or firm engaged in buying and offering for sale, or buying and selling five or more vehicles in a twelve-month period, or in any other way engaged in dealer activity without holding a vehicle dealer license, is guilty of a gross misdemeanor, and upon conviction subject to a fine of up to five thousand dollars for each violation and up to one year in jail.

(b) A second offense is a class C felony punishable under chapter 9A.20 RCW.

(4) A violation of this section is also a per se violation of chapter 19.86 RCW and is considered a deceptive practice.

(5) The department of licensing, the Washington state patrol, the attorney general's office, and the department of revenue shall cooperate in the enforcement of this section.

(6) A distributor, factory branch, or factory representative shall not be required to have a vehicle manufacturer license so long as the vehicle manufacturer so represented is properly licensed pursuant to this chapter.

(7) Nothing in this chapter prohibits financial institutions from cooperating with vehicle dealers licensed under this chapter in dealer sales or leases. However, financial institutions shall not broker vehicles and cooperation is limited to organizing, promoting, and financing of such dealer sales or leases. [2003 c 53 § 249; 1993 c 307 § 4; 1988 c 287 § 2; 1986 c 241 § 3; 1973 1st ex.s. c 132 § 3; 1967 ex.s. c 74 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

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

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

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

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

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

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

(2)(a) To incorporate within the terms of any purchase and sale or lease agreement any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price or capitalized cost of a vehicle an amount for licensing or transfer of title of that vehicle which is not actually due to the state, unless such amount has in fact been paid by the dealer prior to such sale. However, an amount not to exceed thirty-five dollars per vehicle sale or lease may be charged by a dealer to recover administrative costs for collecting motor vehicle excise taxes, licensing and registration fees and other agency fees, verifying and clearing titles, transferring titles, perfect-

ing, releasing, or satisfying liens or other security interests, and other administrative and documentary services rendered by a dealer in connection with the sale or lease of a vehicle and in carrying out the requirements of this chapter or any other provisions of state law.

(b) A dealer may charge the documentary service fee in (a) of this subsection under the following conditions:

(i) The documentary service fee is disclosed in writing to a prospective purchaser or lessee before the execution of a purchase and sale or lease agreement;

(ii) The documentary service fee is not represented to the purchaser or lessee as a fee or charge required by the state to be paid by either the dealer or prospective purchaser or lessee;

(iii) The documentary service fee is separately designated from the selling price or capitalized cost of the vehicle and from any other taxes, fees, or charges; and

(iv) Dealers disclose in any advertisement that a documentary service fee in an amount up to thirty-five dollars may be added to the sale price or the capitalized cost.

For the purposes of this subsection (2), the term "documentary service fee" means the optional amount charged by a dealer to provide the services specified in (a) of this subsection.

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

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

(a) Is subject to the dealer's, or his or her authorized representative's future acceptance, and the dealer fails or refuses within three calendar days, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer or lessee, either (i) to deliver to the buyer or lessee the dealer's signed acceptance, or (ii) to void the order, offer, or contract document and tender the return of any initial payment or security made or given by the buyer or lessee, including but not limited to money, check, promissory note, vehicle keys, a trade-in, or certificate of title to a trade-in; or

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

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

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

(iii) Excessive additional miles or a discrepancy in the mileage. "Excessive additional miles" means the addition of five hundred miles or more, as reflected on the vehicle's odometer, between the time the vehicle was first valued by the dealer for purposes of determining its trade-in value and the time of actual delivery of the vehicle to the dealer. "A discrepancy in the mileage" means (A) a discrepancy between the mileage reflected on the vehicle's odometer and the stated mileage on the signed odometer statement; or (B) a discrepancy between the mileage stated on the signed odometer statement and the actual mileage on the vehicle; or

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

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

(6) For any vehicle dealer or vehicle salesperson to refuse to furnish, upon request of a prospective purchaser or lessee, for vehicles previously registered to a business or governmental entity, the name and address of the business or governmental entity.

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

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle. However, a dealer may issue a second temporary permit on a vehicle if the following conditions are met:

(a) The lienholder fails to deliver the vehicle title to the dealer within the required time period;

(b) The dealer has satisfied the lien; and

(c) The dealer has proof that payment of the lien was made within two calendar days, exclusive of Saturday, Sunday, or a legal holiday, after the sales contract has been executed by all parties and all conditions and contingencies in the sales contract have been met or otherwise satisfied.

(9) For a dealer, salesperson, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser or lessee prior to the delivery of the bargained-for vehicle, to commingle the "on deposit" funds with assets of the dealer, salesperson, or mobile home manufacturer instead of holding the "on deposit" funds as trustee in a separate trust account until the purchaser or lessee has taken delivery of the bargained-for vehicle. Delivery of a manufactured home shall be deemed to occur in accordance with RCW 46.70.135(5). Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his or her customary total customer deposits for vehicles for future delivery. For purposes of this section, "on deposit" funds received from a purchaser of a manufactured home means those funds that a seller requires a purchaser to advance before ordering the manufactured home, but does

not include any loan proceeds or moneys that might have been paid on an installment contract.

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

(11) For a vehicle dealer to pay to or receive from any person, firm, partnership, association, or corporation acting, either directly or through a subsidiary, as a buyer's agent for consumers, any compensation, fee, purchase moneys or funds that have been deposited into or withdrawn out of any account controlled or used by any buyer's agent, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle.

(12) For a buyer's agent, acting directly or through a subsidiary, to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle. In addition, it is unlawful for any buyer's agent to engage in any of the following acts on behalf of or in the name of the consumer:

(a) Receiving or paying any purchase moneys or funds into or out of any account controlled or used by any buyer's agent;

(b) Signing any vehicle purchase orders, sales contracts, leases, odometer statements, or title documents, or having the name of the buyer's agent appear on the vehicle purchase order, sales contract, lease, or title; or

(c) Signing any other documentation relating to the purchase, sale, lease, or transfer of any new motor vehicle.

It is unlawful for a buyer's agent to use a power of attorney obtained from the consumer to accomplish or effect the purchase, sale, lease, or transfer of ownership documents of any new motor vehicle by any means which would otherwise be prohibited under (a) through (c) of this subsection. However, the buyer's agent may use a power of attorney for physical delivery of motor vehicle license plates to the consumer.

Further, it is unlawful for a buyer's agent to engage in any false, deceptive, or misleading advertising, disseminated in any manner whatsoever, including but not limited to making any claim or statement that the buyer's agent offers, obtains, or guarantees the lowest price on any motor vehicle or words to similar effect.

(13) For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW. This subsection also applies to leased vehicles. In addition, it is unlawful for any buyer's agent to fail to have a written agreement with the customer that: (a) Sets forth the terms of the parties' agreement; (b) discloses to the customer the total amount of any fees or other compensation being paid by the customer to the buyer's agent for the agent's services; and (c) further discloses whether the fee or any portion of the fee is refundable.

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

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

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

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

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

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale or lease of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

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

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting par-

ties. This paragraph and subsection (14)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050.

(16) To knowingly and intentionally engage in collusion with a registered owner of a vehicle to repossess and return or resell the vehicle to the registered owner in an attempt to avoid a suspended license impound under chapter 46.55 RCW. However, compliance with chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise disposing of the vehicle, including providing redemption rights to the debtor, is not a violation of this section. [2003 c 368 § 1. Prior: 2001 c 272 § 10; 2001 c 64 § 9; 1999 c 398 § 10; 1997 c 153 § 1; 1996 c 194 § 3; 1995 c 256 § 26; 1994 c 284 § 13; 1993 c 175 § 3; 1990 c 44 § 14; 1989 c 415 § 20; 1986 c 241 § 18; 1985 c 472 § 13; 1981 c 152 § 6; 1977 ex.s. c 125 § 4; 1973 1st ex.s. c 132 § 18; 1969 c 112 § 1; 1967 ex.s. c 74 § 16.]

***Reviser's note:** Chapter 46.94 RCW was repealed by 2003 c 354 § 24. Cf. chapter 46.93 RCW.

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

Severability—1990 c 44: See RCW 19.116.900.

Severability—1989 c 415: See RCW 46.96.900.

Severability—1985 c 472: See RCW 46.94.900.

Certificate of ownership—Failure to transfer within specified time: RCW 46.12.101.

Glass—Limited windows—Vehicle sale requirements: RCW 46.37.430.

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

Tires—Vehicle sale requirements: RCW 46.37.425.

Chapter 46.72 RCW

TRANSPORTATION OF PASSENGERS IN FOR HIRE VEHICLES

Sections

46.72.100 Unprofessional conduct—Bond/insurance policy—Penalty. (*Effective July 1, 2004.*)

46.72.100 Unprofessional conduct—Bond/insurance policy—Penalty. (*Effective July 1, 2004.*) (1) In addition to the unprofessional conduct specified in RCW 18.235.130, the director may take disciplinary action if he or she has good reason to believe that one of the following is true of the operator or the applicant for a permit or certificate: (a) He or she is guilty of committing two or more offenses for which mandatory revocation of driver's license is provided by law; (b) he or she has been convicted of vehicular homicide or vehicular assault; (c) he or she is intemperate or addicted to the use of narcotics.

(2) Any for hire operator who operates a for hire vehicle without first having filed a bond or insurance policy and having received a for hire permit and a for hire certificate as required by this chapter is guilty of a gross misdemeanor, and upon conviction shall be punished by imprisonment in jail for a period not exceeding ninety days or a fine of not exceeding five hundred dollars, or both fine and imprisonment. [2003 c 53 § 250; 2002 c 86 § 293; 1983 c 164 § 8; 1967 c 32 § 86; 1961 c 12 § 46.72.100. Prior: 1947 c 253 § 9; Rem. Supp.

[2003 RCW Supp—page 652]

1947 § 6386-9; prior: 1915 c 57 § 4; RRS § 6385. Formerly RCW 81.72.100.]

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

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

Chapter 46.72A RCW

LIMOUSINES

Sections

46.72A.060 Insurance—Amount—Penalty. (*Effective July 1, 2004.*)

46.72A.070 Vehicle certificates—Issuance of new or duplicate certificate—Penalty. (*Effective July 1, 2004.*)

46.72A.060 Insurance—Amount—Penalty. (*Effective July 1, 2004.*) (1) The department shall require limousine carriers to obtain and continue in effect, liability and property damage insurance from a company licensed to sell liability insurance in this state for each limousine used to transport persons for compensation.

(2) The department shall fix the amount of the insurance policy or policies, giving consideration to the character and amount of traffic, the number of persons affected, and the degree of danger that the proposed operation involves. The limousine carrier must maintain the liability and property damage insurance in force on each motor-propelled vehicle while so used.

(3) Failure to file and maintain in effect the insurance required under this section is a gross misdemeanor. [2003 c 53 § 251; 1996 c 87 § 9.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

46.72A.070 Vehicle certificates—Issuance of new or duplicate certificate—Penalty. (*Effective July 1, 2004.*)

(1) If the limousine carrier substitutes a liability and property damage insurance policy after a vehicle certificate has been issued, a new vehicle certificate is required. The limousine carrier shall submit the substituted policy to the department for approval, together with a fee. If the department approves the substituted policy, the department shall issue a new vehicle certificate.

(2) If a vehicle certificate has been lost, destroyed, or stolen, a duplicate vehicle certificate may be obtained by filing an affidavit of loss and paying a fee.

(3)(a) Except as provided in (b) of this subsection, a limousine carrier who operates a vehicle without first having received a vehicle certificate as required by this chapter is guilty of a misdemeanor.

(b) A second or subsequent offense is a gross misdemeanor. [2003 c 53 § 252; 1996 c 87 § 10.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 46.80 RCW**VEHICLE WRECKERS**

(Formerly: Motor vehicle wreckers)

Sections

- 46.80.020 License required—Penalty. (*Effective July 1, 2004.*)
 46.80.190 Subpoenas. (*Effective July 1, 2004.*)

46.80.020 License required—Penalty. (*Effective July 1, 2004.*) (1) It is unlawful for a person to engage in the business of wrecking vehicles without having first applied for and received a license.

(2)(a) Except as provided in (b) of this subsection, a person or firm engaged in the unlawful activity described in this section is guilty of a gross misdemeanor.

(b) A second or subsequent offense is a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 253; 1995 c 256 § 5; 1979 c 158 § 192; 1977 ex.s. c 253 § 3; 1971 ex.s. c 7 § 1; 1967 c 32 § 94; 1961 c 12 § 46.80.020. Prior: 1947 c 262 § 2; Rem. Supp. 1947 § 8326-41.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

46.80.190 Subpoenas. (*Effective July 1, 2004.*) (1) The department of licensing or its authorized agent may examine or subpoena any persons, books, papers, records, data, vehicles, or vehicle parts bearing upon the investigation or proceeding under this chapter.

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

(3) The director or an authorized agent may administer an oath to the person required to testify, and a person giving false testimony after the administration of the oath is guilty of perjury in the first degree under RCW 9A.72.020.

(4) A court of competent jurisdiction may, upon application by the director, issue to a person who fails to comply, an order to appear before the director or officer designated by the director, to produce documentary or other evidence touching the matter under investigation or in question. [2003 c 53 § 254; 1995 c 256 § 20.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 46.81A RCW**MOTORCYCLE SKILLS EDUCATION PROGRAM**

Sections

- 46.81A.010 Definitions. (*Effective until January 1, 2004.*)
 46.81A.010 Definitions. (*Effective January 1, 2004.*)
 46.81A.020 Powers and duties of director, department. (*Effective January 1, 2004.*)

46.81A.010 Definitions. (*Effective until January 1, 2004.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Motorcycle skills education program" means a motorcycle rider skills training program to be administered by the department.

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

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

(4) "Motorcycle" means a motorcycle licensed under chapter 46.16 RCW, and does not include motorized bicycles, mopeds, scooters, motorized foot scooters, off-road motorcycles, motorized tricycles, side-car equipped motorcycles, or four-wheel all-terrain vehicles. [2003 c 353 § 11; 1988 c 227 § 2.]

Effective date—2003 c 353: See note following RCW 46.04.320.

46.81A.010 Definitions. (*Effective January 1, 2004.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Motorcycle skills education program" means a motorcycle rider skills training program to be administered by the department.

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

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

(4) "Motorcycle" means a motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and is designed to be steered with a handle bar, but excluding farm tractors, electric personal assistive mobility devices, mopeds, motorized foot scooters, motorized bicycles, and off-road motorcycles. [2003 c 353 § 11; 2003 c 41 § 4; 1988 c 227 § 2.]

Reviser's note: This section was amended by 2003 c 41 § 4 and by 2003 c 353 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 353: See note following RCW 46.04.320.

Short title—Effective date—2003 c 41: See notes following RCW 46.20.500.

46.81A.020 Powers and duties of director, department. (*Effective January 1, 2004.*) (1) The director shall administer and enforce the law pertaining to the motorcycle skills education program as set forth in this chapter.

(2) The director may adopt and enforce reasonable rules that are consistent with this chapter.

(3) The director shall revise the Washington motorcycle safety program to:

(a) Institute separate novice and advanced motorcycle skills education courses for both two-wheeled and three-wheeled motorcycles that are each a minimum of eight hours and no more than sixteen hours at a cost of (i) no more than fifty dollars for Washington state residents under the age of eighteen, and (ii) no more than one hundred dollars for Washington state residents who are eighteen years of age or older and military personnel of any age stationed in Washington state;

(b) Encourage the use of loaned or used motorcycles for use in the motorcycle skills education course if the instructor approves them;

(c) Require all instructors for two-wheeled motorcycles to conduct at least three classes in a one-year period, and all instructors for three-wheeled motorcycles to conduct at least one class in a one-year period, to maintain their teaching eligibility;

(d) Encourage the use of radio or intercom equipped helmets when, in the opinion of the instructor, radio or intercom equipped helmets improve the quality of instruction.

(4) The department may enter into agreements to review and certify that a private motorcycle skills education course meets educational standards equivalent to those required of courses conducted under the motorcycle skills education program. An agreement entered into under this subsection must provide that the department may conduct periodic audits to ensure that educational standards continue to meet those required for courses conducted under the motorcycle skills education program, and that the costs of the review, certification, and audit process will be borne by the party seeking certification.

(5) The department shall obtain and compile information from applicants for a motorcycle endorsement regarding whether they have completed a state approved or certified motorcycle skills education course. [2003 c 41 § 5; 2002 c 197 § 2; 1998 c 245 § 91; 1993 c 115 § 2; 1988 c 227 § 3.]

Short title—Effective date—2003 c 41: See notes following RCW 46.20.500.

Chapter 46.87 RCW

PROPORTIONAL REGISTRATION

(Formerly: International Registration Plan)

Sections

46.87.020	Definitions.
46.87.140	Application—Filing, contents—Fees and taxes—Assessments, due date.
46.87.260	Alteration or forgery of cab card or letter of authority—Penalty. (<i>Effective July 1, 2004.</i>)
46.87.290	Refusal, cancellation of application, cab card—Procedures, penalties. (<i>Effective July 1, 2004.</i>)
46.87.294	Refusal under federal prohibition.
46.87.296	Suspension, revocation under federal prohibition.

46.87.020 Definitions. Terms used in this chapter have the meaning given to them in the International Registration Plan (IRP), the Uniform Vehicle Registration, Proration, and Reciprocity Agreement (Western Compact), chapter 46.04 RCW, or as otherwise defined in this section. Definitions given to terms by the IRP and the Western Compact, as applicable, shall prevail unless given a different meaning in this chapter or in rules adopted under authority of this chapter.

(1) "Apportionable vehicle" has the meaning given by the IRP, except that it does not include vehicles with a declared gross weight of twelve thousand pounds or less. Apportionable vehicles include trucks, tractors, truck tractors, road tractors, and buses, each as separate and licensable vehicles. For IRP jurisdictions that require the registration of nonmotor vehicles, this term may include trailers, semitrailers, and pole trailers as applicable, each as separate and licensable vehicles.

(2) "Cab card" is a certificate of registration issued for a vehicle by the registering jurisdiction under the Western Compact. Under the IRP, it is a certificate of registration issued by the base jurisdiction for a vehicle upon which is disclosed the jurisdictions and registered gross weights in such jurisdictions for which the vehicle is registered.

(3) "Commercial vehicle" is a term used by the Western Compact and means any vehicle, except recreational vehicles, vehicles displaying restricted plates, and government owned or leased vehicles, that is operated and registered in more than one jurisdiction and is used or maintained for the transportation of persons for hire, compensation, or profit, or

is designed, used, or maintained primarily for the transportation of property and:

(a) Is a motor vehicle having a declared gross weight in excess of twenty-six thousand pounds; or

(b) Is a motor vehicle having three or more axles with a declared gross weight in excess of twelve thousand pounds; or

(c) Is a motor vehicle, trailer, pole trailer, or semitrailer used in combination when the gross weight or declared gross weight of the combination exceeds twenty-six thousand pounds combined gross weight. The nonmotor vehicles mentioned are only applicable to those jurisdictions requiring the registration of such vehicles.

Although a two-axle motor vehicle, trailer, pole trailer, semitrailer, or any combination of such vehicles with an actual or declared gross weight or declared combined gross weight exceeding twelve thousand pounds but not more than twenty-six thousand is not considered to be a commercial vehicle, at the option of the owner, such vehicles may be considered as "commercial vehicles" for the purpose of proportional registration. The nonmotor vehicles mentioned are only applicable to those jurisdictions requiring the registration of such vehicles.

Commercial vehicles include trucks, tractors, truck tractors, road tractors, and buses. Trailers, pole trailers, and semitrailers, will also be considered as commercial vehicles for those jurisdictions who require registration of such vehicles.

(4) "Credentials" means cab cards, apportioned plates (for Washington-based fleets), and validation tabs issued for proportionally registered vehicles.

(5) "Declared combined gross weight" means the total unladen weight of any combination of vehicles plus the weight of the maximum load to be carried on the combination of vehicles as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid.

(6) "Declared gross weight" means the total unladen weight of any vehicle plus the weight of the maximum load to be carried on the vehicle as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid. In the case of a bus, auto stage, or a passenger-carrying for hire vehicle with a seating capacity of more than six, the declared gross weight shall be determined by multiplying the average load factor of one hundred and fifty pounds by the number of seats in the vehicle, including the driver's seat, and add this amount to the unladen weight of the vehicle. If the resultant gross weight is not listed in RCW 46.16.070, it will be increased to the next higher gross weight so listed pursuant to chapter 46.44 RCW.

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

(8) "Fleet" means one or more commercial vehicles in the Western Compact and one or more apportionable vehicles in the IRP.

(9) "In-jurisdiction miles" means the total miles accumulated in a jurisdiction during the preceding year by vehicles of the fleet while they were a part of the fleet.

(10) "IRP" means the International Registration Plan.

(11) "Jurisdiction" means and includes a state, territory or possession of the United States, the District of Columbia,

the Commonwealth of Puerto Rico, a foreign country, and a state or province of a foreign country.

(12) "Motor carrier" means an entity engaged in the transportation of goods or persons. The term includes a for-hire motor carrier, private motor carrier, contract motor carrier, or exempt motor carrier. The term includes a registrant licensed under this chapter, a motor vehicle lessor, and a motor vehicle lessee.

(13) "Owner" means a person or business firm who holds the legal title to a vehicle, or if a vehicle is the subject of an agreement for its conditional sale with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or if a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or if a mortgagor of a vehicle is entitled to possession, then the owner is deemed to be the person or business firm in whom is vested right of possession or control.

(14) "Preceding year" means the period of twelve consecutive months immediately before July 1st of the year immediately before the commencement of the registration or license year for which apportioned registration is sought.

(15) "Properly registered," as applied to the place of registration under the provisions of the Western Compact, means:

(a) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which the vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from that place of business, and the vehicle has been assigned to that place of business; or

(b) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by that jurisdiction.

In case of doubt or dispute as to the proper place of registration of a commercial vehicle, the department shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected.

(16) "Prorate percentage" is the factor that is applied to the total proratable fees and taxes to determine the apportionable or prorate fees required for registration in a particular jurisdiction. It is determined by dividing the in-jurisdiction miles for a particular jurisdiction by the total miles. This term is synonymous with the term "mileage percentage."

(17) "Registrant" means a person, business firm, or corporation in whose name or names a vehicle or fleet of vehicles is registered.

(18) "Registration year" means the twelve-month period during which the registration plates issued by the base jurisdiction are valid according to the laws of the base jurisdiction.

(19) "Total miles" means the total number of miles accumulated in all jurisdictions during the preceding year by all vehicles of the fleet while they were a part of the fleet. Mileage accumulated by vehicles of the fleet that did not engage in interstate operations is not included in the fleet miles.

(20) "Western Compact" means the Uniform Vehicle Registration, Proration, and Reciprocity Agreement. [2003 c 85 § 1; 1997 c 183 § 2; 1994 c 262 § 12; 1993 c 307 § 12; 1991 c 163 § 4; 1990 c 42 § 111; 1987 c 244 § 16; 1985 c 380 § 2.]

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

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

46.87.140 Application—Filing, contents—Fees and taxes—Assessments, due date. (1) Any owner engaged in interstate operations of one or more fleets of apportionable or commercial vehicles may, in lieu of registration of the vehicles under chapter 46.16 RCW, register and license the vehicles of each fleet under this chapter by filing a proportional registration application for each fleet with the department. The nonmotor vehicles of Washington-based fleets which are operated in IRP jurisdictions that require registration of such vehicles may be proportionally registered for operation in those jurisdictions as herein provided. The application shall contain the following information and such other information pertinent to vehicle registration as the department may require:

(a) A description and identification of each vehicle of the fleet. Motor vehicles and nonpower units shall be placed in separate fleets.

(b) If registering under the provisions of the IRP, the registrant shall also indicate member jurisdictions in which registration is desired and furnish such other information as those member jurisdictions require.

(c) An original or renewal application shall also be accompanied by a mileage schedule for each fleet.

(d) The USDOT number issued to the registrant and the USDOT number of the motor carrier responsible for the safety of the vehicle, if different.

(e) A completed Motor Carrier Identification Report (MCS-150) at the time of fleet renewal or at the time of vehicle registration, if required by the department.

(f) The Taxpayer Identification Number of the registrant and the motor carrier responsible for the safety of the vehicle, if different.

(2) Each application shall, at the time and in the manner required by the department, be supported by payment of a fee computed as follows:

(a) Divide the in-jurisdiction miles by the total miles and carry the answer to the nearest thousandth of a percent (three places beyond the decimal, e.g. 10.543%). This factor is known as the prorate percentage.

(b) Determine the total proratable fees and taxes required for each vehicle in the fleet for which registration is requested, based on the regular annual fees and taxes or applicable fees and taxes for the unexpired portion of the registration year under the laws of each jurisdiction for which fees or taxes are to be calculated.

Washington-based nonmotor vehicles shall normally be fully licensed under the provisions of chapter 46.16 RCW. If these vehicles are being operated in jurisdictions that require the registration of such vehicles, the applicable vehicles may be considered as apportionable vehicles for the purpose of registration in those jurisdictions and this state. The prorate percentage for which registration fees and taxes were paid to

such jurisdictions may be credited toward the one hundred percent of registration fees and taxes due this state for full licensing. Applicable fees and taxes for vehicles of Washington-based fleets are those prescribed under RCW 46.16.070, 46.16.085, and 82.38.075, as applicable. If, during the registration period, the lessor of an apportioned vehicle changes and the vehicle remains in the fleet of the registrant, the department shall only charge those fees prescribed for the issuance of new apportioned license plates, validation tabs, and cab card.

(c) Multiply the total, proratable fees or taxes for each motor vehicle by the prorate percentage applicable to the desired jurisdiction and round the results to the nearest cent. Fees and taxes for nonmotor vehicles being prorated will be calculated as indicated in (b) of this subsection.

(d) Add the total fees and taxes determined in (c) of this subsection for each vehicle to the nonproratable fees required under the laws of the jurisdiction for which fees are being calculated. Nonproratable fees required for vehicles of Washington-based fleets are the administrative fee required by RCW 82.38.075, if applicable, and the vehicle transaction fee pursuant to the provisions of RCW 46.87.130.

(e) Add the total fees and taxes determined in (d) of this subsection for each vehicle listed on the application. Assuming the fees and taxes calculated were for Washington, this would be the amount due and payable for the application under the provisions of the Western Compact. Under the provisions of the IRP, the amount due and payable for the application would be the sum of the fees and taxes referred to in (d) of this subsection, calculated for each member jurisdiction in which registration of the fleet is desired.

(3) All assessments for proportional registration fees are due and payable in United States funds on the date presented or mailed to the registrant at the address listed in the proportional registration records of the department. The registrant may petition for reassessment of the fees or taxes due under this section within thirty days of the date of original service as provided for in this chapter. [2003 c 85 § 2; 1997 c 183 § 5; 1991 c 339 § 10; 1990 c 42 § 114; 1987 c 244 § 27.]

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

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

46.87.260 Alteration or forgery of cab card or letter of authority—Penalty. (*Effective July 1, 2004.*) Any person who alters or forges or causes to be altered or forged any cab card, letter of authority, or other temporary authority issued by the department under this chapter or holds or uses a cab card, letter of authority, or other temporary authority, knowing the document to have been altered or forged, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 255; 1987 c 244 § 39.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

46.87.290 Refusal, cancellation of application, cab card—Procedures, penalties. (*Effective July 1, 2004.*) (1) If the department determines at any time that an applicant for proportional registration of a vehicle or a fleet of vehicles is not entitled to a cab card for a vehicle or fleet of vehicles, the

department may refuse to issue the cab card(s) or to license the vehicle or fleet of vehicles and may for like reason, after notice, and in the exercise of discretion, cancel the cab card(s) and license plate(s) already issued. The department shall send the notice of cancellation by first class mail, addressed to the owner of the vehicle in question at the owner's address as it appears in the proportional registration records of the department, and record the transmittal on an affidavit of first class mail. It is then unlawful for any person to remove, drive, or operate the vehicle(s) until a proper certificate(s) of registration or cab card(s) has been issued.

(2) Any person removing, driving, or operating the vehicle(s) after the refusal of the department to issue a cab card(s), certificate(s) of registration, license plate(s), or the revocation or cancellation of the cab card(s), certificate(s) of registration, or license plate(s) is guilty of a gross misdemeanor.

(3) At the discretion of the department, a vehicle that has been moved, driven, or operated in violation of this section may be impounded by the Washington state patrol, county sheriff, or city police in a manner directed for such cases by the chief of the Washington state patrol until proper registration and license plate have been issued. [2003 c 53 § 256; 1997 c 183 § 6; 1987 c 244 § 42.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

46.87.294 Refusal under federal prohibition. The department shall refuse to register a vehicle under this chapter if the registrant or motor carrier responsible for the safety of the vehicle has been prohibited under federal law from operating by the Federal Motor Carrier Safety Administration. [2003 c 85 § 3.]

46.87.296 Suspension, revocation under federal prohibition. The department shall suspend or revoke the registration of a vehicle registered under this chapter if the registrant or motor carrier responsible for the safety of the vehicle has been prohibited under federal law from operating by the Federal Motor Carrier Safety Administration. [2003 c 85 § 4.]

Chapter 46.93 RCW

MOTORSPORTS VEHICLES—DEALER AND MANUFACTURER FRANCHISES

Sections

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46.93.010 Findings—Intent. The legislature finds and declares that the distribution and sale of motorsports vehicles in this state vitally affect the general economy of the state and the public interest and public welfare, that provision for warranty service to motorsports vehicles is of substantial concern to the people of this state, that the maintenance of fair competition among dealers and others is in the public interest, and that the maintenance of strong and sound dealerships is essential to provide continuing and necessary reliable services to the consuming public in this state and to provide stable employment to the citizens of this state. The legislature further finds that there is a substantial disparity in bargaining power between motorsports vehicle manufacturers and their dealers, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate the relationship between motorsports vehicle dealers and motorsports vehicle manufacturers, importers, distributors, and their representatives doing business in this state, not only for the protection of dealers but also for the benefit for the public in assuring the continued availability and servicing of motorsports vehicles sold to the public.

The legislature recognizes it is in the best interest for manufacturers and dealers of motorsports vehicles to conduct business with each other in a fair, efficient, and competitive manner. The legislature declares the public interest is best served by dealers being assured of the ability to manage their business enterprises under a contractual obligation with manufacturers where dealers do not experience unreasonable interference and are assured of the ability to transfer ownership of their business without undue constraints. It is the intent of the legislature to impose a regulatory scheme and to regulate competition in the motorsports vehicle industry to the extent necessary to balance fairness and efficiency. These actions will permit motorsports vehicle dealers to better serve consumers and allow dealers to devote their best competitive efforts and resources to the sale and services of the manufacturer's products to consumers. [2003 c 354 § 1.]

46.93.020 Definitions. The definitions in this section apply throughout this chapter.

- (1) "Department" means the department of licensing.
- (2) "Director" means the director of the department of licensing.
- (3) "Franchise" means one or more agreements, whether oral or written, between a manufacturer and a new motorsports vehicle dealer, under which the new motorsports vehicle dealer is authorized to sell, service, and repair new motorsports vehicles, parts, and accessories under a common name, trade name, trademark, or service mark of the manufacturer. "Franchise" includes an oral or written contract and includes a dealer agreement, either expressed or implied, between a manufacturer and a new motorsports vehicle dealer that purports to fix the legal rights and liabilities

between the parties and under which (a) the dealer is granted the right to purchase and resell motorsports vehicles manufactured, distributed, or imported by the manufacturer; (b) the dealer's business is associated with the trademark, trade name, commercial symbol, or advertisement designating the franchisor or the products distributed by the manufacturer; and (c) the dealer's business relies on the manufacturer for a continued supply of motorsports vehicles, parts, and accessories.

(4) "Good faith" means honesty in fact and fair dealing in the trade as defined and interpreted in RCW 62A.2-103.

(5) "Designated successor" means:

(a) The spouse, biological or adopted child, grandchild, parent, brother, or sister of the owner of a new motorsports vehicle dealership who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motorsports vehicle dealership under the terms of the owner's will or similar document, and if there is no such will or similar document, then under applicable intestate laws;

(b) A qualified person experienced in the business of a new motorsports vehicle dealer who has been nominated by the owner of a new motorsports vehicle dealership as the successor in a written, notarized, and witnessed instrument submitted to the manufacturer; or

(c) In the case of an incapacitated owner of a new motorsports vehicle dealership, the person who has been appointed by a court as the legal representative of the incapacitated owner's property.

(6) "Manufacturer" means a person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused motorsports vehicles or remanufactures motorsports vehicles in whole or in part and further includes the terms:

(a) "Distributor," which means a person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes new and unused motorsports vehicles to vehicle dealers or who maintains factory representatives.

(b) "Factory branch," which means a branch office maintained by a manufacturer for the purpose of selling or offering for sale, motorsports vehicles to a distributor, wholesaler, or vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives, and further includes a sales promotion organization, whether a person, firm, or corporation, that is engaged in promoting the sale of new and unused motorsports vehicles in this state of a particular brand or make to vehicle dealers.

(c) "Factory representative," which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of their motorsports vehicles or for supervising or contracting with their dealers or prospective dealers.

(7) "Motorsports vehicle" means a motorcycle as defined in RCW 46.04.330; a moped as defined in RCW 46.04.304; a motor-driven cycle as defined in RCW 46.04.332; a personal watercraft as defined in RCW 79A.60.010; a snowmobile as defined in RCW 46.10.010; a four-wheel, all-terrain vehicle; and any other motorsports vehicle defined under RCW 46.93.200 by the department that is otherwise not subject to chapter 46.96 RCW.

(8) "New motorsports vehicle dealer" or "dealer" means a person engaged in the business of buying, selling, exchanging, or otherwise dealing in new motorsports vehicles or new and used motorsports vehicles at an established place of business under a franchise, sales and service agreement, or any other contract with a manufacturer of any one or more types of new motorsports vehicles. The term does not include a miscellaneous vehicle dealer as defined in RCW 46.70.011.

(9) "Owner" means a person holding an ownership interest in the business entity operating as a new motorsports vehicle dealer and who is the designated dealer in the new motorsports vehicle franchise agreement.

(10) "Person" means a natural person, partnership, stock company, corporation, trust, agency, or any other legal entity, as well as any individual officers, directors, or other persons in active control of the activities of the entity.

(11) "Place of business" means a permanent, enclosed commercial building, situated within this state, and the real property on which it is located, at which the business of a motorsports vehicle dealer, including the display and repair of motorsports vehicles, may be lawfully conducted in accordance with the terms of all applicable laws and at which the public may contact the motorsports vehicle dealer and employees at all reasonable times.

(12) "Relevant market area" is defined as follows:

(a) If the population in the county in which the existing, proposed new, or relocated dealership is located or is to be located is four hundred thousand or more, the relevant market area is the geographic area within the radius of ten miles around the existing, proposed new, or relocated place of business for the dealership;

(b) If the population in the county in which the existing, proposed new, or relocated dealership is to be located is two hundred thousand or more and less than four hundred thousand, the relevant market area is the geographic area within a radius of twelve miles around the existing, proposed new, or relocated place of business for the dealership;

(c) If the population in the county in which the existing, proposed new, or relocated dealership is to be located is less than two hundred thousand, the relevant market area is the geographic area within a radius of twenty miles around the existing, proposed new, or relocated place of business for the dealership;

(d) In determining population for this definition, the most recent census by the United States Bureau of Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, will be accumulated for all census tracts either wholly or partially within the relevant market area. [2003 c 354 § 2.]

46.93.030 Termination, cancellation, nonrenewal of franchise restricted. Notwithstanding the terms of a franchise and notwithstanding the terms of a waiver, no manufacturer may terminate, cancel, or fail to renew a franchise with a new motorsports vehicle dealer, unless the manufacturer has complied with the notice requirements of RCW 46.93.070 and an administrative law judge has determined, if requested in writing by the dealer within forty-five days of receiving a notice from a manufacturer, after hearing, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted

in good faith regarding the termination, cancellation, or nonrenewal. [2003 c 354 § 3.]

46.93.040 Determination of good cause, good faith—Petition, notice, decision, appeal. A new motorsports vehicle dealer who has received written notification from the manufacturer of the manufacturer's intent to terminate, cancel, or not renew the franchise, may file a petition with the department for a determination as to the existence of good cause and good faith for the termination, cancellation, or nonrenewal of a franchise. The petition must contain a short statement setting forth the reasons for the dealer's objection to the termination, cancellation, or nonrenewal of the franchise. Upon the filing of the petition and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely petition has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The franchise in question continues in full force and effect pending the administrative law judge's decision. If the decision of the administrative law judge terminating, canceling, or failing to renew a dealer's franchise is appealed by a dealer or manufacturer, the franchise continues in full force and effect until all appeals to a superior court or any appellate court have been completed. Nothing in this section precludes a manufacturer or dealer from petitioning the superior court for a stay or other relief pending judicial review. [2003 c 354 § 4.]

46.93.050 Determination of good cause, good faith—Hearing, decision, procedures—Judicial review. (1) The administrative law judge shall conduct the hearing and render a final decision as expeditiously as possible, but in any event not later than one hundred eighty days after a petition is filed. If the termination, cancellation, or nonrenewal is under RCW 46.93.070(2), the administrative law judge shall give the proceeding priority consideration and shall render a final decision not later than sixty days after a petition is filed.

(2) The administrative law judge shall conduct the hearing as an adjudicative proceeding in accordance with the procedures provided for in the Administrative Procedure Act, chapter 34.05 RCW. The administrative law judge shall render the final decision and shall enter a final order. Except as otherwise provided in RCW 34.05.446 and 34.05.449, all hearing costs must be borne on an equal basis by the parties to the hearing.

(3) A party to a hearing under this chapter may be represented by counsel. A party to a hearing aggrieved by the final order of the administrative law judge concerning the termination, cancellation, or nonrenewal of a franchise may seek judicial review of the order in the superior court or appellate court in the manner provided for in RCW 34.05.510 through 34.05.598. A petitioner for judicial review need not exhaust all administrative appeals or administrative review processes as a prerequisite for seeking judicial review under this section. [2003 c 354 § 5.]

46.93.060 Good cause, what constitutes—Burden of proof. (1) Notwithstanding the terms of a franchise or the terms of a waiver, and except as otherwise provided in RCW 46.93.070(2) (a) through (d), good cause exists for termina-

tion, cancellation, or nonrenewal of a franchise when there is a failure by the dealer to comply with a provision of the franchise that is both reasonable and of material significance to the franchise relationship, if the dealer was notified of the failure within one hundred eighty days after the manufacturer first acquired knowledge of the failure, and the dealer did not correct the failure after being requested to do so.

If, however, the failure of the dealer relates to the performance of the dealer in sales, service, or level of customer satisfaction, good cause is the failure of the dealer to comply with reasonable performance standards determined by the manufacturer in accordance with uniformly applied criteria, and:

(a) The dealer was advised, in writing, by the manufacturer of the failure;

(b) The notice under this subsection stated that notice was provided of a failure of performance under this section;

(c) The manufacturer provided the dealer with specific, reasonable goals or reasonable performance standards with which the dealer must comply, together with a suggested timetable or program for attaining those goals or standards, and the dealer was given a reasonable opportunity, for a period of not more than ninety days, to comply with the goals or standards; and

(d) The dealer did not substantially comply with the manufacturer's performance standards during that period and the failure to demonstrate substantial compliance was not due to market or economic factors within the dealer's relevant market area that were beyond the control of the dealer.

(2) The manufacturer has the burden of proof of establishing good cause and good faith for the termination, cancellation, or nonrenewal of the franchise under this section. [2003 c 354 § 6.]

46.93.070 Notice of termination, cancellation, or nonrenewal. Before the termination, cancellation, or nonrenewal of a franchise, the manufacturer shall give written notification to both the department and the dealer. The notice must be by certified mail or personally delivered to the new motorsports vehicle dealer and must state the intention to terminate, cancel, or not renew the franchise, and the reasons for the termination, cancellation, or nonrenewal, and the effective date of the termination, cancellation, or nonrenewal. The notice must be given:

(1) Not less than ninety days, which runs concurrently with the ninety-day period provided in RCW 46.93.060(1)(c), before the effective date of the termination, cancellation, or nonrenewal;

(2) Not less than fifteen days before the effective date of the termination, cancellation, or nonrenewal with respect to any of the following that constitute good cause for termination, cancellation, or nonrenewal:

(a) Insolvency of the dealer or the filing of any petition by or against the dealer under bankruptcy or receivership law;

(b) Failure of the dealer to conduct sales and service operations during customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the dealer;

(c) Conviction of the dealer, or principal operator of the dealership, of a felony punishable by imprisonment; or

(d) Suspension or revocation of a license that the dealer is required to have to operate the dealership where the suspension or revocation is for a period in excess of thirty days;

(3) Not less than one hundred eighty days before the effective date of termination, cancellation, or nonrenewal, where the manufacturer intends to discontinue sale and distribution of the new motorsports vehicle line. [2003 c 354 § 7.]

46.93.080 Payments by manufacturer to dealer for inventory, equipment, etc. (1) Upon the termination, cancellation, or nonrenewal of a franchise by the manufacturer under this chapter, the manufacturer shall pay the dealer, at a minimum:

(a) Dealer cost, less all allowances paid or credited to the dealer by the manufacturer, of unused, undamaged, and unsold new motorsports vehicles in the dealer's inventory that were acquired from the manufacturer or another dealer of the same line make;

(b) Dealer cost for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging, except that in the case of sheet metal, a comparable substitute for original packaging may be used, if the supply, part, or accessory was acquired from the manufacturer or from another dealer ceasing operations as a part of the dealer's initial inventory, as long as the supplies, parts, and accessories appear in the manufacturer's current parts catalog, list, or current offering;

(c) Dealer cost for all unused, undamaged, and unsold inventory, whether vehicles, parts, or accessories, the purchase of which was required by the manufacturer;

(d) The fair market value of each undamaged sign owned by the dealer that bears a common name, trade name, or trademark of the manufacturer, if acquisition of the sign was recommended or required by the manufacturer and the sign is in good and usable condition less reasonable wear and tear, and has not been depreciated by the dealer more than fifty percent of the value of the sign; and

(e) The fair market value of all special tools owned or leased by the dealer that were acquired from the manufacturer or persons approved by the manufacturer, and that were required by the manufacturer, and are in good and usable condition, less reasonable wear and tear. However, if the tools are leased by the dealer, the manufacturer shall pay the dealer such amounts that are required by the lessor to terminate the lease under the terms of the lease agreement.

(2) To the extent the franchise agreement provides for payment or reimbursement to the dealer in excess of that specified in this section, the provisions of the franchise agreement will control.

(3) The manufacturer shall pay the dealer the sums specified in subsection (1) of this section within ninety days after the tender of the property, if the dealer has clear title to the property and is in a position to convey that title to the manufacturer. [2003 c 354 § 8.]

46.93.090 Mitigation of damages. RCW 46.93.030 through 46.93.080 do not relieve a dealer from the obligation to mitigate the dealer's damages upon termination, cancellation, or nonrenewal of the franchise. [2003 c 354 § 9.]

46.93.100 Warranty work. (1) Each manufacturer shall specify in its franchise agreement, or in a separate written agreement, with each of its dealers licensed in this state, the dealer's obligation to perform warranty work or service on the manufacturer's products. Each manufacturer shall provide each of its dealers with a schedule of compensation to be paid to the dealer for any warranty work or service, including parts, labor, and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products, and for work on and preparation of motorsports vehicles received from the manufacturer. The compensation may not be less than the rates reasonably charged by the dealer for like services and parts to retail customers. The compensation may not be reduced by the manufacturer for any reason or made conditional on an activity outside the performance of warranty work.

(2) All claims for warranty work for parts and labor made by dealers under this section must be paid by the manufacturer within thirty days after approval, and must be approved or denied within thirty days of receipt by the manufacturer. Denial of a claim must be in writing with the specific grounds for denial. The manufacturer may audit claims for warranty work and charge the dealer for any unsubstantiated, incorrect, or false claims for a period of one year after payment. However, the manufacturer may audit and charge the dealer for any fraudulent claims during any period for which an action for fraud may be commenced under applicable state law.

(3) All claims submitted by dealers on the forms and in the manner specified by the manufacturer must be either approved or disapproved within thirty days after their receipt. The manufacturer shall notify the dealer in writing of a disapproved claim, and shall set forth the reasons why the claim was not approved. A claim not specifically disapproved in writing within thirty days after receipt is approved, and the manufacturer is required to pay that claim within thirty days of receipt of the claim. [2003 c 354 § 10.]

46.93.110 Designated successor to franchise ownership. (1) Notwithstanding the terms of a franchise, an owner may appoint a designated successor to succeed to the ownership of the dealer franchise upon the owner's death or incapacity.

(2) Notwithstanding the terms of a franchise, a designated successor of a deceased or incapacitated owner of a dealer franchise may succeed to the ownership interest of the owner under the existing franchise, if:

(a) In the case of a designated successor who meets the definition of a designated successor under RCW 46.93.020(5), but who is not experienced in the business of a new motorsports vehicle dealer, the person will employ an individual who is qualified and experienced in the business of a new motorsports vehicle dealer to help manage the day-to-day operations of the dealership; or in the case of a designated successor who meets the definition of a designated successor under RCW 46.93.020(5) (b) or (c), the person is qualified and experienced in the business of a new motorsports vehicle dealer and meets the normal, reasonable, and uniformly applied standards for grant of an application as a dealer by the manufacturer; and

(b) The designated successor furnishes written notice to the manufacturer of his or her intention to succeed to the ownership of the dealership within sixty days after the owner's death or incapacity; and

(c) The designated successor agrees to be bound by all terms and conditions of the franchise.

(3) The manufacturer may request, and the designated successor shall promptly provide, such personal and financial information as is reasonably necessary to determine whether the succession should be honored.

(4) A manufacturer may refuse to honor the succession to the ownership of a dealer franchise by a designated successor if the manufacturer establishes that good cause exists for its refusal to honor the succession. If the designated successor of a deceased or incapacitated owner of a dealer franchise fails to meet the requirements set forth in subsection (2)(a), (b), and (c) of this section, good cause for refusing to honor the succession is presumed to exist. If a manufacturer believes that good cause exists for refusing to honor the succession to the ownership of a dealer franchise by a designated successor, the manufacturer shall serve written notice on the designated successor and on the department of its refusal to honor the succession no earlier than sixty days from the date the notice is served. The notice must be served not later than sixty days after the manufacturer's receipt of:

(a) Notice of the designated successor's intent to succeed to the ownership interest of the dealer's franchise; or

(b) Any personal or financial information requested by the manufacturer.

(5) The notice in subsection (4) of this section must state the specific grounds for the refusal to honor the succession. If the notice of refusal is not timely and properly served, the designated successor may continue the franchise in full force and effect, subject to termination only as otherwise provided under this chapter.

(6) Within twenty days after receipt of the notice, or within twenty days after the end of any appeal procedure provided by the manufacturer, whichever is greater, the designated successor may file a petition with the department protesting the refusal to honor the succession. The petition must contain a short statement setting forth the reasons for the designated successor's protest. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The manufacturer may not terminate or otherwise discontinue the existing franchise until the administrative law judge has held a hearing and has determined that there is good cause for refusing to honor the succession. If an appeal is taken, the manufacturer may not terminate or discontinue the franchise until all appeals to a superior court or any appellate court have been completed. Nothing in this section precludes a manufacturer or dealer from petitioning the superior court for a stay or other relief pending judicial review.

(7) The manufacturer has the burden of proof to show that good cause exists for the refusal to honor the succession.

(8) The administrative law judge shall conduct the hearing and render a final decision as expeditiously as possible, but in any event not later than one hundred eighty days after a protest is filed.

(9) The administrative law judge shall conduct a hearing concerning the refusal to the succession as provided in RCW 46.93.050(2), and all hearing costs must be borne as provided in that subsection. A party to such a hearing aggrieved by the final order of the administrative law judge may appeal as provided and allowed in RCW 46.93.050(3).

(10) This section does not preclude the owner of a dealer franchise from designating any person as his or her successor by a written, notarized, and witnessed instrument filed with the manufacturer. In the event of a conflict between this section and such a written instrument that has not been revoked by written notice from the owner to the manufacturer, the written instrument governs. [2003 c 354 § 11.]

46.93.120 Relevant market area—New or relocated dealerships, notice of. Notwithstanding the terms of a franchise and notwithstanding the terms of a waiver, if a manufacturer intends or proposes to enter into a franchise to establish an additional dealer or to relocate an existing dealer within or into a relevant market area in which the same line make of motorsports vehicle is then represented, the manufacturer shall provide at least ten days advance written notice to the department and to each dealer of the same line make in the relevant market area, of the manufacturer's intention to establish an additional dealer or to relocate an existing dealer within or into the relevant market area. The notice must be sent by certified mail to each such party and include the following information:

- (1) The specific location at which the additional or relocated dealer will be established;
- (2) The date on or after which the additional or relocated dealer intends to commence business at the proposed location;
- (3) The identity of all dealers who are franchised to sell the same line make vehicles as the proposed dealer and who have licensed locations within the relevant market area;
- (4) The names and addresses, if available, of the owners of and principal investors in the proposed additional or relocated dealership; and
- (5) The specific grounds or reasons for the proposed establishment of an additional dealer or relocation of an existing dealer. [2003 c 354 § 12.]

46.93.130 Protest of new or relocated dealership—Hearing—Arbitration. (1) Within thirty days after receipt of the notice under RCW 46.93.120, or within thirty days after the end of an appeal procedure provided by the manufacturer, whichever is greater, a dealer notified or entitled to notice may file a petition with the department protesting the proposed establishment or relocation. The petition must contain a short statement setting forth the reasons for the dealer's objection to the proposed establishment or relocation. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The manufacturer may not establish or relocate the dealer until the administrative law judge has held a hearing and administrative proceeding under the Administrative Procedure Act, chapter 34.05 RCW, and has determined that there is good cause for permitting the pro-

posed establishment or relocation. When more than one protest is filed against the establishment or relocation of the same dealer, the administrative law judge shall consolidate the hearings to expedite disposition of the matter.

(2) If a manufacturer provides in the franchise agreement or by written statement distributed and provided to its dealers for arbitration under the Washington Arbitration Act, chapter 7.04 RCW, as a mechanism for resolving disputes relating to the establishment of an additional new motorsports vehicle dealer or the relocation of a new motorsports vehicle dealer, subsection (1) of this section and RCW 46.93.140 will take precedence and the arbitration provision in the franchise agreement or a written statement is void, unless the manufacturer and dealer agree to use arbitration.

(3) If the manufacturer and dealer agree to use arbitration, the dispute must be referred for arbitration to such arbitrator as may be agreed upon by the parties to the dispute. The thirty-day period for filing a protest under subsection (1) of this section still applies except the protesting dealer shall file the protest with the manufacturer. If the parties cannot agree upon a single arbitrator within thirty days from the date the protest is filed, the protesting dealer will select an arbitrator, the manufacturer will select an arbitrator, and the two arbitrators will then select a third arbitrator. If a third arbitrator is not agreed upon within thirty days, any party may apply to the superior court, and the judge of the superior court having jurisdiction will appoint the third arbitrator. The protesting dealer will pay the arbitrator selected by him or her, and the manufacturer will pay the arbitrator it selected. The expense of the third arbitrator and all other expenses of arbitration will be shared equally by the parties. Attorneys' fees and fees paid to expert witnesses are not expenses of arbitration and will be paid by the person incurring them.

(4) Notwithstanding the terms of a franchise or written statement of the manufacturer and notwithstanding the terms of a waiver, the arbitration will take place in this state in the county where the protesting dealer has its principal place of business. RCW 46.93.140 applies to a determination made by the arbitrator or arbitrators in determining whether good cause exists for permitting the proposed establishment or relocation of a dealer, and the manufacturer has the burden of proof to establish that good cause exists for permitting the proposed establishment or relocation. After a hearing has been held, the arbitrator or arbitrators shall render a decision as expeditiously as possible, but in any event not later than one hundred twenty days from the date the arbitrator or arbitrators are selected or appointed. The manufacturer may not establish or relocate the new motorsports vehicle dealer until the arbitration hearing has been held and the arbitrator or arbitrators have determined that there is good cause for permitting the proposed establishment or relocation and any judicial appeals under chapter 7.04 RCW have been completed. The written decision of the arbitrator is binding upon the parties unless modified, corrected, or vacated under the Washington Arbitration Act. Any party may appeal the decision of the arbitrator or arbitrators under the Washington Arbitration Act, chapter 7.04 RCW. [2003 c 354 § 13.]

46.93.140 Factors considered by administrative law judge. In determining whether good cause exists for permitting the proposed establishment or relocation of a dealer of

the same line make, the factors that the administrative law judge shall consider must include, but are not limited to the following:

(1) The extent, nature, and permanency of the investment of both the existing dealers of the same line make in the relevant market area and the proposed additional or relocating dealer, including obligations reasonably incurred by the existing dealers to perform their obligations under their respective franchises;

(2) The growth or decline in population and new motor-vehicle registrations during the past five years in the relevant market area;

(3) The effect on the consuming public;

(4) The effect on the existing dealers in the relevant market area, including any adverse financial impact;

(5) The reasonably expected or anticipated vehicle market for the relevant market area, including demographic factors such as age of population, income, education, size class preference, product popularity, retail lease transactions, or other factors affecting sales to consumers in the relevant market area;

(6) Whether it is injurious or beneficial to the public welfare for an additional dealership to be established;

(7) Whether the dealers of the same line make in the relevant market area are providing adequate competition and convenient customer care for the motor-vehicles of the same line make in the relevant market area, including the adequacy of motor-vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel;

(8) Whether the establishment of an additional dealer would increase competition and be in the public interest;

(9) Whether the manufacturer is motivated principally by good faith to establish an additional or new dealer and not by noneconomic considerations;

(10) Whether the manufacturer has denied its existing dealers of the same line make the opportunity for reasonable growth, market expansion, or relocation;

(11) Whether the protesting dealer or dealers are in substantial compliance with their dealer agreements or franchises; and

(12) Whether the manufacturer has complied with the requirements of RCW 46.93.120 and 46.93.130. [2003 c 354 § 14.]

46.93.150 Hearing—Procedures, costs, appeal. (1)

The manufacturer has the burden of proof to establish that good cause exists for permitting the proposed establishment or relocation.

(2) The administrative law judge shall conduct any hearing as provided in RCW 46.93.050(2) and all hearing costs will be borne as provided in that subsection. The administrative law judge shall render the final decision as expeditiously as possible, but in any event not later than one hundred twenty days after a protest is filed. If more than one protest is filed, the one hundred twenty days commences to run from the date the last protest is filed. A party to such a hearing aggrieved by the final order of the administrative law judge may appeal as provided and allowed in RCW 46.93.050(3). [2003 c 354 § 15.]

46.93.160 Relocation requirements—Exceptions. RCW 46.93.120 through 46.93.150 do not apply:

(1) To the sale or transfer of the ownership or assets of an existing dealer where the transferee proposes to engage in business representing the same line make at the same location or within two miles of that location;

(2) To the relocation of an existing dealer within the dealer's relevant market area, if the relocation is not at a site within eight miles of any dealer of the same line make;

(3) If the proposed dealer is to be established at or within two miles of a location at which a former dealer of the same line make had ceased operating within the previous twenty-four months;

(4) Where the proposed relocation is two miles or less from the existing location of the relocating dealer; or

(5) Where the proposed relocation is to be further away from all other existing dealers of the same line make in the relevant market area. [2003 c 354 § 16.]

46.93.170 Unfair practices. (1) Notwithstanding the terms of a franchise agreement, a manufacturer, distributor, factory branch, or factory representative, or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a manufacturer, distributor, factory branch, or factory representative, shall not:

(a) Discriminate between dealers by selling or offering to sell a like motor-vehicle to one dealer at a lower actual price than the actual price offered to another dealer for the same model similarly equipped;

(b) Discriminate between dealers by selling or offering to sell parts or accessories to one dealer at a lower actual price than the actual price offered to another dealer;

(c) Discriminate between dealers by using a promotion plan, marketing plan, or other similar device that results in a lower actual price on vehicles, parts, or accessories being charged to one dealer over another dealer;

(d) Discriminate between dealers by adopting a method, or changing an existing method, for the allocation, scheduling, or delivery of new motor-vehicles, parts, or accessories to its dealers that is not fair, reasonable, and equitable. Upon the request of a dealer, a manufacturer shall disclose in writing to the dealer the method by which new motor-vehicles, parts, and accessories are allocated, scheduled, or delivered to its dealers handling the same line or make of vehicles;

(e) Give preferential treatment to some dealers over others by refusing or failing to deliver, in reasonable quantities and within a reasonable time after receipt of an order, to a dealer holding a franchise for a line or make of motor-vehicles sold or distributed by the manufacturer, a new vehicle, parts, or accessories, if the vehicle, parts, or accessories are being delivered to other dealers, or require a dealer to purchase unreasonable advertising displays or other materials, or unreasonably require a dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of vehicles;

(f) Compete with a dealer by acting in the capacity of a dealer, or by owning, operating, or controlling, whether directly or indirectly, a dealership in this state. It is not, however, a violation of this subsection for:

(i) A manufacturer to own or operate a dealership for a temporary period, not to exceed two years, during the transition from one owner of the dealership to another where the dealership was previously owned by a franchised dealer and is currently for sale to any qualified independent person at a fair and reasonable price. The temporary operation may be extended for one twelve-month period on petition of the temporary operator to the department. The matter will be handled as an adjudicative proceeding under chapter 34.05 RCW. A dealer who is a franchisee of the petitioning manufacturer or distributor may intervene and participate in a proceeding under this subsection (1)(f)(i). The temporary operator has the burden of proof to show justification for the extension and a good faith effort to sell the dealership to an independent person at a fair and reasonable price;

(ii) A manufacturer to own or operate a dealership in conjunction with an independent person in a bona fide business relationship for the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been underrepresented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, and where the independent person (A) has made a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide written agreement with the manufacturer, distributor, factory branch, or factory representative under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions. The manufacturer has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions;

(iii) A manufacturer to own or operate a dealership in conjunction with an independent person in a bona fide business relationship where the independent person (A) has made a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide written agreement with the manufacturer under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions. The manufacture [manufacturer] has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions. The number of dealerships operated under this subsection (1)(f)(iii) may not exceed four percent rounded up to the nearest whole number of a manufacturer's total of dealer franchises in this state;

(iv) A manufacturer to own, operate, or control a dealership trading exclusively in a single line make of the manufacturer if (A) the manufacturer does not own, directly or indirectly, in the aggregate, in excess of forty-five percent of the total ownership interest in the dealership; (B) at the time the manufacturer first acquires ownership or assumes operation or control of any such dealership, the distance between any dealership thus owned, operated, or controlled and the nearest dealership trading in the same line make of vehicle and in which the manufacturer has no ownership or control com-

plies with the applicable provisions in the relevant market area sections of this chapter; (C) all of the manufacturer's franchise agreements confer rights on the dealer of that line make to develop and operate within a defined geographic territory or area, as many dealership facilities as the dealer and the manufacturer agree are appropriate; and (D) the manufacturer had no more than four new motorsports vehicle dealers of that manufacturer's line make in this state, and at least half of those dealers owned and operated two or more dealership facilities in the geographic territory or area covered by their franchise agreements with the manufacturer;

(g) Compete with a dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the manufacturer's new motorsports vehicle warranty and extended warranty. Nothing in this subsection (1)(g), however, prohibits a manufacturer from owning or operating a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the manufacturer;

(h) Use confidential or proprietary information obtained from a dealer to unfairly compete with the dealer without the prior written consent of the dealer. For purposes of this subsection (1)(h), "confidential or proprietary information" means trade secrets as defined in RCW 19.108.010, business plans, marketing plans or strategies, customer lists, contracts, sales data, revenues, or other financial information;

(i) Coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to accept, buy, or order any motorsports vehicle, part, or accessory, or any other commodity or service not voluntarily ordered, or requested, or to buy, order, or pay anything of value for such items in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;

(j) Coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to enter into any agreement that violates this chapter;

(k) Require a change in capital structure or means of financing for the dealership if the dealer at all times meets the reasonable, written, and uniformly applied capital standards determined by the manufacturer;

(l) Prevent or attempt to prevent a dealer from making reasonable changes in the capital structure of a dealership or the means by which the dealership is financed if the dealer meets the reasonable, written, and uniformly applied capital requirements determined by the manufacturer;

(m) Unreasonably require the dealer to change the location or require any substantial alterations to the place of business;

(n) Condition a renewal or extension of the franchise on the dealer's substantial renovation of the existing place of business or on the construction, purchase, acquisition, or release of a new place of business unless written notice is first provided one hundred eighty days before the date of renewal or extension and the manufacturer demonstrates the reasonableness of the requested actions. The manufacturer shall agree to supply the dealer with an adequate quantity of motorsports vehicles, parts, and accessories to meet the sales level necessary to support the overhead resulting from substantial construction, acquisition, or lease of a new place of business;

(o) Coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the vehicle as advertised by the manufacturer, except items that have been voluntarily requested or ordered by the dealer, and except items required by law;

(p) Fail to hold harmless and indemnify a dealer against losses, including lawsuits and court costs, arising from: (i) The manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the manufacturer on the manufacture or performance of a motorsports vehicle without negligence on the part of the dealer; (ii) damage to merchandise in transit where the manufacturer specifies the carrier; (iii) the manufacturer's failure to jointly defend product liability suits concerning the motorsports vehicle, part, or accessory provided to the dealer; or (iv) any other act performed by the manufacturer;

(q) Unfairly prevent or attempt to prevent a dealer from receiving reasonable compensation for the value of a motorsports vehicle;

(r) Fail to pay to a dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the manufacturer on grounds that a new motorsports vehicle, or a prior year's model, is in the dealer's inventory at the time of introduction of new model motorsports vehicles;

(s) Deny a dealer the right of free association with any other dealer for any lawful purpose;

(t) Charge increased prices without having given written notice to the dealer at least fifteen days before the effective date of the price increases;

(u) Permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than their franchised dealers;

(v) Require or coerce a dealer to sell, assign, or transfer a retail sales installment contract, or require the dealer to act as an agent for a manufacturer, in the securing of a promissory note, a security agreement given in connection with the sale of a motorsports vehicle, or securing of a policy of insurance for a motorsports vehicle. The manufacturer may not condition delivery of any motorsports vehicle, parts, or accessories upon the dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies;

(w) Require or coerce a dealer to grant a manufacturer a right of first refusal or other preference to purchase the dealer's franchise or place of business, or both.

(2) Subsections (1)(a), (b), and (c) of this section do not apply to sales to a dealer: (a) For resale to a federal, state, or local government agency; (b) where the motorsports vehicles will be sold or donated for use in a program of driver's education; (c) where the sale is made under a manufacturer's bona fide promotional program offering sales incentives or rebates; (d) where the sale of parts or accessories is under a manufacturer's bona fide quantity discount program; or (e) where the sale is made under a manufacturer's bona fide fleet vehicle discount program. For purposes of this subsection, "fleet" means a group of fifteen or more new motorsports vehicles purchased or leased by a dealer at one time under a single purchase or lease agreement for use as part of a fleet,

and where the dealer has been assigned a fleet identifier code by the department.

(3) The following definitions apply to this section:

(a) "Actual price" means the price to be paid by the dealer less any incentive paid by the manufacturer, whether paid to the dealer or the ultimate purchaser of the motorsports vehicle.

(b) "Control" or "controlling" means (i) the possession of, title to, or control of ten percent or more of the voting equity interest in a person, whether directly or indirectly through a fiduciary, agent, or other intermediary, or (ii) the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, through director control, by contract, or otherwise, except as expressly provided under the franchise agreement.

(c) "Operate" means to manage a dealership, whether directly or indirectly.

(d) "Own" or "ownership" means to hold the beneficial ownership of one percent or more of any class of equity interest in a dealership, whether the interest is that of a shareholder, partner, limited liability company member, or otherwise. To hold an ownership interest means to have possession of, title to, or control of the ownership interest, whether directly or indirectly through a fiduciary, agent, or other intermediary.

(4) A violation of this section is deemed to affect the public interest and constitutes an unlawful and unfair practice under chapter 19.86 RCW. A person aggrieved by an alleged violation of this section may petition the department to have the matter handled as an adjudicative proceeding under chapter 34.05 RCW. [2003 c 354 § 17.]

46.93.180 Sale, transfer, or exchange of franchise.

(1) Notwithstanding the terms of a franchise, a manufacturer may not unreasonably withhold consent to the sale, transfer, or exchange of a franchise to a qualified buyer who meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a dealer or is capable of being approved by the department as a dealer in this state. A manufacturer's failure to respond in writing to a request for consent under this subsection within sixty days after receipt of a written request on the forms, if any, generally used by the manufacturer containing the information and reasonable promises required by a manufacturer, is deemed to be consent to the request. A manufacturer may request, and, if so requested, the applicant for a franchise (a) shall promptly provide such personal and financial information as is reasonably necessary to determine whether the sale, transfer, or exchange should be approved, and (b) shall agree to be bound by all reasonable terms and conditions of the franchise.

(2) If a manufacturer refuses to approve the sale, transfer, or exchange of a franchise, the manufacturer shall serve written notice on the applicant, the transferring, selling, or exchanging dealer, and the department, of its refusal to approve the transfer of the franchise no later than sixty days after the date the manufacturer receives the written request from the dealer. If the manufacturer has requested personal or financial information from the applicant under subsection (1) of this section, the notice must be served not later than

sixty days after the receipt of all of such documents. Service of all notices under this section must be made by personal service or by certified mail, return receipt requested.

(3) The notice in subsection (2) of this section must state the specific grounds for the refusal to approve the sale, transfer, or exchange of the franchise.

(4) Within twenty days after receipt of the notice of refusal to approve the sale, transfer, or exchange of the franchise by the transferring dealer, the dealer may file a petition with the department to protest the refusal to approve the sale, transfer, or exchange. The petition must contain a short statement setting forth the reasons for the dealer's protest. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed, and the department shall arrange for a hearing with an administrative law judge as the presiding officer to determine if the manufacturer unreasonably withheld consent to the sale, transfer, or exchange of the franchise.

(5) In determining whether the manufacturer unreasonably withheld its approval to the sale, transfer, or exchange, the manufacturer has the burden of proof that it acted reasonably. A manufacturer's refusal to accept or approve a proposed buyer who otherwise meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a new dealer, or who otherwise is capable of operating as a dealer in this state, is presumed to be unreasonable.

(6) The administrative law judge shall conduct a hearing and render a final decision as expeditiously as possible, but in any event not later than one hundred twenty days after a protest is filed. Only the selling, transferring, or exchanging dealer and the manufacturer may be parties to the hearing.

(7) The administrative law judge shall conduct any hearing as provided in RCW 46.93.050(2), and all hearing costs must be borne as provided in that subsection. Only the manufacturer and the selling, transferring, or exchanging dealer may appeal the final order of the administrative law judge to the superior court or the appellate court as provided in the Administrative Procedure Act, chapter 34.05 RCW. [2003 c 354 § 18.]

46.93.190 Petition and hearing filing fees, costs, security. The department shall determine and establish the amount of the filing fees required in RCW 46.93.040, 46.93.110, 46.93.130, and 46.93.180. The fees must be set in accordance with RCW 43.24.086.

The department may also require the petitioning or protesting party to give security, in such sum as the department deems proper but not to exceed one thousand dollars, for the payment of such costs as may be incurred in conducting the hearing as required under this chapter. The security may be given in the form of a bond or stipulation or other undertaking with one or more sureties.

At the conclusion of the hearing, the department shall assess, in equal shares, each of the parties to the hearing for the cost of conducting the hearing. Upon receipt of payment of the costs, the department shall refund and return to the petitioning party any excess funds initially posted by the party as security for the hearing costs. If the petitioning party provided security in the form of a bond or other undertaking

with one or more sureties, the bond or other undertaking will then be exonerated and the surety or sureties under it discharged. [2003 c 354 § 19.]

46.93.200 Department defining additional motor-sports vehicles. The department shall determine through rule making under the Administrative Procedure Act any motor-sports vehicles not already defined in RCW 46.93.020(7) as of July 27, 2003, that are manufactured after July 27, 2003. [2003 c 354 § 20.]

46.93.900 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [2003 c 354 § 21.]

46.93.901 Captions not law. Captions used in this chapter are not part of the law. [2003 c 354 § 22.]

Chapter 46.94 RCW

MOTORCYCLE DEALERS' FRANCHISE ACT

Sections

46.94.001 through 46.94.900 Repealed.

46.94.001 through 46.94.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 46.96 RCW

MANUFACTURERS' AND DEALERS' FRANCHISE AGREEMENTS

Sections

46.96.020	Definitions.
46.96.105	Warranty work.
46.96.185	Unfair practices.
46.96.220	Right of first refusal.
46.96.230	Manufacturer incentive programs.
46.96.240	Venue.

46.96.020 Definitions. In addition to the definitions contained in RCW 46.70.011, which are incorporated by reference into this chapter, the definitions set forth in this section apply only for the purposes of this chapter.

(1) A "new motor vehicle" is a vehicle that has not been titled by a state and ownership of which may be transferred on a manufacturer's statement of origin (MSO).

(2) "New motor vehicle dealer" means a motor vehicle dealer engaged in the business of buying, selling, exchanging, or otherwise dealing in new motor vehicles or new and used motor vehicles at an established place of business, under a franchise, sales and service agreement, or contract with the manufacturer of the new motor vehicles. However, the term "new motor vehicle dealer" does not include a miscellaneous vehicle dealer as defined in RCW 46.70.011(3)(c) or a motorcycle dealer as defined in *chapter 46.94 RCW.

(3) "Franchise" means one or more agreements, whether oral or written, between a manufacturer and a new motor vehicle dealer, under which the new motor vehicle dealer is authorized to sell, service, and repair new motor vehicles,

parts, and accessories under a common name, trade name, trademark, or service mark of the manufacturer.

"Franchise" includes an oral or written contract and includes a dealer agreement, either expressed or implied, between a manufacturer and a new motor vehicle dealer that purports to fix the legal rights and liabilities between the parties and under which (a) the dealer is granted the right to purchase and resell motor vehicles manufactured, distributed, or imported by the manufacturer; (b) the dealer's business is associated with the trademark, trade name, commercial symbol, or advertisement designating the franchisor or the products distributed by the manufacturer; and (c) the dealer's business relies on the manufacturer for a continued supply of motor vehicles, parts, and accessories.

(4) "Good faith" means honesty in fact and fair dealing in the trade as defined and interpreted in RCW 62A.2-103.

(5) "Designated successor" means:

(a) The spouse, biological or adopted child, stepchild, grandchild, parent, brother, or sister of the owner of a new motor vehicle dealership who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner's will or similar document, and if there is no such will or similar document, then under applicable intestate laws;

(b) A qualified person experienced in the business of a new motor vehicle dealer who has been nominated by the owner of a new motor vehicle dealership as the successor in a written, notarized, and witnessed instrument submitted to the manufacturer; or

(c) In the case of an incapacitated owner of a new motor vehicle dealership, the person who has been appointed by a court as the legal representative of the incapacitated owner's property.

(6) "Owner" means a person holding an ownership interest in the business entity operating as a new motor vehicle dealer and who is the designated dealer in the new motor vehicle franchise agreement.

(7) "Person" means every natural person, partnership, corporation, association, trust, estate, or any other legal entity. [2003 c 21 § 1; 1989 c 415 § 2.]

***Reviser's note:** Chapter 46.94 RCW was repealed by 2003 c 354 § 24. Cf. chapter 46.93 RCW.

Captions not law—2003 c 21: "Captions used in this act are not part of the law." [2003 c 21 § 7.]

46.96.105 Warranty work. (1) Each manufacturer shall specify in its franchise agreement, or in a separate written agreement, with each of its dealers licensed in this state, the dealer's obligation to perform warranty work or service on the manufacturer's products. Each manufacturer shall provide each of its dealers with a schedule of compensation to be paid to the dealer for any warranty work or service, including parts, labor, and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products.

(2) All claims for warranty work for parts and labor made by dealers under this section shall be submitted to the manufacturer within one year of the date the work was performed. All claims submitted must be paid by the manufacturer within thirty days following receipt, provided the claim has been approved by the manufacturer. The manufacturer

has the right to audit claims for warranty work and to charge the dealer for any unsubstantiated, incorrect, or false claims for a period of one year following payment. However, the manufacturer may audit and charge the dealer for any fraudulent claims during any period for which an action for fraud may be commenced under applicable state law.

(3) All claims submitted by dealers on the forms and in the manner specified by the manufacturer shall be either approved or disapproved within thirty days following their receipt. The manufacturer shall notify the dealer in writing of any disapproved claim, and shall set forth the reasons why the claim was not approved. Any claim not specifically disapproved in writing within thirty days following receipt is approved, and the manufacturer is required to pay that claim within thirty days of receipt of the claim. [2003 c 21 § 2; 1998 c 298 § 1.]

Captions not law—2003 c 21: See note following RCW 46.96.020.

Severability—1998 c 298: See note following RCW 19.118.021.

46.96.185 Unfair practices. (1) Notwithstanding the terms of a franchise agreement, a manufacturer, distributor, factory branch, or factory representative, or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a manufacturer, distributor, factory branch, or factory representative, shall not:

(a) Discriminate between new motor vehicle dealers by selling or offering to sell a like vehicle to one dealer at a lower actual price than the actual price offered to another dealer for the same model similarly equipped;

(b) Discriminate between new motor vehicle dealers by selling or offering to sell parts or accessories to one dealer at a lower actual price than the actual price offered to another dealer;

(c) Discriminate between new motor vehicle dealers by using a promotion plan, marketing plan, or other similar device that results in a lower actual price on vehicles, parts, or accessories being charged to one dealer over another dealer;

(d) Discriminate between new motor vehicle dealers by adopting a method, or changing an existing method, for the allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to its dealers that is not fair, reasonable, and equitable. Upon the request of a dealer, a manufacturer, distributor, factory branch, or factory representative shall disclose in writing to the dealer the method by which new motor vehicles, parts, and accessories are allocated, scheduled, or delivered to its dealers handling the same line or make of vehicles;

(e) Give preferential treatment to some new motor vehicle dealers over others by refusing or failing to deliver, in reasonable quantities and within a reasonable time after receipt of an order, to a dealer holding a franchise for a line or make of motor vehicles sold or distributed by the manufacturer, distributor, factory branch, or factory representative, a new vehicle, parts, or accessories, if the vehicle, parts, or accessories are being delivered to other dealers, or require a dealer to purchase unreasonable advertising displays or other materials, or unreasonably require a dealer to remodel or renovate

existing facilities as a prerequisite to receiving a model or series of vehicles;

(f) Compete with a new motor vehicle dealer by acting in the capacity of a new motor vehicle dealer, or by owning, operating, or controlling, whether directly or indirectly, a motor vehicle dealership in this state. It is not, however, a violation of this subsection for:

(i) A manufacturer, distributor, factory branch, or factory representative to own or operate a dealership for a temporary period, not to exceed two years, during the transition from one owner of the dealership to another where the dealership was previously owned by a franchised dealer and is currently for sale to any qualified independent person at a fair and reasonable price. The temporary operation may be extended for one twelve-month period on petition of the temporary operator to the department. The matter will be handled as an adjudicative proceeding under chapter 34.05 RCW. A dealer who is a franchisee of the petitioning manufacturer or distributor may intervene and participate in a proceeding under this subsection (1)(f)(i). The temporary operator has the burden of proof to show justification for the extension and a good faith effort to sell the dealership to an independent person at a fair and reasonable price;

(ii) A manufacturer, distributor, factory branch, or factory representative to own or operate a dealership in conjunction with an independent person in a bona fide business relationship for the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been underrepresented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, and where the independent person: (A) Has made, or within a period of two years from the date of commencement of operation will have made, a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide written agreement with the manufacturer, distributor, factory branch, or factory representative under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions. The manufacturer, distributor, factory branch, or factory representative has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions. Nothing in this subsection (1)(f)(ii) relieves a manufacturer, distributor, factory branch, or factory representative from complying with RCW 46.96.185(1) (a) through (e);

(iii) A manufacturer, distributor, factory branch, or factory representative to own or operate a dealership in conjunction with an independent person in a bona fide business relationship where the independent person: (A) Has made, or within a period of two years from the date of commencement of operation will have made, a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide written agreement with the manufacturer, distributor, factory branch, or factory representative under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time

and under reasonable terms and conditions. The manufacturer, distributor, factory branch, or factory representative has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions. The number of dealerships operated under this subsection (1)(f)(iii) may not exceed four percent rounded up to the nearest whole number of a manufacturer's total of new motor vehicle dealer franchises in this state. Nothing in this subsection (1)(f)(iii) relieves a manufacturer, distributor, factory branch, or factory representative from complying with RCW 46.96.185(1) (a) through (e);

(iv) A truck manufacturer to own, operate, or control a new motor vehicle dealership that sells only trucks of that manufacturer's line make with a gross vehicle weight rating of 12,500 pounds or more, and the truck manufacturer has been continuously engaged in the retail sale of the trucks at least since January 1, 1993; or

(v) A manufacturer to own, operate, or control a new motor vehicle dealership trading exclusively in a single line make of the manufacturer if (A) the manufacturer does not own, directly or indirectly, in the aggregate, in excess of forty-five percent of the total ownership interest in the dealership, (B) at the time the manufacturer first acquires ownership or assumes operation or control of any such dealership, the distance between any dealership thus owned, operated, or controlled and the nearest new motor vehicle dealership trading in the same line make of vehicle and in which the manufacturer has no ownership or control is not less than fifteen miles and complies with the applicable provisions in the relevant market area sections of this chapter, (C) all of the manufacturer's franchise agreements confer rights on the dealer of that line make to develop and operate within a defined geographic territory or area, as many dealership facilities as the dealer and the manufacturer agree are appropriate, and (D) as of January 1, 2000, the manufacturer had no more than four new motor vehicle dealers of that manufacturer's line make in this state, and at least half of those dealers owned and operated two or more dealership facilities in the geographic territory or area covered by their franchise agreements with the manufacturer;

(g) Compete with a new motor vehicle dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motor vehicles under the manufacturer's new car warranty and extended warranty. Nothing in this subsection (1)(g), however, prohibits a manufacturer, distributor, factory branch, or factory representative from owning or operating a service facility for the purpose of providing or performing maintenance, repair, or service work on motor vehicles that are owned by the manufacturer, distributor, factory branch, or factory representative;

(h) Use confidential or proprietary information obtained from a new motor vehicle dealer to unfairly compete with the dealer. For purposes of this subsection (1)(h), "confidential or proprietary information" means trade secrets as defined in RCW 19.108.010, business plans, marketing plans or strategies, customer lists, contracts, sales data, revenues, or other financial information;

(i) Terminate, cancel, or fail to renew a franchise with a new motor vehicle dealer based upon any of the following

events, which do not constitute good cause for termination, cancellation, or nonrenewal under RCW 46.96.060: (A) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a franchise agreement for the sale or service of another make or line of new motor vehicles, or (B) the fact that the new motor vehicle dealer has established another make or line of new motor vehicles or service in the same dealership facilities as those of the manufacturer or distributor with the prior written approval of the manufacturer or distributor, if the approval was required under the terms of the new motor vehicle dealer's franchise agreement; or

(j) Coerce or attempt to coerce a motor vehicle dealer to refrain from, or prohibit or attempt to prohibit a new motor vehicle dealer from acquiring, owning, having an investment in, participating in the management of, or holding a franchise agreement for the sale or service of another make or line of new motor vehicles or related products, or establishing another make or line of new motor vehicles or service in the same dealership facilities, if the prohibition against acquiring, owning, investing, managing, or holding a franchise for such additional make or line of vehicles or products, or establishing another make or line of new motor vehicles or service in the same dealership facilities, is not supported by reasonable business considerations. The burden of proving that reasonable business considerations support or justify the prohibition against the additional make or line of new motor vehicles or products or nonexclusive facilities is on the manufacturer.

(2) Subsection (1)(a), (b), and (c) of this section do not apply to sales to a motor vehicle dealer: (a) For resale to a federal, state, or local government agency; (b) where the vehicles will be sold or donated for use in a program of driver's education; (c) where the sale is made under a manufacturer's bona fide promotional program offering sales incentives or rebates; (d) where the sale of parts or accessories is under a manufacturer's bona fide quantity discount program; or (e) where the sale is made under a manufacturer's bona fide fleet vehicle discount program. For purposes of this subsection, "fleet" means a group of fifteen or more new motor vehicles purchased or leased by a dealer at one time under a single purchase or lease agreement for use as part of a fleet, and where the dealer has been assigned a fleet identifier code by the department of licensing.

(3) The following definitions apply to this section:

(a) "Actual price" means the price to be paid by the dealer less any incentive paid by the manufacturer, distributor, factory branch, or factory representative, whether paid to the dealer or the ultimate purchaser of the vehicle.

(b) "Control" or "controlling" means (i) the possession of, title to, or control of ten percent or more of the voting equity interest in a person, whether directly or indirectly through a fiduciary, agent, or other intermediary, or (ii) the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, through director control, by contract, or otherwise, except as expressly provided under the franchise agreement.

(c) "Motor vehicles" does not include trucks that are 14,001 pounds gross vehicle weight and above or recreational vehicles as defined in RCW 43.22.335.

(d) "Operate" means to manage a dealership, whether directly or indirectly.

(e) "Own" or "ownership" means to hold the beneficial ownership of one percent or more of any class of equity interest in a dealership, whether the interest is that of a shareholder, partner, limited liability company member, or otherwise. To hold an ownership interest means to have possession of, title to, or control of the ownership interest, whether directly or indirectly through a fiduciary, agent, or other intermediary.

(4) A violation of this section is deemed to affect the public interest and constitutes an unlawful and unfair practice under chapter 19.86 RCW. A person aggrieved by an alleged violation of this section may petition the department to have the matter handled as an adjudicative proceeding under chapter 34.05 RCW. [2003 c 21 § 3; 2000 c 203 § 1.]

Captions not law—2003 c 21: See note following RCW 46.96.020.

46.96.220 Right of first refusal. (1) In the event of a proposed sale or transfer of a new motor vehicle dealership involving the transfer or sale of more than fifty percent of the ownership interest in, or more than fifty percent of the assets of, the dealership at the time of the transfer or sale, where the franchise agreement for the dealership contains a right of first refusal in favor of the manufacturer or distributor, then notwithstanding the terms of the franchise agreement, the manufacturer or distributor must be permitted to exercise a right of first refusal to acquire the dealership only if all of the following requirements are met:

(a) The manufacturer or distributor sends by certified mail, return receipt requested, or delivers by personal service, notice of its intent to exercise its right of first refusal within the lesser of (i) forty-five days of receipt of the completed proposal for the proposed sale or transfer, or (ii) the time period specified in the dealership's franchise agreement; and

(b) The exercise of the right of first refusal will result in the motor vehicle dealer receiving consideration, terms, and conditions that are equal to or better than that for which the dealer has contracted in connection with the proposed transaction.

(2) Notwithstanding subsection (1) of this section, the manufacturer's or distributor's right of first refusal does not apply to transfer of a dealership under RCW 46.96.110, and does not apply to a proposed transaction involving any of the following purchasers or transferees:

(a) A purchaser or transferee who has been preapproved by the manufacturer or distributor with respect to the transaction;

(b) A family member or members, including the spouse, biological or adopted child, stepchild, grandchild, spouse of a child or grandchild, brother, sister, or parent of the dealer-operator, or one or more of the dealership's owners;

(c) A manager continuously employed by the motor vehicle dealer in the dealership during the previous three years who is otherwise qualified as a dealer-operator by meeting the reasonable and uniformly applied standards for approval of an application as a new motor vehicle dealer-operator by the manufacturer;

(d) A partnership, corporation, limited liability company, or other entity controlled by any of the family mem-

bers, identified in (b) of this subsection, of the dealer-operator; or

(e) A trust established or to be established for the purpose of allowing the new motor vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards, or provides for the succession of the franchise agreement to designated family members identified in (b) of this subsection, or qualified management identified in (c) of this subsection, in the event of the death or incapacity of the dealer-operator or its principal owner or owners.

(3) As a condition to the manufacturer or distributor exercising its right of first refusal, the manufacturer or distributor shall pay the reasonable expenses, including attorneys' fees, incurred by the dealer's proposed purchaser or transferee in negotiating, and undertaking any action to consummate, the contract for the proposed sale of the dealership up to the time of the manufacturer's or distributor's exercise of that right. In addition, the manufacturer or distributor shall pay any fees and expenses of the motor vehicle dealer arising on and after the date the manufacturer or distributor gives notice of the exercise of its right of first refusal, and incurred by the motor vehicle dealer as a result of alterations to documents, or additional appraisals, valuations, or financial analyses caused or required of the dealer by the manufacturer or distributor to consummate the contract for the sale of the dealership to the manufacturer's or distributor's proposed transferee, that would not have been incurred but for the manufacturer's or distributor's exercise of its right of first refusal. These expenses and fees must be paid by the manufacturer or distributor to the dealer and to the dealer's proposed purchaser or transferee on or before the closing date of the sale of the dealership to the manufacturer or distributor if the party entitled to reimbursement has submitted or caused to be submitted to the manufacturer or distributor, an accounting of these expenses and fees within thirty days after receipt of the manufacturer's or distributor's written request for the accounting. A manufacturer or distributor may request the accounting before exercising its right of first refusal.

(4) As a further condition to the exercise of its right of first refusal, a manufacturer or distributor shall assume and guarantee the lease or shall acquire the real property on which the motor vehicle franchise is conducted. Unless otherwise agreed to by the dealer and manufacturer or distributor, the lease terms or the real property acquisition terms must be the same as those on which the lease or property was to be transferred or sold to the dealer's proposed purchaser or transferee.

(5) If the selling dealer has disclosed to the proposed purchaser or transferee, in writing, the existence of the manufacturer's or distributor's right of first refusal, then the selling dealer has no liability to the proposed purchaser or transferee for a claim for damages resulting from the manufacturer or distributor exercising its right of first refusal. If the existence of the manufacturer's or distributor's right of first refusal was disclosed by the selling dealer to the proposed purchaser or transferee, in writing, before or at the time of execution of the purchase and sale or transfer agreement, the manufacturer or distributor shall indemnify, hold harmless, and defend the selling dealer from and against any and all claims, damages, losses, actions, or causes of action asserted by the dealer's proposed purchaser or transferee against the selling dealer arising from the manufacturer's or distributor's exercise of its

right of first refusal, and has the right, under this section, to file a motion on behalf of the dealer to dismiss the actions or causes of action asserted by the dealer's proposed purchaser or transferee. [2003 c 21 § 4.]

Captions not law—2003 c 21: See note following RCW 46.96.020.

46.96.230 Manufacturer incentive programs. (1) A manufacturer or distributor shall pay a motor vehicle dealer's claim for payment or other compensation due under a manufacturer incentive program within thirty days after approval of the claim. A claim that is not disapproved or disallowed within thirty days after the manufacturer or distributor receives the claim is deemed automatically approved. If the motor vehicle dealer's claim is not approved, the manufacturer or distributor shall provide the dealer with written notice of the reasons for the disapproval at the time notice of disapproval is given.

(2) A manufacturer may not deny a claim based solely on a motor vehicle dealer's incidental failure to comply with a specific claim-processing requirement that results in a clerical error or other administrative technicality.

(3) Notwithstanding the terms of a franchise agreement or other contract with a manufacturer or distributor, a motor vehicle dealer has one year after the expiration of a manufacturer or distributor incentive program to submit a claim for payment or compensation under the program.

(4) Notwithstanding the terms of a franchise agreement or other contract with a dealer and except as provided in subsection (5) of this section, after the expiration of one year after the date of payment of a claim under a manufacturer or distributor incentive program, a manufacturer or distributor may not:

(a) Charge back to a motor vehicle dealer, whether directly or indirectly, the amount of a claim that has been approved and paid by the manufacturer or distributor under an incentive program;

(b) Charge back to a motor vehicle dealer, whether directly or indirectly, the cash value of a prize or other thing of value awarded to the dealer under an incentive program; or

(c) Audit the records of a motor vehicle dealer to determine compliance with the terms of an incentive program. Where, however, a manufacturer or distributor has reasonable grounds to believe that the dealer committed fraud with respect to the incentive program, the manufacturer or distributor may audit the dealer for a fraudulent claim during any period for which an action for fraud may be commenced under applicable state law.

(5) Notwithstanding subsection (4)(a) and (b) of this section, a manufacturer or distributor may make charge-backs to a motor vehicle dealer if, after completion of an audit of the dealer's records, the manufacturer or distributor can show, by a preponderance of the evidence, that (a) the claim was intentionally false or fraudulent at the time it was submitted to the manufacturer or distributor, or (b) with respect to a claim under a service incentive program, the repair work was improperly performed in a substandard manner or was unnecessary to correct a defective condition. [2003 c 21 § 5.]

Captions not law—2003 c 21: See note following RCW 46.96.020.

46.96.240 Venue. Notwithstanding the provisions of a franchise agreement or other provision of law to the contrary, the venue for a cause of action, claim, lawsuit, administrative hearing or proceeding, arbitration, or mediation, whether arising under this chapter or otherwise, in which the parties or litigants are a manufacturer or distributor and one or more motor vehicle dealers, is the state of Washington. It is the public policy of this state that venue provided for in this section may not be modified or waived in any contract or other agreement, and any provision contained in a franchise agreement that requires arbitration or litigation to be conducted outside the state of Washington is void and unenforceable.

This section does not apply to a voluntary dispute resolution procedure that is not binding on the dealer. [2003 c 21 § 6.]

Captions not law—2003 c 21: See note following RCW 46.96.020.

Title 47

PUBLIC HIGHWAYS AND TRANSPORTATION

Reviser's note: *Referendum Bill No. 51 was rejected by the voters at the November 2002 election, after the 2002 print edition of the Revised Code of Washington had been published and distributed. The following explains what session laws were affected and the resulting changes that were made to this title.*

Engrossed Substitute Senate Bill No. 6008 (codified as 2002 c 203) was contingent on funding being provided by legislative appropriation (see 2002 c 203 § 13). Funding was provided in Engrossed Substitute Senate Bill No. 6347 (codified as 2002 c 201). However, 2002 c 201 was contingent on passage of Engrossed Substitute House Bill No. 2969 (codified as 2002 c 202), which was sent to the voters as Referendum Bill No. 51, and rejected by the voters. Therefore, 2002 c 201 and 2002 c 203 did not take effect.

We have removed RCW 47.05.100, and the notes following, from this title.

Chapters

47.01	Department of transportation.
47.04	General provisions.
47.06	Statewide transportation planning.
47.06C	Permit efficiency and accountability.
47.10	Highway construction bonds.
47.12	Acquisition and disposition of state highway property.
47.28	Construction and maintenance of highways.
47.36	Traffic control devices.
47.38	Roadside areas—Safety rest areas.
47.39	Scenic and recreational highway act of 1967.
47.41	Junkyards adjacent to interstate and primary highways.
47.44	Franchises on state highways.
47.52	Limited access facilities.
47.60	Puget sound ferry and toll bridge system.
47.64	Marine employees—Public employment relations.
47.68	Aeronautics.
47.76	Rail freight service.
47.80	Regional transportation planning organizations.

Chapter 47.01 RCW

DEPARTMENT OF TRANSPORTATION

Sections

47.01.321	Skills bank—Report.
47.01.900	Repealed.

47.01.321 Skills bank—Report. The department of transportation shall work with local transportation jurisdictions and representatives of transportation labor groups to establish a human resources skills bank of transportation professionals. The skills bank must be designed to allow all transportation authorities to draw from it when needed. The department shall issue a report of findings and recommendations to the transportation committees of the legislature by December 1, 2003. The report must include, but not be limited to, identification of any statutory or administrative rule changes necessary to create the skills bank and allow it to function in the manner described. [2003 c 363 § 203.]

Findings—Intent—2003 c 363 §§ 201-206: See note following RCW 49.04.041.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

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

Chapter 47.04 RCW

GENERAL PROVISIONS

Sections

47.04.010	Definitions.
47.04.045	Wireless service facilities—Right of way leases—Rules.
47.04.046	Wireless site leases—Pending applications.

47.04.010 Definitions. The following words and phrases, wherever used in this title, shall have the meaning as in this section ascribed to them, unless where used the context thereof shall clearly indicate to the contrary or unless otherwise defined in the chapter of which they are a part:

(1) "Alley." A highway within the ordinary meaning of alley not designated for general travel and primarily used as a means of access to the rear of residences and business establishments;

(2) "Arterial highway." Every highway, as herein defined, or portion thereof designated as such by proper authority;

(3) "Business district." The territory contiguous to and including a highway, as herein defined, when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway;

(4) "Center line." The line, marked or unmarked parallel to and equidistant from the sides of a two-way traffic roadway of a highway except where otherwise indicated by painted lines or markers;

(5) "Center of intersection." The point of intersection of the center lines of the roadways of intersecting highways;

(6) "City street." Every highway as herein defined, or part thereof located within the limits of incorporated cities and towns, except alleys;

(7) "Combination of vehicles." Every combination of motor vehicle and motor vehicle, motor vehicle and trailer, or motor vehicle and semitrailer;

(8) "Commercial vehicle." Any vehicle the principal use of which is the transportation of commodities, merchandise, produce, freight, animals, or passengers for hire;

(9) "County road." Every highway as herein defined, or part thereof, outside the limits of incorporated cities and towns and which has not been designated as a state highway, or branch thereof;

(10) "Crosswalk." The portion of the roadway between the intersection area and a prolongation or connection of the farthest sidewalk line or in the event there are no sidewalks then between the intersection area and a line ten feet therefrom, except as modified by a marked crosswalk;

(11) "Highway." Every way, lane, road, street, boulevard, and every way or place in the state of Washington open as a matter of right to public vehicular travel both inside and outside the limits of incorporated cities and towns;

(12) "Intersection area." (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two or more highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict;

(b) Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection;

(c) The junction of an alley with a street or highway shall not constitute an intersection;

(13) "Intersection control area." The intersection area as herein defined, together with such modification of the adjacent roadway area as results from the arc or curb corners and together with any marked or unmarked crosswalks adjacent to the intersection;

(14) "Laned highway." A highway the roadway of which is divided into clearly marked lanes for vehicular traffic;

(15) "Local authorities." Every county, municipal, or other local public board or body having authority to adopt local police regulations under the Constitution and laws of this state;

(16) "Marked crosswalk." Any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface thereof;

(17) "Metal tire." Every tire, the bearing surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material;

(18) "Motor truck." Any motor vehicle, as herein defined, designed or used for the transportation of commodities, merchandise, produce, freight, or animals;

(19) "Motor vehicle." Every vehicle, as herein defined, which is in itself a self-propelled unit;

(20) "Multiple lane highway." Any highway the roadway of which is of sufficient width to reasonably accommodate two or more separate lanes of vehicular traffic in the same direction, each lane of which shall be not less than the maximum legal vehicle width, and whether or not such lanes are marked;

(21) "Operator." Every person who drives or is in actual physical control of a vehicle as herein defined;

(22) "Peace officer." Any officer authorized by law to execute criminal process or to make arrests for the violation of the statutes generally or of any particular statute or statutes relative to the highways of this state;

(23) "Pedestrian." Any person afoot or who is using a wheelchair, power wheelchair as defined in RCW 46.04.415, or a means of conveyance propelled by human power other than a bicycle;

(24) "Person." Every natural person, firm, copartnership, corporation, association, or organization;

(25) "Personal wireless service." Any federally licensed personal wireless service;

(26) "Personal wireless service facilities." Unstaffed facilities that are used for the transmission or reception, or both, of personal wireless services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures;

(27) "Pneumatic tires." Every tire of rubber or other resilient material designed to be inflated with compressed air to support the load thereon;

(28) "Private road or driveway." Every way or place in private ownership and used for travel of vehicles by the owner or those having express or implied permission from the owner, but not by other persons;

(29) "Railroad." A carrier of persons or property upon vehicles, other than street cars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns;

(30) "Railroad sign or signal." Any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train;

(31) "Residence district." The territory contiguous to and including the highway, as herein defined, not comprising a business district, as herein defined, when the property on such highway for a continuous distance of three hundred feet or more on either side thereof is in the main improved with residences or residences and buildings in use for business;

(32) "Roadway." The paved, improved, or proper driving portion of a highway designed, or ordinarily used for vehicular travel;

(33) "Safety zone." The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is marked or indicated by painted marks, signs, buttons, standards, or otherwise so as to be plainly discernible;

(34) "Sidewalk." That property between the curb lines or the lateral lines of a roadway, as herein defined, and the adjacent property, set aside and intended for the use of pedestrians or such portion of private property parallel and in proximity to a highway and dedicated to use by pedestrians;

(35) "Solid tire." Every tire of rubber or other resilient material which does not depend upon inflation with compressed air for the support of the load thereon;

(36) "State highway." Every highway as herein defined, or part thereof, which has been designated as a state highway, or branch thereof, by legislative enactment;

(37) "Street car." A vehicle other than a train, as herein defined, for the transporting of persons or property and operated upon stationary rails principally within incorporated cities and towns;

(38) "Traffic." Pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly or together while using any highways for purposes of travel;

(39) "Traffic control signal." Any traffic device, as herein defined, whether manually, electrically, or mechanically operated, by which traffic alternately is directed to stop or proceed or otherwise controlled;

(40) "Traffic devices." All signs, signals, markings, and devices not inconsistent with this title placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic;

(41) "Train." A vehicle propelled by steam, electricity, or other motive power with or without cars coupled thereto, operated upon stationary rails, except street cars;

(42) "Vehicle." Every device capable of being moved upon a highway and in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting power wheelchairs, as defined in RCW 46.04.415, or devices moved by human or animal power or used exclusively upon stationary rails or tracks.

Words and phrases used herein in the past, present, or future tense shall include the past, present, and future tenses; words and phrases used herein in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter genders; and words and phrases used herein in the singular or plural shall include the singular and plural; unless the context thereof shall indicate to the contrary. [2003 c 244 § 2; 2003 c 141 § 8; 1975 c 62 § 50; 1967 ex.s. c 145 § 42; 1961 c 13 § 47.04.010. Prior: 1937 c 53 § 1; RRS § 6400-1.]

Reviser's note: This section was amended by 2003 c 141 § 8 and by 2003 c 244 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

Aeronautics, definitions relating to: RCW 47.68.020.

Canal, defined: RCW 47.72.060.

Department, commission, secretary—Defined: RCW 47.01.021.

Ferry workers, marine employees, definitions relating to: RCW 47.64.011.

Junkyards, definitions relating to: RCW 47.41.020.

Limited access facilities, definitions relating to: RCW 46.52.010.

Signs and scenic vistas, definitions relating to: RCW 47.42.020.

Toll bridges, roads, definitions relating to: RCW 47.56.010.

Urban arterials, definitions relating to: RCW 47.26.040, 47.26.090, 47.26.100, 47.26.110.

Urban public transportation systems—Defined: RCW 47.04.082.

47.04.045 Wireless service facilities—Right of way leases—Rules. (1) For the purposes of this section:

(a) "Right of way" means all state-owned land within a state highway corridor.

[2003 RCW Supp—page 672]

(b) "Service provider" means every corporation, company, association, joint stock association, firm, partnership, or person that owns, operates, or manages any personal wireless service facility. "Service provider" includes a service provider's contractors, subcontractors, and legal successors.

(2) The department shall establish a process for issuing a lease for the use of the right of way by a service provider and shall require that telecommunications equipment be co-located on the same structure whenever practicable. Consistent with federal highway administration approval, the lease must include the right of direct ingress and egress from the highway for construction and maintenance of the personal wireless service facility during nonpeak hours if public safety is not adversely affected. Direct ingress and egress may be allowed at any time for the construction of the facility if public safety is not adversely affected and if construction will not substantially interfere with traffic flow during peak traffic periods. The lease may specify an indirect ingress and egress to the facility if it is reasonable and available for the particular location.

(3) The cost of the lease must be limited to the fair market value of the portion of the right of way being used by the service provider and the direct administrative expenses incurred by the department in processing the lease application.

If the department and the service provider are unable to agree on the cost of the lease, the service provider may submit the cost of the lease to binding arbitration by serving written notice on the department. Within thirty days of receiving the notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or panel shall determine the cost of the lease based on comparable siting agreements. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(4) The department shall act on an application for a lease within sixty days of receiving a completed application, unless a service provider consents to a different time period.

(5) The reasons for a denial of a lease application must be supported by substantial evidence contained in a written record.

(6) The department may adopt rules to implement this section.

(7) All lease money paid to the department under this section shall be deposited in the motor vehicle fund created in RCW 46.68.070. [2003 c 244 § 5.]

47.04.046 Wireless site leases—Pending applications. Applications for wireless site leases pending on July 27, 2003, must be treated as applications under RCW 47.04.045 with the consent of the applicant. [2003 c 244 § 8.]

Chapter 47.06 RCW

STATEWIDE TRANSPORTATION PLANNING

Sections

47.06.043 Technical workers—Skill enhancement.

47.06.043 Technical workers—Skill enhancement.

The state interest component of the statewide multimodal transportation plan must include a plan for enhancing the skills of the existing technical transportation work force. [2003 c 363 § 204.]

Findings—Intent—2003 c 363 §§ 201-206: See note following RCW 49.04.041.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

Chapter 47.06C RCW

PERMIT EFFICIENCY AND ACCOUNTABILITY

Sections

47.06C.010 Findings—Intent. (*Expires March 31, 2006.*)
 47.06C.040 Committee responsibilities. (*Expires March 31, 2006.*)
 47.06C.901 Expiration date—2001 1st sp.s. c 2.

47.06C.010 Findings—Intent. (*Expires March 31, 2006.*) The legislature finds that the public health and safety of its citizens, the natural resources, and the environment are vital interests of the state that need to be protected and preserved. The legislature further finds that the safety of the traveling public and the state's economic well-being are vital interests that depend upon the development of cost-effective and efficient transportation systems planned, designed, constructed, and maintained through expedited permit decision-making processes.

It is the intent of the legislature to achieve transportation permit reform that expedites the delivery of transportation projects through a streamlined approach to environmental permit decision making. To optimize the limited resources available for transportation system improvements and environmental protection, state regulatory and natural resource agencies, public and private sector interests, Indian tribes, local and regional governments, applicable federal agencies, and the department of transportation must work cooperatively to establish common goals, minimize project delays, develop consistency in the application of environmental standards, maximize environmental benefits through coordinated investment strategies, and eliminate duplicative processes through assigned responsibilities of selected permit drafting and compliance activities between state and federal agencies.

Therefore, the transportation permit efficiency and accountability committee is created. The committee shall integrate current environmental standards, but may not create new environmental standards. The committee shall conduct three environmental permit streamlining pilot projects and create a process to develop general permits. Additionally, the committee shall seek federal delegation to the state where appropriate to streamline transportation projects. [2003 c 8 § 1; 2001 1st sp.s. c 2 § 1.]

Effective date—2003 c 8: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2003]." [2003 c 8 § 4.]

47.06C.040 Committee responsibilities. (*Expires March 31, 2006.*) (1)(a) The committee and its authorized technical subcommittees shall develop a one-stop permit

decision-making process that uses interdisciplinary review of transportation projects of statewide significance to streamline and expedite permit decision making. The committee shall collaborate with appropriate agencies and parties to identify existing environmental standards, to assess the application of those standards, and develop an integrated permitting process based upon environmental standards and best management practices, which may use prescriptive or performance standards, for transportation projects of statewide significance that can be applied with certainty, consistency, and assurance of swift permit action, while taking into account the varying environmental conditions throughout the state.

(b) By June 30, 2003, the committee shall develop a detailed work plan of one-stop permitting activities for review by the legislature. The work plan must include both a schedule to use the one-stop permit process on all funded transportation projects of statewide significance and any additional resources needed to ensure that this occurs. This work plan must include a process that enables the department to propose permit terms and conditions for permitting agency review and approval.

(c) The committee shall provide a status report to the legislature by December 31, 2003, and shall also identify barriers and opportunities to achieve a concurrent public review process, concurrent public hearings, and a unified appeals process for one-stop permitting.

(2) The committee shall give notice to the legislative authority of each affected county and city of the projects that are designated as transportation projects of statewide significance.

(3) The committee shall create a technical subcommittee with representation at a minimum from the department of fish and wildlife, the department of ecology, and the department of transportation.

(a) Within six months from the first meeting of the committee, the subcommittee shall create a process to develop a programmatic approach for transportation projects. The committee shall review the department's construction project list to determine which projects or activities may be included in the programmatic approach and develop agreements with a goal of covering seventy percent of those projects or activities with programmatic agreements. At a minimum, this process must require that decisions on minor variations to the requirements of a programmatic approach must be provided by the permit decision-making agencies within twenty-one days of submittal.

(b) By June 30, 2003, the committee shall prioritize programmatic agreement opportunities identified in (a) of this subsection, develop a detailed work plan to achieve the goals set forth, and submit the report and plan to the legislature. The work plan must be reviewed and updated on a quarterly basis and submitted to the legislature twice yearly. This work plan must include the following elements:

(i) A schedule of activities and resources needed to achieve completion of the nine highest priority multiagency programmatic agreements by June 30, 2004;

(ii) A prioritized list of the remaining departmental activities eligible for programmatic, multiagency consideration by September 30, 2003;

(iii) A schedule of activities and resources to achieve completion of the prioritized list of programmatic agreements by December 31, 2005.

(c) The committee shall work with local governments to identify opportunities to integrate local government requirements in the agreements or permits identified in (b) of this subsection.

(d) The technical subcommittee's recommendations must be approved by a majority of the voting members of the committee.

(4) The committee shall explore the development of a consolidated local permit process.

(5) The committee shall conduct one or more pilot projects to implement the collaborative review process set forth in RCW 36.70A.430 to review and coordinate state and local permits for a transportation project funded in the transportation budget and that crosses more than one city or county boundary.

(6) The committee shall appoint a task force of representatives from cities and counties, the department of transportation, and other agencies as appropriate to identify one or more city or county permits for activities for which uniform standards can be developed for application by local governments. It is the goal of the task force to develop uniform standards and best practices for these identified permits that may be used by local governments in issuing their permits. The task force shall identify strategies for local governments to adapt these standards and best practices to local conditions. The committee shall encourage local governments to use these standards and best practices in local ordinances. The task force shall submit a progress report to the committee and the legislature by December 31, 2003, and shall conclude its work and report its final recommendations for review to the committee and the legislature no later than December 31, 2004.

(7) The committee shall develop and prioritize a list of permit streamlining opportunities, specifically identifying substantive and procedural duplications and recommendations for resolving those duplications. The committee shall evaluate current laws and regulations and develop recommendations on ways to minimize the lapsing of permits. The committee shall evaluate flexible approaches that maximize transportation and environmental interests and make recommendations regarding where those approaches should be implemented.

(8) The committee shall undertake the following activities to develop a watershed approach to environmental mitigation:

(a) Develop methodologies for analyzing environmental impacts and applying compensatory mitigation consistent with a watershed-based approach before final design, including least cost methodology and low-impact development methodology;

(b) Assess models to collate and access watershed data to support early agency involvement in transportation planning and reviews under the national Environmental Policy Act and the State Environmental Policy Act;

(c) Use existing best available information from watershed planning efforts, lead entities, regional fisheries enhancement groups, and other recognized entities as deemed appropriate by the committee, to determine potential

mitigation requirements for projects within a watershed. Priority consideration should be given to the use of the state's alternative mitigation policy guidance to best link transportation mitigation needs with local watershed and lead entity project lists; and

(d) By June 30, 2003, develop a detailed work plan that covers watershed-based mitigation activities. This work plan must be submitted to the legislature and include the following elements:

(i) A schedule of activities and resources needed to complete a watershed-based mitigation policy by December 31, 2003, that covers elements of permitting deemed appropriate by the committee;

(ii) A schedule of activities and resources needed to develop watershed-based mitigation decision-making tools by June 30, 2004;

(iii) A schedule of activities and resources needed to complete a test of technical and policy methods of watershed-based mitigation decision making by December 31, 2004, for a funded project in an urbanized area of the state; and

(iv) A schedule to integrate watershed-based mitigation policies, technical tools, and procedures for projects by June 30, 2005.

(9)(a) The committee shall seek federal delegation to the state where appropriate to streamline permit processes for transportation projects of statewide significance including: Delegation of section 404 permit authority under the Clean Water Act; nonfederal lead agency status under the federal Endangered Species Act; section 106 cultural resource designation under the National Historic Preservation Act; and other appropriate authority that when delegated should result in permit streamlining.

(b) The department of ecology, and the department of fish and wildlife shall jointly review relevant federal, state, and local environmental laws, regulations, policies, guidance, studies, and streamlining initiatives, and shall report to the committee and the legislature by September 30, 2003, on those instances where such might allow for delegation to the department or some other duly recognized entity as appropriate. The report must include recommendations on:

(i) How to delegate consistent with federal permit streamlining efforts contained in new federal transportation authorizations and under Presidential Executive Order number 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews, September 18, 2002;

(ii) How to maximize possible use of programmatic approaches to simplify issuance of federally required permits and project approvals;

(iii) The scope, roles, and responsibilities associated with any such delegation, especially as relates to regulatory standard setting, permitting, and oversight; and

(iv) A work plan and schedule of activities and resources needed to implement the recommendations of the department, the department of ecology, and the department of fish and wildlife on this matter.

The committee shall take action on the report, and shall report to the legislature by December 31, 2003, and every six months thereafter on the status of such delegation efforts.

(10) The committee shall develop a dispute resolution process to resolve conflicts in interpretation of environmental standards and best management practices, mitigation require-

ments, permit requirements, assigned responsibilities, and other related issues by September 1, 2001. The dispute resolution process may not abrogate or supplant any appeal right of any party under existing statutes. The dispute resolution process must be designed to include federal agencies if they choose to participate.

(11) The committee shall develop preliminary models and strategies for agencies to test how best to maximize the environmental investment of transportation funds on a watershed basis. After agencies test the models and strategies developed by the committee, the committee shall evaluate the models and strategies and make recommendations to the legislature.

(12) The committee shall develop a consistent methodology for the timely and predictable submittal and evaluation of completed plans and specifications detailing project elements that impact environmental resources as well as proposed mitigation measures during the preliminary specifications and engineering phase of project development and submit information on the consistent methodology to the legislature.

(13) The committee shall provide a summary report to the legislature on December 31, 2003, and every six months thereafter that details the committee's status and performance and its progress in implementing its master work plan. [2003 c 8 § 2; 2001 1st sp.s. c 2 § 4.]

Effective date—2003 c 8: See note following RCW 47.06C.010.

47.06C.901 Expiration date—2001 1st sp.s. c 2. This act expires March 31, 2006. [2003 c 8 § 3; 2001 1st sp.s. c 2 § 13.]

Effective date—2003 c 8: See note following RCW 47.06C.010.

Chapter 47.10 RCW

HIGHWAY CONSTRUCTION BONDS

Sections

2003 TRANSPORTATION PROJECTS—NICKEL ACCOUNT

47.10.861	Bond issue authorized.
47.10.862	Administration and amount of sale.
47.10.863	Proceeds—Deposit and use.
47.10.864	Statement of general obligation—Pledge of excise taxes.
47.10.865	Repayment procedure—Bond retirement fund.
47.10.866	Equal charge against motor vehicle and special fuels tax revenues.

MULTIMODAL TRANSPORTATION PROJECTS—2003 ACT

47.10.867	Bond issue authorized—Appropriation of proceeds.
47.10.868	Proceeds—Deposit and use.
47.10.869	Repayment procedure.
47.10.870	Statement of general obligation—Transfer and payment of funds.
47.10.871	Additional repayment means.
47.10.872	Legal investment.

2003 TRANSPORTATION PROJECTS— NICKEL ACCOUNT

47.10.861 Bond issue authorized. In order to provide funds necessary for the location, design, right of way, and construction of selected projects or improvements that are identified as transportation 2003 projects or improvements in the omnibus transportation budget, there shall be issued and sold upon the request of the transportation commission a total

of two billion six hundred million dollars of general obligation bonds of the state of Washington. [2003 c 147 § 1.]

Effective date—2003 c 147: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 147 § 16.]

47.10.862 Administration and amount of sale. Upon the request of the transportation commission, as appropriate, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds in RCW 47.10.861 through 47.10.866 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.10.861 through 47.10.866 shall be sold in the manner, at time or times, in amounts, and at the price as the state finance committee shall determine. No bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [2003 c 147 § 2.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.863 Proceeds—Deposit and use. The proceeds from the sale of bonds authorized by RCW 47.10.861 shall be deposited in the transportation 2003 account (nickel account) in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in RCW 47.10.861, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting. [2003 c 147 § 3.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.864 Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.10.861 through 47.10.866 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.10.861 through 47.10.866 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of these excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.861 through 47.10.866, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.861 through 47.10.866. [2003 c 147 § 4.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.865 Repayment procedure—Bond retirement fund. Both principal and interest on the bonds issued for the purposes of RCW 47.10.861 through 47.10.866 shall be payable from the highway bond retirement fund. The state

finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the transportation 2003 account (nickel account) in the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by RCW 47.10.861 through 47.10.866 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the transportation 2003 account (nickel account) in the motor vehicle fund. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the transportation 2003 account (nickel account) proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities, and towns shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the transportation 2003 account (nickel account) not required for bond retirement or interest on the bonds. [2003 c 147 § 5.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.866 Equal charge against motor vehicle and special fuels tax revenues. Bonds issued under the authority of RCW 47.10.861 through 47.10.865 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes. [2003 c 147 § 6.]

Effective date—2003 c 147: See note following RCW 47.10.861.

MULTIMODAL TRANSPORTATION PROJECTS— 2003 ACT

47.10.867 Bond issue authorized—Appropriation of proceeds. For the purpose of providing funds for the planning, design, construction, reconstruction, and other necessary costs for transportation projects, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of three hundred forty-nine million five hundred thousand dollars, or as much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale

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without prior legislative appropriation of the net proceeds of the sale of the bonds. [2003 c 147 § 7.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.868 Proceeds—Deposit and use. The proceeds of the sale of the bonds authorized in RCW 47.10.867 must be deposited in the multimodal transportation account and must be used exclusively for the purposes specified in RCW 47.10.867 and for the payment of expenses incurred in the issuance and sale of the bonds. [2003 c 147 § 8.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.869 Repayment procedure. (1) The nondebt-limit reimbursable bond retirement account must be used for the payment of the principal and interest on the bonds authorized in RCW 47.10.867.

(2)(a) The state finance committee must, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in RCW 47.10.867.

(b) On or before the date on which any interest or principal and interest is due, the state treasurer shall transfer from the multimodal transportation account for deposit into the nondebt-limit reimbursable bond retirement account the amount computed in (a) of this subsection for bonds issued for the purposes of RCW 47.10.867.

(3) If the multimodal transportation account has insufficient revenues to pay the principal and interest computed in subsection (2)(a) of this section, then the debt-limit reimbursable bond retirement account must be used for the payment of the principal and interest on the bonds authorized in RCW 47.10.867 from any additional means provided by the legislature.

(4) If at any time the multimodal transportation account has insufficient revenues to repay the bonds, the legislature may provide additional means for the payment of the bonds. [2003 c 147 § 9.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.870 Statement of general obligation—Transfer and payment of funds. (1) Bonds issued under RCW 47.10.867 must state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal and interest, and must contain an unconditional promise to pay the principal and interest as it becomes due.

(2) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2003 c 147 § 10.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.871 Additional repayment means. The legislature may provide additional means for raising moneys for the payment of the principal and interest on the bonds authorized in RCW 47.10.867, and RCW 47.10.869 and 47.10.870 are not deemed to provide an exclusive method for their payment. [2003 c 147 § 11.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.872 Legal investment. The bonds authorized in RCW 47.10.867 are a legal investment for all state funds or funds under state control and for all funds of any other public body. [2003 c 147 § 12.]

Effective date—2003 c 147: See note following RCW 47.10.861.

Chapter 47.12 RCW

ACQUISITION AND DISPOSITION OF STATE HIGHWAY PROPERTY

Sections

47.12.120 Lease of unused highway land or air space.
47.12.370 Environmental mitigation—Exchange agreements.

47.12.120 Lease of unused highway land or air space.

The department may rent or lease any lands, improvements, or air space above or below any lands that are held for highway purposes but are not presently needed. The rental or lease:

- (1) Must be upon such terms and conditions as the department may determine;
- (2) Is subject to the provisions and requirements of zoning ordinances of political subdivisions of government;
- (3) Includes lands used or to be used for both limited access and conventional highways that otherwise meet the requirements of this section; and
- (4) In the case of bus shelters provided by a local transit authority that include commercial advertising, may charge the transit authority only for commercial space. [2003 c 198 § 2; 1977 ex.s. c 151 § 50; 1969 c 91 § 1; 1961 c 13 § 47.12.120. Prior: 1949 c 162 § 1; Rem. Supp. 1949 § 6400-122.]

47.12.370 Environmental mitigation—Exchange agreements. (1) The department may enter into exchange agreements with local, state, or federal agencies, tribal governments, or private nonprofit nature conservancy corporations as defined in RCW 64.04.130, to convey properties under the jurisdiction of the department that serve as environmental mitigation sites, as full or part consideration for the grantee assuming all future maintenance and operation obligations and costs required to maintain and operate the environmental mitigation site in perpetuity.

(2) Tribal governments shall only be eligible to participate in an exchange agreement if they:

(a) Provide the department with a valid waiver of their tribal sovereign immunity from suit. The waiver must allow the department to enforce the terms of the exchange agreement or quitclaim deed in state court; and

(b) Agree that the property shall not be placed into trust status.

(3) The conveyances must be by quitclaim deed, or other form of conveyance, executed by the secretary of transportation, and must expressly restrict the use of the property to a mitigation site consistent with preservation of the functions and values of the site, and must provide for the automatic reversion to the department if the property is not used as a mitigation site or is not maintained in a manner that complies with applicable permits, laws, and regulations pertaining to

the maintenance and operation of the mitigation site. [2003 c 187 § 1; 2002 c 188 § 1.]

Chapter 47.28 RCW

CONSTRUCTION AND MAINTENANCE OF HIGHWAYS

Sections

47.28.241 Alternative delivery of construction services—Definitions.
47.28.251 Alternative delivery of construction services—Financial incentives—Private contracting—Reports.

47.28.241 Alternative delivery of construction services—Definitions. The definitions in this section apply throughout RCW 47.28.251 and 41.06.380 unless the context clearly requires otherwise.

(1) "Construction services" means those services that aid in the delivery of the highway construction program and include, but are not limited to, real estate services and construction engineering services.

(2) "Construction engineering services" include, but are not limited to, construction management, construction administration, materials testing, materials documentation, contractor payments and general administration, construction oversight, and inspection and surveying. [2003 c 363 § 102.]

Part headings not law—2003 c 363: "Part headings used in this act are not part of the law." [2003 c 363 § 308.]

Severability—2003 c 363: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 363 § 309.]

47.28.251 Alternative delivery of construction services—Financial incentives—Private contracting—Reports. (1) The department of transportation shall work with representatives of transportation labor groups to develop a financial incentive program to aid in retention and recruitment of employee classifications where problems exist and program delivery is negatively affected. The department's financial incentive program must be reviewed and approved by the legislature before it can be implemented. This program must support the goal of enhancing project delivery timelines as outlined in section 101, chapter 363, Laws of 2003. Upon receiving approval from the legislature, the department of personnel shall implement, as required, specific aspects of the financial incentive package, as developed by the department of transportation.

(2) Notwithstanding chapter 41.06 RCW, the department of transportation may acquire services from qualified private firms in order to deliver the transportation construction program to the public. Services may be acquired solely for augmenting the department's work force capacity and only when the department's transportation construction program cannot be delivered through its existing or readily available work force. The department of transportation shall work with representatives of transportation labor groups to develop and implement a program identifying those projects requiring contracted services while establishing a program as defined in subsection (1) of this section to provide the classified personnel necessary to deliver future construction programs. The procedures for acquiring construction engineering services from private firms may not be used to displace existing

state employees nor diminish the number of existing classified positions in the present construction program. The acquisition procedures must be in accordance with chapter 39.80 RCW.

(3) Starting in December 2004, and biennially thereafter, the secretary shall report to the transportation committees of the legislature on the use of construction engineering services from private firms authorized under this section. The information provided to the committees must include an assessment of the benefits and costs associated with using construction engineering services, or other services, from private firms, and a comparison of public versus private sector costs. The secretary may act on these findings to ensure the most cost-effective means of service delivery. [2003 c 363 § 103.]

Finding—Intent—2003 c 363 § 103 and 104: "The legislature finds that there is a pressing need for additional transportation projects to meet the mobility needs of Washington's citizens. With major new investments approved to meet these pressing needs, additional work force assistance is necessary to ensure and enhance project delivery timelines. Recruiting and retaining a high quality work force, and implementing new and innovative procedures for delivering these transportation projects, is required to accomplish them on a timely basis that best serves the public. It is the intent of sections 103 and 104 of this act that no state employees will lose their employment as a result of implementing new and innovative project delivery procedures." [2003 c 363 § 101.]

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

Chapter 47.36 RCW

TRAFFIC CONTROL DEVICES

Sections

47.36.030	Traffic control devices—Specifications to be furnished to counties and cities.
47.36.141	Bus shelters—Advertising.
47.36.180	Forbidden devices—Penalty. (<i>Effective July 1, 2004.</i>)
47.36.200	Signs or flagmen at thoroughfare work sites. (<i>Effective January 1, 2004, until July 1, 2004.</i>)
47.36.200	Signs or flagmen at thoroughfare work sites—Penalty. (<i>Effective July 1, 2004.</i>)
47.36.210	Repealed. (<i>Effective July 1, 2004.</i>)
47.36.220	Repealed. (<i>Effective July 1, 2004.</i>)
47.36.230	Repealed. (<i>Effective July 1, 2004.</i>)
47.36.250	Dangerous road conditions requiring special tires, chains, or traction equipment—Signs or devices—Penalty. (<i>Effective until July 1, 2004.</i>)
47.36.250	Dangerous road conditions requiring special tires, chains, or traction equipment—Signs or devices—Penalty. (<i>Effective July 1, 2004.</i>)

47.36.030 Traffic control devices—Specifications to be furnished to counties and cities. The secretary of transportation shall have the power and it shall be its duty to adopt and designate a uniform state standard for the manufacture, display, erection, and location of all signs, signals, signboards, guideposts, and other traffic devices erected or to be erected upon the state highways of the state of Washington for the purpose of furnishing information to persons traveling upon such state highways regarding traffic regulations, directions, distances, points of danger, and conditions requiring caution, and for the purpose of imposing restrictions upon persons operating vehicles thereon. Such signs shall conform as nearly as practicable to the manual of specifications for the manufacture, display, and erection of uniform traffic control devices for streets and highways and all amendments, corrections, and additions thereto. The department of transportation shall prepare plans and specifications of the uniform

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state standard of traffic devices so adopted and designated, showing the materials, colors, and designs thereof, and shall upon the issuance of any such plans and specifications or revisions thereof and upon request, furnish to the boards of county commissioners and the governing body of any incorporated city or town, a copy thereof. Signs, signals, signboards, guideposts, and other traffic devices erected on county roads shall conform in all respects to the specifications of color, design, and location approved by the secretary. Traffic devices hereafter erected within incorporated cities and towns shall conform to such uniform state standard of traffic devices so far as is practicable. The uniform system must allow local transit authority bus shelters located within the right of way of the state highway system to display and maintain commercial advertisements subject to applicable federal regulations, if any. [2003 c 198 § 3; 1977 ex.s. c 151 § 61; 1961 c 13 § 47.36.030. Prior: 1945 c 178 § 1, part; 1937 c 53 § 48, part; Rem. Supp. 1945 § 6400-48, part; prior: 1931 c 118 § 1, part; RRS § 6308-1, part; 1923 c 102 § 1, part; 1917 c 78 § 1, part; RRS § 6303, part.]

47.36.141 Bus shelters—Advertising. (1) Local transit authority bus shelters within the right of way of the state highway system may display and maintain commercial advertisements subject to applicable federal regulations, if any. Pursuant to RCW 47.12.120, the department may lease state right of way air space to local transit authorities for this purpose, unless there are significant safety concerns regarding the placement of certain advertisements.

(2) Advertisements posted on a local transit authority's bus shelter may not exceed twenty-four square feet on each side of the panel. Panels may not be placed on the roof of the shelter or on the forward side of the shelter facing oncoming traffic. [2003 c 198 § 1.]

47.36.180 Forbidden devices—Penalty. (*Effective July 1, 2004.*) (1) It is unlawful to erect or maintain at or near a city street, county road, or state highway any structure, sign, or device:

(a) Visible from a city street, county road, or state highway and simulating any directional, warning, or danger sign or light likely to be mistaken for such a sign or bearing any such words as "danger," "stop," "slow," "turn," or similar words, figures, or directions likely to be construed as giving warning to traffic;

(b) Visible from a city street, county road, or state highway and displaying any red, green, blue, or yellow light or intermittent or blinking light or rotating light identical or similar in size, shape, and color to that used on any emergency vehicle or road equipment or any light otherwise likely to be mistaken for a warning, danger, directional, or traffic control signal or sign;

(c) Visible from a city street, county road, or state highway and displaying any lights tending to blind persons operating vehicles upon the highway, city street, or county road, or any glaring light, or any light likely to be mistaken for a vehicle upon the highway or otherwise to be so mistaken as to constitute a danger; or

(d) Visible from a city street, county road, or state highway and flooding or intending to flood or directed across the roadway of the highway with a directed beam or diffused

light, whether or not the flood light is shielded against directing its flood beam toward approaching traffic on the highway, city street, or county road.

(2) Any structure or device erected or maintained contrary to the provisions of this section is a public nuisance, and the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall notify the owner thereof that it constitutes a public nuisance and must be removed, and if the owner fails to do so, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town may abate the nuisance.

(3) If the owner fails to remove any structure or device within fifteen days after being notified to remove the structure or device as provided in this section, he or she is guilty of a misdemeanor. [2003 c 53 § 257; 1984 c 7 § 201; 1961 c 13 § 47.36.180. Prior: 1957 c 204 § 1; 1937 c 53 § 62; RRS § 6400-62.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

47.36.200 Signs or flagmen at thoroughfare work sites. (*Effective January 1, 2004, until July 1, 2004.*) (1) When construction, repair, or maintenance work is conducted on or adjacent to a public highway, county road, street, bridge, or other thoroughfare commonly traveled and when the work interferes with the normal and established mode of travel on the highway, county road, street, bridge, or thoroughfare, the location shall be properly posted by prominently displayed signs or flagmen or both. Signs used for posting in such an area shall be consistent with the provisions found in the state of Washington "Manual on Uniform Traffic Control Devices for Streets and Highways" obtainable from the department of transportation.

(2) If the construction, repair, or maintenance work includes or uses grooved pavement, abrupt lane edges, steel plates, or gravel or earth surfaces, the construction, repair, or maintenance zone must be posted with signs stating the condition, as required by current law, and in addition, must warn motorcyclists of the potential hazard. For the purposes of this subsection, the department shall adopt by rule a uniform sign or signs for this purpose, including at least the following language, "MOTORCYCLES USE EXTREME CAUTION." [2003 c 355 § 1; 1984 c 7 § 202; 1961 c 13 § 47.36.200. Prior: 1957 c 95 § 1.]

Effective date—2003 c 355: "This act takes effect January 1, 2004." [2003 c 355 § 3.]

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

47.36.200 Signs or flagmen at thoroughfare work sites—Penalty. (*Effective July 1, 2004.*) (1) When construction, repair, or maintenance work is conducted on or adjacent to a public highway, county road, street, bridge, or other thoroughfare commonly traveled and when the work interferes with the normal and established mode of travel on the highway, county road, street, bridge, or thoroughfare, the location shall be properly posted by prominently displayed signs or flagmen or both. Signs used for posting in such an area shall be consistent with the provisions found in the state of Washington "Manual on Uniform Traffic Control Devices

for Streets and Highways" obtainable from the department of transportation.

(2) If the construction, repair, or maintenance work includes or uses grooved pavement, abrupt lane edges, steel plates, or gravel or earth surfaces, the construction, repair, or maintenance zone must be posted with signs stating the condition, as required by current law, and in addition, must warn motorcyclists of the potential hazard. For the purposes of this subsection, the department shall adopt by rule a uniform sign or signs for this purpose, including at least the following language, "MOTORCYCLES USE EXTREME CAUTION."

(3) Any contractor, firm, corporation, political subdivision, or other agency performing such work shall comply with this section.

(4) Each driver of a motor vehicle used in connection with such construction, repair, or maintenance work shall obey traffic signs posted for, and flaggers stationed at such location in the same manner and under the same restrictions as is required for the driver of any other vehicle.

(5) A violation of or a failure to comply with this section is a misdemeanor. Each day upon which there is a violation, or there is a failure to comply, constitutes a separate violation. [2003 c 355 § 1; 2003 c 53 § 258; 1984 c 7 § 202; 1961 c 13 § 47.36.200. Prior: 1957 c 95 § 1.]

Reviser's note: This section was amended by 2003 c 53 § 258 and by 2003 c 355 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 355: "This act takes effect January 1, 2004." [2003 c 355 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

47.36.210 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

47.36.220 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

47.36.230 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

47.36.250 Dangerous road conditions requiring special tires, chains, or traction equipment—Signs or devices—Penalty. (*Effective until July 1, 2004.*) If the department or its delegate determines at any time for any part of the public highway system that the unsafe conditions of the roadway require particular tires, tire chains, or traction equipment in addition to or beyond the ordinary pneumatic rubber tires, the department may establish the following recommendations or requirements with respect to the use of such equipment for all persons using such public highway:

(1) Traction advisory - oversize vehicles prohibited.

(2) Traction advisory - oversize vehicles prohibited. Vehicles over 10,000 GVW - chains required.

(3) Traction advisory - oversize vehicles prohibited. All vehicles - chains required, except all wheel drive.

Any equipment that may be required by this section shall be approved by the state patrol as authorized under RCW 46.37.420.

The department shall place and maintain signs and other traffic control devices on the public highways that indicate the tire, tire chain, or traction equipment recommendation or requirement determined under this section. Such signs or traffic control devices shall in no event prohibit the use of studded tires from November 1st to April 1st, but when the department determines that chains are required and that no other traction equipment will suffice, the requirement is applicable to all types of tires including studded tires. The Washington state patrol or the department may specify different recommendations or requirements for four wheel drive vehicles in gear.

Failure to obey a requirement indicated under this section is a traffic infraction under chapter 46.63 RCW subject to a penalty of five hundred dollars including all statutory assessments. [2003 c 356 § 1; 1987 c 330 § 747; 1984 c 7 § 203; 1975 1st ex.s. c 255 § 1; 1969 ex.s. c 7 § 2.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

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

Restrictions as to tire equipment, metal studs: RCW 46.37.420.

47.36.250 Dangerous road conditions requiring special tires, chains, or traction equipment—Signs or devices—Penalty. (Effective July 1, 2004.) (1) If the department or its delegate determines at any time for any part of the public highway system that the unsafe conditions of the roadway require particular tires, tire chains, or traction equipment in addition to or beyond the ordinary pneumatic rubber tires, the department may establish the following recommendations or requirements with respect to the use of such equipment for all persons using such public highway:

(a) Traction advisory - oversize vehicles prohibited.

(b) Traction advisory - oversize vehicles prohibited. Vehicles over 10,000 GVW - chains required.

(c) Traction advisory - oversize vehicles prohibited. All vehicles - chains required, except all wheel drive.

(2) Any equipment that may be required by this section shall be approved by the state patrol as authorized under RCW 46.37.420.

(3) The department shall place and maintain signs and other traffic control devices on the public highways that indicate the tire, tire chain, or traction equipment recommendation or requirement determined under this section. Such signs or traffic control devices shall in no event prohibit the use of studded tires from November 1st to April 1st, but when the department determines that chains are required and that no other traction equipment will suffice, the requirement is applicable to all types of tires including studded tires. The Washington state patrol or the department may specify different recommendations or requirements for four wheel drive vehicles in gear.

(4) Failure to obey a requirement indicated under this section is a traffic infraction under chapter 46.63 RCW subject to a penalty of five hundred dollars including all statutory assessments. [2003 c 356 § 1; 2003 c 53 § 259; 1987 c 330 § 747; 1984 c 7 § 203; 1975 1st ex.s. c 255 § 1; 1969 ex.s. c 7 § 2.]

Reviser's note: This section was amended by 2003 c 53 § 259 and by 2003 c 356 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

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

Restrictions as to tire equipment, metal studs: RCW 46.37.420.

Chapter 47.38 RCW

ROADSIDE AREAS—SAFETY REST AREAS

Sections

- 47.38.010 Rules governing use and control of rest areas, historic sites, viewpoints, etc.—Penalties. (Effective July 1, 2004.)
- 47.38.030 Repealed. (Effective July 1, 2004.)

47.38.010 Rules governing use and control of rest areas, historic sites, viewpoints, etc.—Penalties. (Effective July 1, 2004.) (1) Pursuant to chapter 34.05 RCW, the department and the Washington state patrol shall jointly adopt rules governing the conduct and the safety of the traveling public relating to the use and control of rest areas and other areas as designated in RCW 47.12.250. Nothing herein may be construed as limiting the powers of the department as provided by law.

(2) Except as otherwise provided in this section, any person violating this section or any rule or regulation adopted pursuant to this section is guilty of a misdemeanor.

(3)(a) Except as provided in (b) of this subsection, violation of such a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(b) Violation of such a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [2003 c 53 § 260; 1993 c 116 § 1; 1984 c 7 § 204; 1967 ex.s. c 145 § 29.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

Roadside areas—Safety rest areas, provisions of scenic and recreational highway act concerning: Chapter 47.39 RCW.

47.38.030 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 47.39 RCW

SCENIC AND RECREATIONAL HIGHWAY ACT OF 1967

Sections

- 47.39.020 Designation of portions of existing highways as part of system.

47.39.020 Designation of portions of existing highways as part of system. The following portions of highways are designated as part of the scenic and recreational highway system:

(1) State route number 2, beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an

easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin; also

Beginning at the junction with state route number 17, in the vicinity of Coulee City, thence easterly to the junction with state route number 155;

(2) State route number 3, beginning at a junction with state route number 101 in the vicinity of Shelton, thence northeasterly and northerly to a junction with state route number 104 in the vicinity of Port Gamble;

(3) State route number 4, beginning at the junction with state route number 101, thence easterly through Cathlamet to Coal Creek road, approximately .5 miles west of the Longview city limits;

(4) State route number 6, beginning at the junction with state route number 101 in Raymond, thence easterly to the junction with state route number 5, in the vicinity of Chehalis;

(5) State route number 7, beginning at the junction with state route number 12 in Morton, thence northerly to the junction with state route number 507;

(6) State route number 8, beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 near Tumwater;

(7) State route number 9, beginning at the junction with state route number 530 in Arlington, thence northerly to the end of the route at the Canadian border;

(8) State route number 10, beginning at Teanaway junction, thence easterly to a junction with state route number 97 west of Ellensburg;

(9) State route number 11, beginning at the junction with state route number 5 in the vicinity of Burlington, thence in a northerly direction to the junction with state route number 5;

(10) State route number 12, beginning at a junction with a county road approximately 2.8 miles west of the crossing of the Wynoochee river which is approximately 1.2 miles west of Montesano, thence in an easterly direction to a junction with state route number 8 in the vicinity of Elma; also

Beginning at a junction with state route number 5, thence easterly by way of Morton, Randle, and Packwood to the junction with state route number 410, approximately 3.5 miles west of Naches; also

Beginning at the junction with state route number 124 in the vicinity of the Tri-Cities, thence easterly through Wallula and Touchet to a junction with a county road approximately 2.4 miles west of a junction with state route number 129 at Clarkston;

(11) State route number 14, beginning at the crossing of Gibbons creek approximately 0.9 miles east of Washougal, thence easterly along the north bank of the Columbia river to a point in the vicinity of Plymouth;

(12) State route number 17, beginning at a junction with state route number 395 in the vicinity of Mesa, thence northerly to the junction with state route number 97 in the vicinity of Brewster;

(13) State route number 19, the Chimacum-Beaver Valley road, beginning at the junction with state route number 104, thence northerly to the junction with state route number 20;

(14) State route number 20, beginning at the junction with state route number 101 to the ferry zone in Port Townsend; also

Beginning at the Keystone ferry slip on Whidbey Island, thence northerly and easterly to a junction with state route number 153 southeast of Twisp; also

Beginning at the junction of state route number 97 in the vicinity of Okanogan, thence westerly across the Okanogan river to the junction with state route number 215; also

Beginning at a junction with state route number 97 near Tonasket, thence easterly and southerly to a junction with state route number 2 at Newport;

(15) State route number 25, beginning at the Spokane river bridge, thence northerly through Cedonia, Gifford, Kettle Falls, and Northport, to the Canadian border;

(16) State route number 26, beginning at the Whitman county boundary line, thence easterly by way of the vicinities of La Crosse and Dusty to a junction with state route number 195 in the vicinity of Colfax;

(17) State route number 27, beginning at a junction with state route number 195 in the vicinity of Pullman, thence northerly by way of the vicinities of Palouse and Garfield to a junction with state route number 271 in the vicinity of Oakesdale; also

From a junction with state route number 271 at Oakesdale, thence northerly to the vicinity of Tekoa;

(18) State route number 31, beginning at the junction with state route number 20 in Tiger, thence northerly to the Canadian border;

(19) State route number 82, beginning at the junction with state route number 395 south of the Tri-Cities area, thence southerly to the end of the route at the Oregon border;

(20) State route number 90, beginning at the junction with East Sunset Way in the vicinity east of Issaquah, thence easterly to Thorp road 9.0 miles west of Ellensburg;

(21) State route number 97, beginning at the Oregon border, in a northerly direction through Toppenish and Wapato to the junction with state route number 82 at Union Gap; also

Beginning at the junction with state route number 10, 2.5 miles north of Ellensburg, in a northerly direction to the junction with state route number 2, 4.0 miles east of Leavenworth; also

Beginning at the junction of state route number 153 in the vicinity south of Pateros, thence northerly by way of the vicinities of Brewster, Okanogan, Omak, Riverside, Tonasket, and Oroville to the international boundary line;

(22) State route number 97 alternate, beginning at the junction with state route number 2 in the vicinity of Monitor, thence northerly to the junction with state route number 97, approximately 5.0 miles north of Chelan;

(23) State route number 101, beginning at the Astoria-Megler bridge, thence north to Fowler street in Raymond; also

Beginning at a junction with state route number 109 in the vicinity of Queets, thence in a northerly, northeasterly, and easterly direction by way of Forks to the junction with state route number 5 in the vicinity of Olympia;

(24) State route number 104, beginning at a junction with state route number 101 in the vicinity south of Discovery bay, thence in a southeasterly direction to the Kingston ferry crossing;

(25) State route number 105, beginning at a junction with state route number 101 at Raymond, thence westerly and

northerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen;

(26) State route number 109, beginning at a junction with state route number 101 in Hoquiam to a junction with state route number 101 in the vicinity of Queets;

(27) State route number 112, beginning at the easterly boundary of the Makah Indian reservation, thence in an easterly direction to the vicinity of Laird's corner on state route number 101;

(28) State route number 116, beginning at the junction with the Chimacum-Beaver Valley road, thence in an easterly direction to Fort Flagler State Park;

(29) State route number 119, beginning at the junction with state route number 101 at Hoodspoint, thence northwesterly to the Mount Rose development intersection;

(30) State route number 122, Harmony road, between the junction with state route number 12 near Mayfield dam and the junction with state route number 12 in Mossyrock;

(31) State route number 123, beginning at the junction with state route number 12 in the vicinity of Morton, thence northerly to the junction with state route number 410;

(32) State route number 129, beginning at the Oregon border, thence northerly to the junction with state route number 12 in Clarkston;

(33) State route number 141, beginning at the junction with state route number 14 in Bingen, thence northerly to the end of the route at the Skamania county line;

(34) State route number 142, beginning at the junction with state route number 14 in Lyle, thence northeasterly to the junction with state route number 97, .5 miles from Goldendale;

(35) State route number 153, beginning at a junction with state route number 97 in the vicinity of Pateros, thence in a northerly direction to a junction with state route number 20 in the vicinity south of Twisp;

(36) State route number 155, beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence northerly and westerly to the junction with state route number 215;

(37) State route number 194, beginning at the Port of Almota to the junction with state route number 195 in the vicinity of Pullman;

(38) State route number 195, beginning at the Washington-Idaho boundary line southeast of Uniontown, thence northwesterly and northerly by way of the vicinity of Colton, Pullman, Colfax, Steptoe, and Rosalia to the Whitman county boundary line;

(39) State route number 202, beginning at the junction with state route number 522, thence in an easterly direction to the junction with state route number 90 in the vicinity of North Bend;

(40) State route number 211, beginning at the junction with state route number 2, thence northerly to the junction with state route number 20 in the vicinity of Usk;

(41) State route number 215, beginning at the junction of state route number 20 in the vicinity of Okanogan, thence northeasterly on the west side of the Okanogan river to a junction with state route number 97 north of Omak;

(42) State route number 231, beginning at the junction with state route number 23, in the vicinity of Sprague, thence in a northerly direction to the junction with state route number 2, approximately 2.5 miles west of Reardan;

(43) State route number 261, beginning at the junction with state route number 12 in the vicinity of Delaney, thence northwesterly to the junction with state route number 260;

(44) State route number 262, beginning at the junction with state route number 26, thence northeasterly to the junction with state route number 17 between Moses Lake and Othello;

(45) State route number 271, beginning at a junction with state route number 27 in the vicinity of Oakesdale, thence northwesterly to a junction with state route number 195 in the vicinity south of Rosalia;

(46) State route number 272, beginning at the junction with state route number 195 in Colfax, thence easterly to the Idaho state line, approximately 1.5 miles east of Palouse;

(47) State route number 305, beginning at the Winslow ferry dock to the junction with state route number 3 approximately 1.0 mile north of Poulsbo;

(48) State route number 395, beginning at the north end of the crossing of Mill creek in the vicinity of Colville, thence in a northwesterly direction to a junction with state route number 20 at the west end of the crossing over the Columbia river at Kettle Falls;

(49) State route number 401, beginning at a junction with state route number 101 at Point Ellice, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle;

(50) State route number 410, beginning 4.0 miles east of Enumclaw, thence in an easterly direction to the junction with state route number 12, approximately 3.5 miles west of Naches;

(51) State route number 501, beginning at the junction with state route number 5 in the vicinity of Vancouver, thence northwesterly on the New Lower River road around Vancouver Lake;

(52) State route number 503, beginning at the junction with state route number 500, thence northerly by way of Battle Ground and Yale to the junction with state route number 5 in the vicinity of Woodland;

(53) State route number 504, beginning at a junction with state route number 5 at Castle Rock, to the end of the route on Johnston Ridge, approximately milepost 52;

(54) State route number 505, beginning at the junction with state route number 504, thence northwesterly by way of Toledo to the junction with state route number 5;

(55) State route number 508, beginning at the junction with state route number 5, thence in an easterly direction to the junction with state route number 7 in Morton;

(56) State route number 525, beginning at the ferry toll booth on Whidbey Island to a junction with state route number 20 east of the Keystone ferry slip;

(57) State route number 542, beginning at the junction with state route number 5, thence easterly to the vicinity of Austin pass in Whatcom county;

(58) State route number 547, beginning at the junction with state route number 542 in Kendall, thence northwesterly to the junction with state route number 9 in the vicinity of the Canadian border;

(59) State route number 706, beginning at the junction with state route number 7 in Elbe, in an easterly direction to the end of the route at Mt. Rainier National Park;

(60) State route number 821, beginning at a junction with state route number 82 at the Yakima firing center interchange, thence in a northerly direction to a junction with state route number 82 at the Thrall road interchange;

(61) State route number 971, Navarre Coulee road, between the junction with state route number 97 and the junction with South Lakeshore road. [2003 c 55 § 1; 1993 c 430 § 7; 1992 c 26 § 2; 1991 c 342 § 54; 1990 c 240 § 3; 1975 c 63 § 8; 1973 1st ex.s. c 151 § 10; 1971 ex.s. c 73 § 29; 1970 ex.s. c 51 § 177; 1969 ex.s. c 281 § 6; 1967 ex.s. c 85 § 2.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Legislative finding—1990 c 240: "The legislature finds that scenic and recreational highways are designated because of a need to develop management plans that will protect and preserve the scenic and recreational resources from loss through inappropriate development. Protection of scenic and recreational resources includes managing land use outside normal highway rights of way. The legislature recognizes that scenic and recreational highways are typically located in areas that are natural in character, along watercourses or through mountainous areas, or in areas with a view of such scenery." [1990 c 240 § 1.]

Chapter 47.41 RCW

JUNKYARDS ADJACENT TO INTERSTATE AND PRIMARY HIGHWAYS

Sections

47.41.070 Violations—Penalty—Abatement as public nuisance. (*Effective July 1, 2004.*)

47.41.070 Violations—Penalty—Abatement as public nuisance. (*Effective July 1, 2004.*) (1) If the owner of the land upon which any such junkyard is located, or the operator thereof, as the case may be, fails to comply with the notice or remove any such junk within the time provided in this chapter after being so notified, he or she is guilty of a misdemeanor. In addition to the penalties imposed by law upon conviction, an order may be entered compelling compliance with this chapter. Each day the junkyard is maintained in a manner so as not to comply with this chapter constitutes a separate offense.

(2) If the operator of the junkyard or the owner of the property upon which it is located, as the case may be, is not found or refuses receipt of the notice, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall post the property upon which it is located with a notice that the junkyard constitutes a public nuisance and that the junk thereon must be removed as provided in this chapter. If the notice is not complied with, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall abate the nuisance and remove the junk, and for that purpose may enter upon private property without incurring liability for doing so. [2003 c 53 § 261; 1984 c 7 § 220; 1971 ex.s. c 101 § 7.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

Chapter 47.44 RCW

FRANCHISES ON STATE HIGHWAYS

Sections

47.44.081 Exception—Leases for deployment of personal wireless service facilities.

47.44.081 Exception—Leases for deployment of personal wireless service facilities. This chapter does not apply to leases issued for the deployment of personal wireless service facilities as provided in RCW 47.04.045. [2003 c 244 § 3.]

Chapter 47.52 RCW

LIMITED ACCESS FACILITIES

Sections

47.52.120 Violations specified—Exceptions—Penalty. (*Effective July 1, 2004.*)

47.52.220 Personal wireless service facilities—Approach permit—Report.

47.52.120 Violations specified—Exceptions—Penalty. (*Effective July 1, 2004.*) (1) After the opening of any limited access highway facility, it shall be unlawful for any person to: (a) Drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line on limited access facilities; (b) make a left turn or semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line; (c) drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line; (d) drive any vehicle into the limited access facility from a local service road except through an opening provided for that purpose in the dividing curb, dividing section, or dividing line which separates such service road from the limited access facility proper; (e) stop or park any vehicle or equipment within the right of way of such facility, including the shoulders thereof, except at points specially provided therefor, and to make only such use of such specially provided stopping or parking points as is permitted by the designation thereof: PROVIDED, That this subsection (1)(e) shall not apply to authorized emergency vehicles, law enforcement vehicles, assistance vans, or to vehicles stopped for emergency causes or equipment failures; (f) travel to or from such facility at any point other than a point designated by the establishing authority as an approach to the facility or to use an approach to such facility for any use in excess of that specified by the establishing authority.

(2) For the purposes of this section, an assistance van is a vehicle rendering aid free of charge to vehicles with equipment or fuel problems. The state patrol shall establish by rule additional standards and operating procedures, as needed, for assistance vans.

(3) Any person who violates this section is guilty of a misdemeanor and upon arrest and conviction therefor shall be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment in the city or county jail for not less than five days nor more than ninety days, or by both fine and imprisonment.

(4) Nothing contained in this section prevents the highway authority from proceeding to enforce the prohibitions or limitations of access to such facilities by injunction or as otherwise provided by law. [2003 c 53 § 262; 1987 c 330 § 748; 1985 c 149 § 1; 1961 c 13 § 47.52.120. Prior: 1959 c 167 § 1; 1947 c 202 § 11; Rem. Supp. 1947 § 6402-70.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

47.52.220 Personal wireless service facilities—Approach permit—Report. (1) The department shall authorize an off and on approach to partially controlled limited access highways for the placement and service of facilities providing personal wireless services.

(a) The approach shall be in a legal manner not to exceed thirty feet in width.

(b) The approach may be specified at a point satisfactory to the department at or between designated highway stations.

(c) The permit holder may use the approach for ingress and egress from the highway for construction or maintenance of the personal wireless service facility during nonpeak traffic hours so long as public safety is not adversely affected. The permit holder may use the approach for ingress and egress at any time for the construction of the facility if public safety is not adversely affected and if construction will not substantially interfere with traffic flow during peak traffic periods.

(2) The department shall authorize the approach by an annual permit, which may only be canceled upon one hundred eighty days' written notice to the permit holder.

(a) The department shall set the yearly cost of a permit in rule.

(b) The permit shall be assignable to the contractors and subcontractors of the permit holder. The permit shall also be transferable to a new owner following the sale or merger of the permit holder.

(3) For the purposes of this section:

(a) "Personal wireless services" means any federally licensed personal wireless service.

(b) "Facilities" means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures.

(4) The department shall present a report to the house of representatives technology, telecommunications, and energy committee and the senate technology and communications committee on the implementation of the permit process and the cost of permits by January 15, 2004, and by the first day of the legislative session following adoption of any rule increasing the cost of permits. [2003 c 188 § 2.]

Chapter 47.60 RCW

PUGET SOUND FERRY AND TOLL BRIDGE SYSTEM

Sections

47.60.120 Other crossings—Infringement of existing franchises—Waivers (as amended by 2003 c 83).

47.60.120 Other crossings—Infringement of existing franchises—Waivers (as amended by 2003 c 373).

47.60.135 Charter of state ferries—Hazardous materials.

47.60.140 System as self-liquidating undertaking—Powers of department—Concessions.

47.60.150 Fixing of charges—Deposit of revenues.

47.60.326 Schedule of charges for state ferries—Review by department, factors considered—Rule making by commission.

47.60.330 Public participation.

47.60.656 Passenger-only ferry service—Conveyances.

47.60.120 Other crossings—Infringement of existing franchises—Waivers (as amended by 2003 c 83). (1) If the department acquires or constructs, maintains, and operates any ferry crossings upon or toll bridges over Puget Sound or any of its tributary or connecting waters, there shall not be constructed, operated, or maintained any other ferry crossing upon or bridge over any such waters within ten miles of any such crossing or bridge operated or maintained by the department excepting such bridges or ferry crossings in existence, and being operated and maintained under a lawfully issued franchise at the time of the location of the ferry crossing or construction of the toll bridge by the department.

(2) The ten-mile distance in subsection (1) of this section means ten statute miles measured by airline distance. The ten-mile restriction shall be applied by comparing the two end points (termini) of a state ferry crossing to those of a private ferry crossing.

(3) The Washington utilities and transportation commission may, upon written petition of a commercial ferry operator certificated or applying for certification under chapter 81.84 RCW, and upon notice and hearing, grant a waiver from the ten-mile restriction. The waiver must not be detrimental to the public interest. In making a decision to waive the ten-mile restriction, the commission shall consider, but is not limited to, the impact of the waiver on transportation congestion mitigation, air quality improvement, and the overall impact on the Washington state ferry system. The commission shall act upon a request for a waiver within ninety days after the conclusion of the hearing. A waiver is effective for a period of five years from the date of issuance. At the end of five years the waiver becomes permanent unless appealed within thirty days by the commission on its own motion, the department, or an interested party.

(4) The department shall not maintain and operate any ferry crossing or toll bridge over Puget Sound or any of its tributary or connecting waters that would infringe upon any franchise lawfully issued by the state and in existence and being exercised at the time of the location of the ferry crossing or toll bridge by the department, without first acquiring the rights granted to such franchise holder under the franchise.

(5) This section does not apply to the operation of passenger-only ferry service by public transportation benefit areas meeting the requirements of RCW 36.57A.200 or to the operation of passenger-only ferry service by ferry districts. [2003 c 83 § 204; 1993 c 427 § 1; 1984 c 7 § 307; 1961 c 13 § 47.60.120. Prior: 1949 c 179 § 6; Rem. Supp. 1949 § 6584-35.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

47.60.120 Other crossings—Infringement of existing franchises—Waivers (as amended by 2003 c 373). (1) If the department acquires or constructs, maintains, and operates any ferry crossings upon or toll bridges over Puget Sound or any of its tributary or connecting waters, there shall not be constructed, operated, or maintained any other ferry crossing upon or bridge over any such waters within ten miles of any such crossing or bridge operated or maintained by the department excepting such bridges or ferry crossings in existence, and being operated and maintained under a lawfully issued franchise at the time of the location of the ferry crossing or construction of the toll bridge by the department.

(2) The ten-mile distance in subsection (1) of this section means ten statute miles measured by airline distance. The ten-mile restriction shall be applied by comparing the two end points (termini) of a state ferry crossing to those of a private ferry crossing.

(3) The Washington utilities and transportation commission may, upon written petition of a commercial ferry operator certificated or applying for certification under chapter 81.84 RCW, and upon notice and hearing, grant a waiver from the ten-mile restriction. The waiver must not be detrimental to the public interest. In making a decision to waive the ten-mile restriction, the commission shall consider, but is not limited to, the impact of the waiver on transportation congestion mitigation, air quality improvement, and the overall impact on the Washington state ferry system. The commission shall act upon a request for a waiver within ninety days after the conclusion of the

hearing. A waiver is effective for a period of five years from the date of issuance. At the end of five years the waiver becomes permanent unless appealed within thirty days by the commission on its own motion, the department, or an interested party.

(4) The department shall not maintain and operate any ferry crossing or toll bridge over Puget Sound or any of its tributary or connecting waters that would infringe upon any franchise lawfully issued by the state and in existence and being exercised at the time of the location of the ferry crossing or toll bridge by the department, without first acquiring the rights granted to such franchise holder under the franchise.

(5) This section does not apply to operators of passenger-only ferry service. [2003 c 373 § 2; 1993 c 427 § 1; 1984 c 7 § 307; 1961 c 13 § 47.60.120. Prior: 1949 c 179 § 6; Rem. Supp. 1949 § 6584-35.]

Reviser's note: RCW 47.60.120 was amended twice during the 2003 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

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

47.60.135 Charter of state ferries—Hazardous materials. (1) The charter use of Washington State Ferry vessels when established route operations and normal user requirements are not disrupted is permissible. In establishing chartering agreements, Washington State Ferries shall consider the special needs of local communities and interested parties. Washington State Ferries shall use sound business judgment and be sensitive to the interests of existing private enterprises.

(2) Consistent with the policy as established in subsection (1) of this section, the chief executive officer of the Washington State Ferries may approve agreements for the chartering of Washington State Ferry vessels to groups or individuals, including hazardous material transporters, in accordance with the following:

(a) Vessels may be committed to charter only when established route operation and normal user requirements are not disrupted or inconvenienced. If a vessel is engaged in the transport of hazardous materials, the transporter shall pay for all legs necessary to complete the charter, even if the vessel is simultaneously engaged in an operational voyage on behalf of Washington State Ferries.

(b) Charter rates for vessels must be established at actual vessel operating costs plus a market-rate profit margin. Actual vessel operating costs include, but are not limited to, all labor, fuel, and vessel maintenance costs incurred due to the charter agreement, including deadheading and standby.

(c) Parties chartering Washington State Ferry vessels shall comply with all applicable laws, rules, and regulations during the charter voyage, and failure to so comply is cause for immediate termination of the charter voyage. [2003 c 374 § 1; 1997 c 323 § 2.]

Finding—1997 c 323: "The legislature finds that when established route operations and normal user requirements are not disrupted Washington state ferries may be used for the transportation of hazardous materials under the chartering procedures and rates described in RCW 47.60.135." [1997 c 323 § 1.]

47.60.140 System as self-liquidating undertaking—Powers of department—Concessions. (1) The department is empowered to operate such ferry system, including all operations, whether intrastate or international, upon any route or routes, and toll bridges as a revenue-producing and self-liquidating undertaking. The department has full charge of

the construction, rehabilitation, rebuilding, enlarging, improving, operation, and maintenance of the ferry system, including toll bridges, approaches, and roadways incidental thereto that may be authorized by the department, including the collection of tolls and other charges for the services and facilities of the undertaking. The department has the exclusive right to enter into leases and contracts for use and occupancy by other parties of the concessions and space located on the ferries, wharves, docks, approaches, parking lots, and landings, including the selling of commercial advertising space and licenses to use the Washington State Ferries trademarks, but, except as provided in subsection (2) of this section, no such leases or contracts may be entered into for more than ten years, nor without a competitive contract process, except as otherwise provided in this section. The competitive process shall be either an invitation for bids in accordance with the process established by chapter 43.19 RCW, or a request for proposals in accordance with the process established by RCW 47.56.030. All revenues from commercial advertising, concessions, parking, leases, and contracts must be deposited in the Puget Sound ferry operations account in accordance with RCW 47.60.150.

(2) As part of a joint development agreement under which a public or private developer constructs or installs improvements on ferry system property, the department may lease all or part of such property and improvements to such developers for that period of time, not to exceed fifty-five years, or not to exceed thirty years for those areas located within harbor areas, which the department determines is necessary to allow the developer to make reasonable recovery on its initial investment. Any lease entered into as provided for in this subsection that involves state aquatic lands shall conform with the Washington state Constitution and applicable statutory requirements as determined by the department of natural resources. That portion of the lease rate attributable to the state aquatic lands shall be distributed in the same manner as other lease revenues derived from state aquatic lands as provided in *RCW 79.24.580.

(3) The department shall include in the strategic planning and performance assessment process, as required by RCW 43.88.090, an analysis of the compatibility of public and private partnerships with the state ferry system's core business, and the department's efforts to maximize nonfarebox revenues and provide benefit to the public users of the ferry system facilities. The department shall include an assessment of the need for an open solicitation to identify and select possible public or private partnerships in order to maximize the value of projects and the state's investment in current and future ferry system operations.

(a) When the department determines that an open solicitation is necessary, a request for proposal shall be released, consisting of an open solicitation outlining functional specifications to be used as the basis for selecting partnerships in the project.

(b) Any responses to the request for proposal shall be evaluated, at a minimum, on the basis of compatibility with the state ferry system's core business, potential to maximize nonfarebox revenue, longevity of the possible partnership commitment, and benefit to the public users of the ferry system facilities.

(c) If no responses are received, or those that are received are incompatible with ferry system operations, or do not meet the criteria stated in (b) of this subsection, the state ferry system may proceed with state ferry system operating strategies designed to achieve state ferry system objectives without established partnerships. [2003 c 374 § 2; 1995 1st sp.s. c 4 § 2; 1987 c 69 § 1; 1984 c 7 § 311; 1965 ex.s. c 170 § 58; 1961 c 13 § 47.60.140. Prior: 1951 c 259 § 1; 1949 c 179 § 5, part; Rem. Supp. 1949 § 6584-34, part.]

***Reviser's note:** RCW 79.24.580 was recodified as RCW 79.90.245 pursuant to 2003 c 334 § 569.

Effective date—1995 1st sp.s. c 4: See note following RCW 47.56.030.

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

47.60.150 Fixing of charges—Deposit of revenues.

Subject to the provisions of RCW 47.60.326, the schedule of charges for the services and facilities of the system shall be fixed and revised from time to time by the commission so that the tolls and other revenues deposited in the Puget Sound ferry operations account for maintenance and operation, and all moneys in the Puget Sound capital construction account available for debt service will yield annual revenue and income sufficient, after allowance for all operating, maintenance, and repair expenses to pay the interest and principal and sinking fund charges for all outstanding revenue bonds, and to create and maintain a fund for ordinary renewals and replacements: PROVIDED, That if provision is made by any resolution for the issuance of revenue bonds for the creation and maintenance of a special fund for rehabilitating, rebuilding, enlarging, or improving all or any part of the ferry system then such schedule of tolls and rates of charges shall be fixed and revised so that the revenue and income will also be sufficient to comply with such provision.

All income and revenues as collected by the ferry system from any source shall be paid to the state treasurer for the account of the department and deposited into the Puget Sound ferry operations account. Nothing in this section requires tolls on the Hood Canal bridge except as may be required by any bond covenants. [2003 c 374 § 3; 1999 c 94 § 26; 1990 c 42 § 405. Prior: 1986 c 66 § 2; 1986 c 23 § 1; 1983 c 3 § 135; 1972 ex.s. c 24 § 5; 1961 c 13 § 47.60.150; prior: 1949 c 179 § 5, part; Rem. Supp. 1949 § 6584-34, part.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

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

Effective date—1986 c 66: "This act shall take effect July 1, 1987. The secretary of transportation may immediately take such steps as are necessary to ensure that this act is implemented on its effective date." [1986 c 66 § 14.]

Effective date—1986 c 23: "This act shall take effect on July 1, 1987. The secretary of transportation may immediately take such steps as may be necessary to insure that this act is implemented on its effective date." [1986 c 23 § 2.]

47.60.326 Schedule of charges for state ferries—

Review by department, factors considered—Rule making by commission. (1) In order to maintain an adequate, fair, and economically sound schedule of charges for the transportation of passengers, vehicles, and commodities on the Wash-

ington state ferries, the department of transportation each year shall conduct a full review of such charges.

(2) Prior to February 1st of each odd-numbered year the department shall transmit to the transportation commission a report of its review together with its recommendations for the revision of a schedule of charges for the ensuing biennium. The commission on or before July 1st of that year shall adopt as a rule, in the manner provided by the Washington administrative procedure act, a schedule of charges for the Washington state ferries for the ensuing biennium commencing July 1st. The schedule may initially be adopted as an emergency rule if necessary to take effect on, or as near as possible to, July 1st.

(3) The department in making its review and formulating recommendations and the commission in adopting a schedule of charges may consider any of the following factors:

(a) The amount of subsidy available to the ferry system for maintenance and operation;

(b) The time and distance of ferry runs;

(c) The maintenance and operation costs for ferry runs with a proper adjustment for higher costs of operating outmoded or less efficient equipment;

(d) The efficient distribution of traffic between cross-sound routes;

(e) The desirability of reasonable commutation rates for persons using the ferry system to commute daily to work;

(f) The effect of proposed fares in increasing walk-on and vehicular passenger use;

(g) The effect of proposed fares in promoting all types of ferry use during nonpeak periods;

(h) The estimated revenues that are projected to be earned by the ferry system from commercial advertisements, parking, contracts, leases, and other sources;

(i) Such other factors as prudent managers of a major ferry system would consider.

(4) If at any time during the biennium it appears that projected revenues from the Puget Sound ferry operations account and any other operating subsidy available to the Washington state ferries will be less than the projected total cost of maintenance and operation of the Washington state ferries for the biennium, the department shall forthwith undertake a review of its schedule of charges to ascertain whether or not the schedule of charges should be revised. The department shall, upon completion of its review report, submit its recommendation to the transportation commission which may in its sound discretion revise the schedule of charges as required to meet necessary maintenance and operation expenditures of the ferry system for the biennium or may defer action until the regular annual review and revision of ferry charges as provided in subsection (2) of this section.

(5) The provisions of RCW 47.60.330 relating to public participation shall apply to the process of revising ferry tolls under this section.

(6) Under RCW 43.135.055, the transportation commission may increase ferry tolls included in the schedule of charges adopted under this section by a percentage that exceeds the fiscal growth factor.

(7) Notwithstanding the provisions of this section and chapter 81.28 RCW, and using sound business judgment, the chief executive officer of the ferry system may authorize the use of promotional, discounted, and special event fares to the

general public and commercial enterprises for the purpose of maximizing capacity use and the revenues collected by the ferry system. The department shall report to the transportation commission a summary of the promotional, discounted, and special event fares offered during each fiscal year and the financial results from these activities. [2003 c 374 § 4; 2001 1st sp.s. c 1 § 1; 1999 c 94 § 27; 1990 c 42 § 406; 1983 c 15 § 25; 1981 c 344 § 5.]

Effective date—2001 1st sp.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2001]." [2001 1st sp.s. c 1 § 2.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

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

Severability—1983 c 15: See RCW 47.64.910.

Severability—1981 c 344: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 344 § 8.]

47.60.330 Public participation. (1) Before a substantial expansion or curtailment in the level of service provided to ferry users, or a revision in the schedule of ferry tolls or charges, the department of transportation shall consult with affected ferry users. The consultation shall be: (a) By public hearing in affected local communities; (b) by review with the affected ferry advisory committees pursuant to RCW 47.60.310; (c) by conducting a survey of affected ferry users; or (d) by any combination of (a) through (c). Promotional, discount, and special event fares that are not part of the published schedule of ferry charges or tolls are exempt. The department shall report an accounting of all exempt revenues to the transportation commission each fiscal year.

(2) There is created a ferry system productivity council consisting of a representative of each ferry advisory committee empanelled under RCW 47.60.310, elected by the members thereof, and two representatives of employees of the ferry system appointed by mutual agreement of all of the unions representing ferry employees, which shall meet from time to time with ferry system management to discuss means of improving ferry system productivity.

(3) Before increasing ferry tolls the department of transportation shall consider all possible cost reductions with full public participation as provided in subsection (1) of this section and, consistent with public policy, shall consider adapting service levels equitably on a route-by-route basis to reflect trends in and forecasts of traffic usage. Forecasts of traffic levels shall be developed by the bond covenant traffic engineering firm appointed under the provisions of RCW 47.60.450. Provisions of this section shall not alter obligations under RCW 47.60.450. Before including any toll increase in a budget proposal by the commission, the department of transportation shall consult with affected ferry users in the manner prescribed in (1)(b) of this section plus the procedure of either (1)(a) or (c) of this section. [2003 c 374 § 5; 1983 c 15 § 26.]

Severability—1983 c 15: See RCW 47.64.910.

47.60.656 Passenger-only ferry service—Conveyances. The department of transportation may enter into con-

tracts with public transportation benefit areas meeting the requirements of RCW 36.57A.200 or county ferry districts to convey passenger-only ferry vessels and other properties associated with passenger-only ferry service that serve to provide passenger-only ferry service, as full or part consideration for the benefit area or ferry district assuming all future maintenance and operation obligations and costs required to maintain and operate the vessel and facilities. The conveyances must provide that the vessels or properties revert to the department if the vessels are not used for providing passenger-only ferry service. [2003 c 83 § 203.]

Reviser's note: 2003 c 83 directed that this section be added to chapter 47.52 RCW. However, codification in chapter 47.60 RCW appears to be more appropriate.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Chapter 47.64 RCW

MARINE EMPLOYEES—PUBLIC EMPLOYMENT RELATIONS

Sections

- 47.64.090 Other party operating ferry by rent, lease, or charter—Passenger-only ferry service (*as amended by 2003 c 91*).
- 47.64.090 Other party operating ferry by rent, lease, or charter (*as amended by 2003 c 373*).

47.64.090 Other party operating ferry by rent, lease, or charter—Passenger-only ferry service (*as amended by 2003 c 91*). (1) Except as provided in section 203 (~~(of this act)~~), chapter 83, Laws of 2003 and subsection (2) of this section, or as provided in section 303 (~~(of this act)~~), chapter 83, Laws of 2003 and subsection (3) of this section, if any party assumes the operation and maintenance of any ferry or ferry system by rent, lease, or charter from the department of transportation, such party shall assume and be bound by all the provisions herein and any agreement or contract for such operation of any ferry or ferry system entered into by the department shall provide that the wages to be paid, hours of employment, working conditions, and seniority rights of employees will be established by the marine employees' commission in accordance with the terms and provisions of this chapter and it shall further provide that all labor disputes shall be adjudicated in accordance with chapter 47.64 RCW.

(2) If a public transportation benefit area meeting the requirements of section 201 (~~(of this act)~~), chapter 83, Laws of 2003 has voter approval to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase passenger-only vessels, related equipment, or terminal space for purposes of loading and unloading the passenger-only ferry. Charges for the vessels, equipment, and space must be fair market value taking into account the public benefit derived from the ferry service. A benefit area or subcontractor of that benefit area that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to:

(a) The terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors' employees under chapter 41.56 RCW or the National Labor Relations Act, as applicable;

(b) Unless otherwise prohibited by federal or state law, a requirement that the benefit area and any contract with its subcontractors, give preferential hiring to former employees of the department of transportation who separated from employment with the department because of termination of the ferry service by the state of Washington; and

(c) Unless otherwise prohibited by federal or state law, a requirement that the benefit area and any contract with its subcontractors, on any questions concerning representation of employees for collective bargaining purposes, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer.

(3) If a ferry district is formed under section 301 (~~(of this act)~~), chapter 83, Laws of 2003 to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase vessels, related equipment, or terminal space for purposes of loading and unloading the ferry. Charges for the vessels, equipment, and space must be

fair market value taking into account the public benefit derived from the ferry service. A ferry district or subcontractor of that district that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to:

(a) ~~((Subject to))~~ The terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors' employees under chapter 41.56 RCW or the National Labor Relations Act, as applicable;

(b) ~~((Subject to))~~ Unless otherwise prohibited by federal or state law, a requirement ~~((to be included by))~~ that the ferry district ~~((in))~~ and any contract with ~~((the district's))~~ its subcontractors, ~~((that))~~ on any questions concerning representation of employees for collective bargaining purposes, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer. [2003 c 91 § 1; 2003 c 83 § 205; 1983 c 15 § 27; 1961 c 13 § 47.64.090. Prior: 1949 c 148 § 8; Rem. Supp. 1949 § 6524-29.]

(c) ~~((Subject to))~~ Unless otherwise prohibited by federal or state law, a requirement ~~((to be included by))~~ that the ferry district ~~((in))~~ and any contract with ~~((the district's))~~ its subcontractors, ~~((that))~~ on any questions concerning representation of employees for collective bargaining purposes, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer. [2003 c 91 § 1; 2003 c 83 § 205; 1983 c 15 § 27; 1961 c 13 § 47.64.090. Prior: 1949 c 148 § 8; Rem. Supp. 1949 § 6524-29.]

Contingent effective date—2003 c 91: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 23, 2003], but only if Engrossed Substitute House Bill No. 1853 has become law. If Engrossed Substitute House Bill No. 1853 has not become law by June 30, 2003, sections 1 and 2 of this act are null and void." [2003 c 91 § 4.] Engrossed Substitute House Bill No. 1853 became law as 2003 c 83, effective April 23, 2003.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

47.64.090 Other party operating ferry by rent, lease, or charter (as amended by 2003 c 373). (1) Except as provided in subsection (2) of this section, if any party assumes the operation and maintenance of any ferry or ferry system by rent, lease, or charter from the department of transportation, such party shall assume and be bound by all the provisions herein and any agreement or contract for such operation of any ferry or ferry system entered into by the department shall provide that the wages to be paid, hours of employment, working conditions and seniority rights of employees will be established by the marine employees' commission in accordance with the terms and provisions of this chapter and it shall further provide that all labor disputes shall be adjudicated in accordance with chapter 47.64 RCW.

(2) The department of transportation shall make its terminal, dock, and pier space available to private operators of passenger-only ferries if the space can be made available without limiting the operation of car ferries operated by the department. These private operators are not bound by the provisions of subsection (1) of this section. Charges for the equipment and space must be fair market value taking into account the public benefit derived from the passenger-only ferry service. [2003 c 373 § 3; 1983 c 15 § 27; 1961 c 13 § 47.64.090. Prior: 1949 c 148 § 8; Rem. Supp. 1949 § 6524-29.]

Reviser's note: RCW 47.64.090 was amended three times during the 2003 legislative session, twice without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Findings—Intent—2003 c 373: "The legislature finds that the Washington state department of transportation should focus on its core ferry mission of moving automobiles on Washington state's marine highways. The legislature finds that current statutes impose barriers to entities other than the state operating passenger-only ferries. The legislature intends to lift those barriers to allow entities other than the state to provide passenger-only ferry service. The legislature finds that the provision of this service and the improvement in the mobility of the citizens of Washington state is legally adequate consideration for the use of state facilities in conjunction with the provision of the service, and the legislature finds that allowing the operators of passenger-only ferries to use state facilities on the basis of legally adequate consideration does not evince donative intent on the part of the legislature." [2003 c 373 § 1.]

Severability—1983 c 15: See RCW 47.64.910.

Chapter 47.68 RCW

AERONAUTICS

(Formerly: Chapter 14.04 RCW, Aeronautics commission)

Sections

47.68.233	Registration of pilots—Certificates—Fees—Exemptions—Use of fees. (Effective until July 1, 2004.)
47.68.233	Registration of pilots—Certificates—Fees—Exemptions—Use of fees. (Effective July 1, 2004.)
47.68.234	Registration of airman and airwoman. (Effective until July 1, 2004.)
47.68.234	Registration of airman and airwoman. (Effective July 1, 2004.)
47.68.240	Penalties for violations. (Effective until July 1, 2004.)
47.68.240	Penalties for violations. (Effective July 1, 2004.)
47.68.250	Registration of aircraft.
47.68.255	Evasive registration. (Effective July 1, 2004.)

47.68.233 Registration of pilots—Certificates—Fees—Exemptions—Use of fees. (Effective until July 1, 2004.) The department shall require that every pilot who is a resident of this state and every nonresident pilot who regularly operates any aircraft in this state be registered with the department. The department shall charge an annual fee of fifteen dollars for each registration. For the period of July 1, 2003, through June 30, 2005, seven dollars of each registration fee collected shall be deposited into the aeronautics account, to be used solely for airport maintenance. All registration certificates issued under this section shall be renewed annually during the month of the registrant's birthdate.

Except as provided in the paragraph above, the registration fee imposed by this section shall be used by the department for the purpose of (a) search and rescue of lost and downed aircraft and airmen under the direction and supervision of the secretary, (b) safety and education, and (c) volunteer recognition and support.

Registration shall be effected by filing with the department a certified written statement that contains the information reasonably required by the department. The department shall issue certificates of registration and in connection therewith shall prescribe requirements for the possession and exhibition of the certificates.

The provisions of this section do not apply to:

(1) A pilot who operates an aircraft exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia;

(2) A pilot registered under the laws of a foreign country;

(3) A pilot engaged exclusively in commercial flying constituting an act of interstate or foreign commerce;

(4) A person piloting an aircraft equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of the controls and the flight is solely for instruction or for the demonstration of the aircraft to a bona fide prospective purchaser.

Failure to register as provided in this section is a violation of RCW 47.68.230 and subjects the offender to the penalties incident thereto. [2003 c 375 § 1; 2000 c 176 § 1; 1987 c 220 § 2; 1984 c 7 § 355; 1983 c 3 § 143; 1967 c 207 § 2. Formerly RCW 14.04.233.]

Effective date—2003 c 375: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 375 § 7.]

Severability—1987 c 220: See note following RCW 47.68.230.

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

47.68.233 Registration of pilots—Certificates—Fees—Exemptions—Use of fees. (Effective July 1, 2004.)

(1) The department shall require that every pilot who is a resident of this state and every nonresident pilot who regularly operates any aircraft in this state be registered with the department. The department shall charge an annual fee of fifteen dollars for each registration. For the period of July 1, 2003, through June 30, 2005, seven dollars of each registration fee collected shall be deposited into the aeronautics account, to be used solely for airport maintenance. All registration certificates issued under this section shall be renewed annually during the month of the registrant's birthdate.

(2) Except as provided in the paragraph above, the registration fee imposed by this section shall be used by the department for the purpose of (a) search and rescue of lost and downed aircraft and airmen under the direction and supervision of the secretary, (b) safety and education, and (c) volunteer recognition and support.

(3) Registration shall be effected by filing with the department a certified written statement that contains the information reasonably required by the department. The department shall issue certificates of registration and in connection therewith shall prescribe requirements for the possession and exhibition of the certificates.

(4) The provisions of this section do not apply to:

(a) A pilot who operates an aircraft exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia;

(b) A pilot registered under the laws of a foreign country;

(c) A pilot engaged exclusively in commercial flying constituting an act of interstate or foreign commerce;

(d) A person piloting an aircraft equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of the controls and the flight is solely for instruction or for the demonstration of the aircraft to a bona fide prospective purchaser.

(5) Failure to register as provided in this section is a violation of RCW 47.68.230 and subjects the offender to the penalties set forth in RCW 47.68.240(2). [2003 c 375 § 1; 2003 c 53 § 263; 2000 c 176 § 1; 1987 c 220 § 2; 1984 c 7 § 355; 1983 c 3 § 143; 1967 c 207 § 2. Formerly RCW 14.04.233.]

Reviser's note: This section was amended by 2003 c 53 § 263 and by 2003 c 375 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 375: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 375 § 7.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1987 c 220: See note following RCW 47.68.230.

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

47.68.234 Registration of airman and airwoman. (Effective until July 1, 2004.) The department shall require

that every airman or airwoman that is not registered under RCW 47.68.233 and who is a resident of this state, or every nonresident airman or airwoman who is regularly performing duties as an airman or airwoman within this state, be registered with the department. The department shall charge an annual fee of fifteen dollars for each registration. For the period of July 1, 2003, through June 30, 2005, seven dollars of which shall be deposited into the aeronautics account, to be used solely for airport maintenance. A registration certificate issued under this section is to be renewed annually during the month of the registrant's birthdate.

Except as provided in the paragraph above, the department shall use the registration fee imposed under this section for the purposes of: (1) Search and rescue of lost and downed aircraft and airmen or airwomen under the direction and supervision of the secretary; and (2) safety and education.

Registration is effected by filing with the department a certified written statement that contains the information reasonably required by the department. The department shall issue certificates of registration and, in connection with the certificates, shall provide requirements for the possession and exhibition of the certificates.

Failure to register as provided in this section is a violation of RCW 47.68.230 and subjects the offender to the penalties incident to this section. [2003 c 375 § 2; 1993 c 208 § 3.]

Effective date—2003 c 375: See note following RCW 47.68.233.

47.68.234 Registration of airman and airwoman. (Effective July 1, 2004.)

(1) The department shall require that every airman or airwoman that is not registered under RCW 47.68.233 and who is a resident of this state, or every nonresident airman or airwoman who is regularly performing duties as an airman or airwoman within this state, be registered with the department. The department shall charge an annual fee of fifteen dollars for each registration. For the period of July 1, 2003, through June 30, 2005, seven dollars of which shall be deposited into the aeronautics account, to be used solely for airport maintenance. A registration certificate issued under this section is to be renewed annually during the month of the registrant's birthdate.

(2) Except as provided in the paragraph above, the department shall use the registration fee imposed under this section for the purposes of: (a) Search and rescue of lost and downed aircraft and airmen or airwomen under the direction and supervision of the secretary; and (b) safety and education.

(3) Registration is effected by filing with the department a certified written statement that contains the information reasonably required by the department. The department shall issue certificates of registration and, in connection with the certificates, shall provide requirements for the possession and exhibition of the certificates.

(4) Failure to register as provided in this section is a violation of RCW 47.68.230 and subjects the offender to the penalties set forth in RCW 47.68.240(2). [2003 c 375 § 2; 2003 c 53 § 264; 1993 c 208 § 3.]

Reviser's note: This section was amended by 2003 c 53 § 264 and by 2003 c 375 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 375: See note following RCW 47.68.233.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

47.68.240 Penalties for violations. (Effective until July 1, 2004.) (1) Any person violating any of the provisions of this chapter, or any of the rules, regulations, or orders issued pursuant thereto, shall be guilty of a misdemeanor and shall be punished as provided under chapter 9A.20 RCW, except that any person violating any of the provisions of RCW 47.68.220, 47.68.230, or 47.68.255 shall be guilty of a gross misdemeanor which shall be punished as provided under chapter 9A.20 RCW. In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence which may be imposed pursuant thereto, for violations of RCW 47.68.220 and 47.68.230, the court in its discretion may prohibit the violator from operating an aircraft within the state for such period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as a contempt of court.

(2) In addition to the provisions of subsection (1) of this section, failure to register an aircraft, as required by this chapter is subject to the following civil penalties:

(a) If the aircraft registration is sixty days to one hundred nineteen days past due, the civil penalty is one hundred dollars.

(b) If the aircraft registration is one hundred twenty days to one hundred eighty days past due, the civil penalty is two hundred dollars.

(c) If the aircraft registration is over one hundred eighty days past due, the civil penalty is four hundred dollars.

(3) In addition to the provisions in subsection (1) of this section, failure to register as a pilot, airman, or airwoman, as required by this chapter, is subject to a civil penalty of four times the fees that are due. If the pilot registration is sixty days past due, the pilot, airman, or airwoman is subject to the [a] civil penalty of four times the fees that are due.

(4) The revenue from penalties prescribed in subsection (2) of this section must be deposited into the aeronautics account under RCW 82.42.090. The revenue from penalties prescribed in subsection (3) of this section must be deposited into the aircraft search and rescue, safety, and education account under RCW 47.68.236. [2003 c 375 § 3; 2000 c 229 § 2; 1999 c 277 § 5; 1993 c 238 § 3; 1987 c 202 § 216; 1983 c 3 § 145; 1947 c 165 § 24; Rem. Supp. 1947 § 10964-104. Formerly RCW 14.04.240.]

Effective date—2003 c 375: See note following RCW 47.68.233.

Effective date—2000 c 229: See note following RCW 46.16.010.

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

47.68.240 Penalties for violations. (Effective July 1, 2004.) (1) Except as provided in subsection (2) of this section, any person violating any of the provisions of this chapter, or any of the rules, regulations, or orders issued pursuant thereto, is guilty of a misdemeanor.

(2)(a) Any person violating any of the provisions of RCW 47.68.220, 47.68.230, or 47.68.255 is guilty of a gross misdemeanor.

(b) In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence

which may be imposed pursuant thereto, for violations of RCW 47.68.220 and 47.68.230, the court in its discretion may prohibit the violator from operating an aircraft within the state for such period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as a contempt of court.

(3) In addition to the provisions of subsection[s] (1) [and (2)] of this section, failure to register an aircraft, as required by this chapter is subject to the following civil penalties:

(a) If the aircraft registration is sixty days to one hundred nineteen days past due, the civil penalty is one hundred dollars.

(b) If the aircraft registration is one hundred twenty days to one hundred eighty days past due, the civil penalty is two hundred dollars.

(c) If the aircraft registration is over one hundred eighty days past due, the civil penalty is four hundred dollars.

(4) In addition to the provisions in subsection[s] (1) [and (2)] of this section, failure to register as a pilot, airman, or airwoman, as required by this chapter, is subject to a civil penalty of four times the fees that are due. If the pilot registration is sixty days past due, the pilot, airman, or airwoman is subject to the [a] civil penalty of four times the fees that are due.

(5) The revenue from penalties prescribed in subsection (3) of this section must be deposited into the aeronautics account under RCW 82.42.090. The revenue from penalties prescribed in subsection (4) of this section must be deposited into the aircraft search and rescue, safety, and education account under RCW 47.68.236. [2003 c 375 § 3; 2000 c 229 § 2; 1999 c 277 § 5; 1993 c 238 § 3; 1987 c 202 § 216; 1983 c 3 § 145; 1947 c 165 § 24; Rem. Supp. 1947 § 10964-104. Formerly RCW 14.04.240.]

Reviser's note: This section was amended by 2003 c 53 § 265 and by 2003 c 375 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 375: See note following RCW 47.68.233.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2000 c 229: See note following RCW 46.16.010.

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

47.68.250 Registration of aircraft. Every aircraft shall be registered with the department for each calendar year in which the aircraft is operated or is based within this state. A fee of fifteen dollars shall be charged for each such registration and each annual renewal thereof.

Possession of the appropriate effective federal certificate, permit, rating, or license relating to ownership and airworthiness of the aircraft, and payment of the excise tax imposed by Title 82 RCW for the privilege of using the aircraft within this state during the year for which the registration is sought, and payment of the registration fee required by this section shall be the only requisites for registration of an aircraft under this section.

The registration fee imposed by this section shall be payable to and collected by the secretary. The fee for any calendar year must be paid during the month of January, and shall be collected by the secretary at the time of the collection by him or her of the said excise tax. If the secretary is satisfied

that the requirements for registration of the aircraft have been met, he or she shall thereupon issue to the owner of the aircraft a certificate of registration therefor. The secretary shall pay to the state treasurer the registration fees collected under this section, which registration fees shall be credited to the aeronautics account in the transportation fund.

It shall not be necessary for the registrant to provide the secretary with originals or copies of federal certificates, permits, ratings, or licenses. The secretary shall issue certificates of registration, or such other evidences of registration or payment of fees as he or she may deem proper; and in connection therewith may prescribe requirements for the possession and exhibition of such certificates or other evidences.

The provisions of this section shall not apply to:

(1) An aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(2) An aircraft registered under the laws of a foreign country;

(3) An aircraft which is owned by a nonresident and registered in another state: PROVIDED, That if said aircraft shall remain in and/or be based in this state for a period of ninety days or longer it shall not be exempt under this section;

(4) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(5) An aircraft owned by the commercial manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft;

(6) An aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW;

(7) An aircraft based within the state that is in an unairworthy condition, is not operated within the registration period, and has obtained a written exemption issued by the secretary.

The secretary shall be notified within thirty days of any change in ownership of a registered aircraft. The notification shall contain the N, NC, NR, NL, or NX number of the aircraft, the full name and address of the former owner, and the full name and address of the new owner. For failure to so notify the secretary, the registration of that aircraft may be canceled by the secretary, subject to reinstatement upon application and payment of a reinstatement fee of ten dollars by the new owner.

A municipality or port district that owns, operates, or leases an airport, as defined in RCW 47.68.020, with the intent to operate, shall require from an aircraft owner proof of aircraft registration as a condition of leasing or selling tiedown or hanger space for an aircraft. It is the responsibility of the lessee or purchaser to register the aircraft. The airport shall work with the aviation division to assist in its efforts to register aircraft by providing information about based aircraft on an annual basis as requested by the division. [2003 c 375 § 4; 1999 c 302 § 2; 1998 c 188 § 1; 1995 c 170 § 3; 1993 c 208 § 7; 1987 c 220 § 3; 1979 c 158 § 206; 1967 ex.s. c 9 § 8; 1955 c 150 § 11; 1949 c 49 § 12; 1947 c 165 §

25; Rem. Supp. 1949 § 10964-105. Formerly RCW 14.04.250.]

Effective date—2003 c 375: See note following RCW 47.68.233.

Severability—1987 c 220: See note following RCW 47.68.230.

Aircraft dealers: Chapter 14.20 RCW.

Definition of terms: RCW 14.20.010, 47.68.020.

47.68.255 Evasive registration. (Effective July 1, 2004.) A person who is required to register an aircraft under this chapter and who registers an aircraft in another state or foreign country evading the Washington aircraft excise tax is guilty of a gross misdemeanor. For a second or subsequent offense, the person convicted is also subject to a fine equal to four times the amount of avoided taxes and fees, no part of which may be suspended or deferred. Excise taxes owed and fines assessed will be deposited in the manner provided under RCW 46.16.010(4). [2003 c 53 § 266; 2000 c 229 § 3; 1999 c 277 § 6; 1996 c 184 § 3; 1993 c 238 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2000 c 229: See note following RCW 46.16.010.

Effective date—1996 c 184: See note following RCW 46.16.010.

Chapter 47.76 RCW RAIL FREIGHT SERVICE

Sections

47.76.400	Produce railcar pool—Findings—Intent.
47.76.410	Produce railcar pool—Definition.
47.76.420	Produce railcar pool—Departmental authority.
47.76.430	Produce railcar pool—Funding.
47.76.440	Produce railcar pool—Management.
47.76.450	Produce railcar pool account.
47.76.900	Captions not law.

47.76.400 Produce railcar pool—Findings—Intent. The legislature finds that an actively coordinated and cooperatively facilitated railcar pool for transportation of perishable agricultural commodities is necessary for the continued viability and competitiveness of Washington's agricultural industry. The legislature also finds that the rail transportation model established by the Washington Grain Train program has been successful in serving the shipping needs of the wheat industry.

It is, therefore, the intent of the legislature to authorize and direct the Washington department of transportation to develop a railcar program for Washington's perishable commodity industries to be known as the Washington Produce Railcar Pool. This railcar program should be modeled from the Washington Grain Train program, but be made flexible enough to work with entities outside state government in order to fulfill its mission, including, but not limited to, the federal and local governments, commodity commissions, and private entities. [2003 c 191 § 1.]

47.76.410 Produce railcar pool—Definition. As used in RCW 47.76.400 through 47.76.450 "short line railroad" means a Class II or Class III railroad as defined by the United States Surface Transportation Board. [2003 c 191 § 2.]

47.76.420 Produce railcar pool—Departmental authority. In addition to powers otherwise granted by law,

the department may establish a Washington Produce Railcar Pool to promote viable, cost-effective rail service for Washington produce, including but not limited to apples, onions, pears, and potatoes, both processed and fresh.

To the extent that funds are appropriated, the department may:

(1) Operate the Washington Produce Railcar Pool program while working in close coordination with the department of agriculture, interested commodity commissions, port districts, and other interested parties;

(2) For the purposes of this program:

(a) Purchase or lease new or used refrigerated railcars;

(b) Accept donated refrigerated railcars; and

(c) Refurbish and remodel the railcars;

(3) Hire, in consultation with affected stakeholders, including but not limited to short line railroads, commodity commissions, and port districts, a transportation management firm to perform the function outlined in RCW 47.76.440; and

(4) Contribute the efforts of a short line rail-financing expert to find funding for the project to help interested short line railroads in this state to accomplish the necessary operating arrangements once the railcars are ready for service. [2003 c 191 § 3.]

47.76.430 Produce railcar pool—Funding. To the extent that funds are appropriated, the department shall fund the program as follows: The department may accept funding from the federal government, or other public or private sources, to purchase or lease new or used railcars and to refurbish and remodel the railcars as needed. Nothing in this section precludes other entities, including but not limited to short line railroads, from performing the remodeling under RCW 47.76.400 through 47.76.450. [2003 c 191 § 4.]

47.76.440 Produce railcar pool—Management. (1) The transportation management firm hired under RCW 47.76.420(3) shall manage the day-to-day operations of the railcars, such as monitoring the location of the cars, returning them to this state, distributing them, arranging for pretrips and repairs, and arranging for per diem, mileage allowances, and other freight billing charges with the railroads.

(2) The railcar pool must be managed over the life of the railcars so that the railcars will be distributed to railroads and port districts around the state for produce loadings as market conditions warrant or to other users, including out-of-state users by contractual agreement, during times of excess capacity.

(3) To maximize railcar availability and use, the department or the transportation management firm may make agreements with the transcontinental railroad systems to pool Washington-owned or Washington-managed railcars with those of the railroads. In such instances, the railroad must agree to provide immediately an equal number of railcars to the Washington railcar pool.

(4) The department shall act in an oversight role to verify that the railcar pool is managed in accordance with subsections (2) and (3) of this section. [2003 c 191 § 5.]

47.76.450 Produce railcar pool account. The produce railcar pool account is created in the custody of the state trea-

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surer. All receipts from per diem charges, mileage charges, and freight billing charges paid by railroads and shippers that use the railcars in the Washington Produce Railcar Pool must be deposited into the account. Expenditures from the account may be used only for the purposes of RCW 47.76.400 through 47.76.440. Only the secretary of transportation or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2003 c 191 § 6.]

47.76.900 Captions not law. Section captions used in RCW 47.76.400 through 47.76.450 are not part of the law. [2003 c 191 § 8.]

Chapter 47.80 RCW

REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS

Sections

47.80.040	Transportation policy boards.
47.80.080	Majority vote on state matters.

47.80.040 Transportation policy boards. Each regional transportation planning organization shall create a transportation policy board. Transportation policy boards shall provide policy advice to the regional transportation planning organization and shall allow representatives of major employers within the region, the department of transportation, transit districts, port districts, and member cities, towns, and counties within the region to participate in policy making. Any members of the house of representatives or the state senate whose districts are wholly or partly within the boundaries of the regional transportation planning organization are considered ex officio, nonvoting policy board members of the regional transportation planning organization. This does not preclude legislators from becoming full-time, voting board members. [2003 c 351 § 1; 1990 1st ex.s. c 17 § 56.]

47.80.080 Majority vote on state matters. When voting on matters solely affecting Washington state, a regional transportation planning organization must obtain a majority vote of the Washington residents serving as members of the regional transportation planning organization before a matter may be adopted. [2003 c 351 § 2.]

Title 48

INSURANCE

Chapters

48.01	Initial provisions.
48.02	Insurance commissioner.
48.06	Organization of domestic insurers.
48.09	Mutual insurers.
48.13	Investments.
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Chapter 48.01 RCW INITIAL PROVISIONS

Sections

48.01.050	"Insurer" defined.
48.01.080	Penalties.
48.01.235	Enrollment of a child under the health plan of the child's parent—Requirements—Restrictions.

48.01.050 "Insurer" defined. "Insurer" as used in this code includes every person engaged in the business of making contracts of insurance, other than a fraternal benefit society. A reciprocal or interinsurance exchange is an "insurer" as used in this code. Two or more hospitals that join and organize as a mutual corporation pursuant to chapter 24.06 RCW for the purpose of insuring or self-insuring against liability claims, including medical liability, through a contributing trust fund are not an "insurer" under this code. Two or more local governmental entities, under any provision of law, that join together and organize to form an organization for the purpose of jointly self-insuring or self-funding are not an "insurer" under this code. Two or more persons engaged in the business of commercial fishing who enter into an arrangement with other such persons for the pooling of funds to pay claims or losses arising out of loss or damage to a vessel or machinery used in the business of commercial fishing and owned by a member of the pool are not an "insurer" under this code. [2003 c 248 § 1; 1990 c 130 § 1; 1985 c 277 § 9; 1979 ex.s. c 256 § 13; 1975-'76 2nd ex.s. c 13 § 1; 1947 c 79 § .01.05; Rem. Supp. 1947 § 45.01.05.]

Retrospective application—1985 c 277: "This act applies retrospectively to group self-funded plans formed on or after January 1, 1983." [1985 c 277 § 10.]

"Domestic," "foreign," "alien" insurers defined: RCW 48.05.010.

Merger, rehabilitation, liquidation situations—"Insurer" defined: RCW 48.31.020, 48.99.010.

"Reciprocal insurance, insurer" defined: RCW 48.10.010, 48.10.020.

48.01.080 Penalties. Except as otherwise provided in this code, any person violating any provision of this code is guilty of a gross misdemeanor and will, upon conviction, be fined not less than ten dollars nor more than one thousand dollars, or imprisoned for not more than one year, or both, in addition to any other penalty or forfeiture provided herein or otherwise by law. [2003 c 250 § 1; 1947 c 79 § .01.08; Rem. Supp. 1947 § 45.01.08.]

Severability—2003 c 250: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected." [2003 c 250 § 15.]

48.01.235 Enrollment of a child under the health plan of the child's parent—Requirements—Restrictions.

(1) An issuer and an employee welfare benefit plan, whether insured or self funded, as defined in the employee retirement income security act of 1974, 29 U.S.C. Sec. 1101 et seq. may not deny enrollment of a child under the health plan of the child's parent on the grounds that:

(a) The child was born out of wedlock;

(b) The child is not claimed as a dependent on the parent's federal tax return; or

(c) The child does not reside with the parent or in the issuer's, or insured or self funded employee welfare benefit plan's service area.

(2) Where a child has health coverage through an issuer, or an insured or self funded employee welfare benefit plan of a noncustodial parent, the issuer, or insured or self funded employee welfare benefit plan, shall:

(a) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;

(b) Permit the provider or the custodial parent to submit claims for covered services without the approval of the noncustodial parent. If the provider submits the claim, the provider will obtain the custodial parent's assignment of insurance benefits or otherwise secure the custodial parent's approval.

For purposes of this subsection the department of social and health services as the state medicaid agency under RCW 74.09.500 may reassign medical insurance rights to the provider for custodial parents whose children are eligible for services under RCW 74.09.500; and

(c) Make payments on claims submitted in accordance with (b) of this subsection directly to the custodial parent, to the provider, or to the department of social and health services as the state medicaid agency under RCW 74.09.500.

(3) Where a child does not reside in the issuer's service area, an issuer shall cover no less than urgent and emergent care. Where the issuer offers broader coverage, whether by policy or reciprocal agreement, the issuer shall provide such coverage to any child otherwise covered that does not reside in the issuer's service area.

(4) Where a parent is required by a court order to provide health coverage for a child, and the parent is eligible for family health coverage, the issuer, or insured or self funded employee welfare benefit plan, shall:

(a) Permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(b) Enroll the child under family coverage upon application of the child's other parent, department of social and health services as the state medicaid agency under RCW 74.09.500, or child support enforcement program, if the parent is enrolled but fails to make application to obtain coverage for such child; and

(c) Not disenroll, or eliminate coverage of, such child who is otherwise eligible for the coverage unless the issuer or insured or self funded employee welfare benefit plan is provided satisfactory written evidence that:

(i) The court order is no longer in effect; or
 (ii) The child is or will be enrolled in comparable health coverage through another issuer, or insured or self funded employee welfare benefit plan, which will take effect not later than the effective date of disenrollment.

(5) An issuer, or insured or self funded employee welfare benefit plan, that has been assigned the rights of an individual eligible for medical assistance under medicaid and coverage for health benefits from the issuer, or insured or self funded employee welfare benefit plan, may not impose requirements on the department of social and health services that are different from requirements applicable to an agent or assignee of any other individual so covered. [2003 c 248 § 2; 1995 c 34 § 3.]

Chapter 48.02 RCW INSURANCE COMMISSIONER

Sections

48.02.190 Operating costs of office—Insurance commissioner's regulatory account—Contributions by insurance organizations, fees.

48.02.190 Operating costs of office—Insurance commissioner's regulatory account—Contributions by insurance organizations, fees. (1) As used in this section:

(a) "Organization" means every insurer, as defined in RCW 48.01.050, having a certificate of authority to do business in this state and every health care service contractor registered to do business in this state. "Class one" organizations shall consist of all insurers as defined in RCW 48.01.050. "Class two" organizations shall consist of all organizations registered under provisions of chapter 48.44 RCW.

(b) "Receipts" means (i) net direct premiums consisting of direct gross premiums, as defined in RCW 48.18.170, paid for insurance written or renewed upon risks or property resident, situated, or to be performed in this state, less return premiums and premiums on policies not taken, dividends paid or credited to policyholders on direct business, and premiums received from policies or contracts issued in connection with qualified plans as defined in RCW 48.14.021, and (ii) prepayments to health care service contractors as set forth in RCW 48.44.010(3) less experience rating credits, dividends, prepayments returned to subscribers, and payments for contracts not taken.

(2) The annual cost of operating the office of insurance commissioner shall be determined by legislative appropriation. A pro rata share of the cost shall be charged to all organizations. Each class of organization shall contribute sufficient in fees to the insurance commissioner's regulatory account to pay the reasonable costs, including overhead, of regulating that class of organization.

(3) Fees charged shall be calculated separately for each class of organization. The fee charged each organization shall be that portion of the cost of operating the insurance commissioner's office, for that class of organization, for the ensuing fiscal year that is represented by the organization's portion of the receipts collected or received by all organizations within that class on business in this state during the previous calendar year: PROVIDED, That the fee shall not exceed one-eighth of one percent of receipts: PROVIDED

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FURTHER, That the minimum fee shall be one thousand dollars.

(4) The commissioner shall annually, on or before June 1, calculate and bill each organization for the amount of its fee. Fees shall be due and payable no later than June 15 of each year: PROVIDED, That if the necessary financial records are not available or if the amount of the legislative appropriation is not determined in time to carry out such calculations and bill such fees within the time specified, the commissioner may use the fee factors for the prior year as the basis for the fees and, if necessary, the commissioner may impose supplemental fees to fully and properly charge the organizations. The penalties for failure to pay fees when due shall be the same as the penalties for failure to pay taxes pursuant to RCW 48.14.060. The fees required by this section are in addition to all other taxes and fees now imposed or that may be subsequently imposed.

(5) All moneys collected shall be deposited in the insurance commissioner's regulatory account in the state treasury which is hereby created.

(6) Unexpended funds in the insurance commissioner's regulatory account at the close of a fiscal year shall be carried forward in the insurance commissioner's regulatory account to the succeeding fiscal year and shall be used to reduce future fees. During the 2003-2005 fiscal biennium, the legislature may transfer from the insurance commissioner's regulatory account to the state general fund such amounts as reflect excess fund balance in the account. [2003 1st sp.s. c 25 § 923; 2002 c 371 § 913; 1987 c 505 § 54; 1986 c 296 § 7.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

Chapter 48.06 RCW ORGANIZATION OF DOMESTIC INSURERS

Sections

48.06.030 Solicitation permit. (*Effective July 1, 2004.*)

48.06.190 Penalty for exhibiting false accounts, etc. (*Effective July 1, 2004.*)

48.06.030 Solicitation permit. (*Effective July 1, 2004.*) (1) No person forming or proposing to form in this state an insurer, or insurance holding corporation, or stock corporation to finance an insurer or insurance production therefor, or corporation to manage an insurer, or corporation to be attorney in fact for a reciprocal insurer, or a syndicate for any of such purposes, shall advertise, or solicit or receive any funds, agreement, stock subscription, or membership on account thereof unless he or she has applied for and has received from the commissioner a solicitation permit.

(2) Any person violating this section is guilty of a class B felony and shall be subject to a fine of not more than ten thousand dollars or imprisonment for not more than ten years, or by both fine and imprisonment. [2003 c 53 § 267; 1947 c 79 § .06.03; Rem. Supp. 1947 § 45.06.03.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

48.06.190 Penalty for exhibiting false accounts, etc. (*Effective July 1, 2004.*) Every person who, with intent to deceive, knowingly exhibits any false account, or document, or advertisement, relative to the affairs of any insurer, or of any corporation or syndicate of the kind enumerated in RCW 48.06.030, formed or proposed to be formed, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 268; 1947 c 79 § .06.19; Rem. Supp. 1947 § 45.06.19.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 48.09 RCW MUTUAL INSURERS

Sections

48.09.320 Borrowed capital.

48.09.320 Borrowed capital. (1) A domestic mutual insurer may, with the commissioner's advance approval and without the pledge of any of its assets, borrow money to defray the expenses of its organization or for any purpose required by its business, upon an agreement that such money and such fair and reasonable interest thereon as may be agreed upon, shall be repaid only out of the insurer's earned surplus in excess of its required minimum surplus.

(2) An insurer borrowing funds under this section must comply with the national association of insurance commissioner's - accounting practices and procedures manual which sets forth requirements for borrowed money to be treated as surplus notes for financial accounting purposes.

(3) The commissioner's approval of such borrowed funds, if granted, shall specify the amount to be borrowed, the purpose for which the money is to be used, the terms and form of the loan agreement, the date by which the loan must be completed, fair and reasonable commissions or promotional expenses to be incurred or to be paid, and such other related matters as the commissioner shall deem proper. If the money is to be borrowed upon multiple agreements, the agreements shall be serially numbered. No loan agreement or series thereof shall have or be given any preferential rights over any other such loan agreement or series. [2003 c 249 § 1; 1947 c 79 § .09.32; Rem. Supp. 1947 § 45.09.32.]

Chapter 48.13 RCW INVESTMENTS

Sections

48.13.180 Foreign securities.

48.13.180 Foreign securities. (1) An insurer authorized to transact insurance in a foreign country may invest any of its funds, in aggregate amount not exceeding its deposit and reserve obligations incurred in such country, in securities of or in such country possessing characteristics and of a quality similar to those required pursuant to this chapter for investments in the United States.

(2) Subject to the limitations in this chapter, an insurer may invest any of its funds, in an aggregate amount not exceeding ten percent of its assets, in addition to any amount permitted pursuant to subsection (1) of this section, in obliga-

tions of foreign governments including provinces, counties, municipalities, or similar entities, and in obligations and securities of foreign corporations, which have not been in default during the five years next preceding date of acquisition, and if the foreign jurisdiction has a sovereign debt rating of SVO 1. However, an investment made in any one foreign country pursuant to this subsection shall not exceed five percent of the insurer's assets. [2003 c 251 § 1; 1947 c 79 § .13.18; Rem. Supp. 1947 § 45.13.18.]

Chapter 48.14 RCW FEES AND TAXES

Sections

48.14.029 Premium tax credit—New employment for international service activities in eligible areas—Designation of census tracts for eligibility—Records—Tax due upon ineligibility—Interest assessment—Information from employment security department.

48.14.060 Failure to pay tax—Penalty.

48.14.095 Unlawful or delinquent insurers or taxpayers—Computing the tax payable—Risks, exposures, or enrolled participants only partially in state.

48.14.029 Premium tax credit—New employment for international service activities in eligible areas—Designation of census tracts for eligibility—Records—Tax due upon ineligibility—Interest assessment—Information from employment security department. (1) Subject to the limits in this section, an eligible person is allowed a credit against the tax due under RCW 48.14.020. The credit is based on qualified employment positions in eligible areas. The credit is available to persons who are engaged in international insurance services as defined in this section. In order to receive the credit, the international insurance services activities must take place at a business within the eligible area.

(2)(a) The credit shall equal three thousand dollars for each qualified employment position created after July 1, 1998, in an eligible area. A credit is earned for the calendar year the person is hired to fill the position, plus the four subsequent consecutive years, if the position is maintained for those four years.

(b) Credit may not be taken for hiring of persons into positions that exist on July 1, 1998. Credit is authorized for new employees hired for new positions created after July 1, 1998. New positions filled by existing employees are eligible for the credit under this section only if the position vacated by the existing employee is filled by a new hire.

(c) When a position is newly created, if it is filled before July 1st, this position is eligible for the full yearly credit. If it is filled after June 30th, this position is eligible for half of the credit.

(d) Credit may be accrued and carried over until it is used. No refunds may be granted for credits under this section.

(3) For the purposes of this section:

(a) "Eligible area" means: (i) A community empowerment zone under RCW 43.31C.020; or (ii) a contiguous group of census tracts that meets the unemployment and poverty criteria of RCW 43.31C.030 and is designated under subsection (4) of this section;

(b) "Eligible person" means a person, as defined in RCW 82.04.030, who in an eligible area at a specific location is engaged in the business of providing international insurance services;

(c) "International insurance services" means a business that provides insurance services related directly to the delivery of the service outside the United States or on behalf of persons residing outside the United States; and

(d) "Qualified employment position" means a permanent full-time position to provide international insurance services. If an employee is either voluntarily or involuntarily separated from employment, the employment position is considered filled on a full-time basis if the employer is either training or actively recruiting a replacement employee.

(4) By ordinance, the legislative authority of a city with population greater than eighty thousand, located in a county containing no community empowerment zones as designated under RCW 43.31C.020, may designate a contiguous group of census tracts within the city as an eligible area under this section. Each of the census tracts must meet the unemployment and poverty criteria of RCW 43.31C.030. Upon making the designation, the city shall transmit to the department of revenue a certification letter and a map, each explicitly describing the boundaries of the census tract. This designation must be made by December 31, 1998.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. This information includes:

(a) Employment records for the previous six years;

(b) Information relating to description of international insurance services activity engaged in at the eligible location by the person; and

(c) Information relating to customers of international insurance services activity engaged in at that location by the person.

(6) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been used shall be immediately due. The department shall assess interest, but not penalties, on the credited taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be assessed retroactively to the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(7) The employment security department shall provide to the department of revenue such information needed by the department of revenue to verify eligibility under this section. [2003 c 248 § 3; 1998 c 313 § 3.]

Intent—Findings—Effective date—1998 c 313: See notes following RCW 82.04.44525.

Business and occupation tax credit: RCW 82.04.44525.

48.14.060 Failure to pay tax—Penalty. (1) Any insurer or taxpayer, as defined in RCW 48.14.0201, failing to file its tax statement and to pay the specified tax or prepayment of tax on premiums and prepayments for health care services by the last day of the month in which the tax becomes due shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not paid within forty-five days after the due date, the insurer will be assessed a total

penalty of ten percent of the amount of the tax; and if the tax is not paid within sixty days of the due date, the insurer will be assessed a total penalty of twenty percent of the amount of the tax. The tax may be collected by distraint, and the penalty recovered by any action instituted by the commissioner in any court of competent jurisdiction. The amount of any penalty collected must be paid to the state treasurer and credited to the general fund.

(2) In addition to the penalties set forth in subsection (1) of this section, interest will accrue on the amount of the unpaid tax or prepayment at the maximum legal rate of interest permitted under RCW 19.52.020 commencing sixty-one days after the tax is due until paid. This interest will not accrue on taxes imposed under RCW 48.15.120.

(3) The commissioner may revoke the certificate of authority or registration of any delinquent insurer or taxpayer, and the certificate of authority or registration will not be reissued until all taxes, prepayments of tax, interest, and penalties have been fully paid and the insurer or taxpayer has otherwise qualified for the certificate of authority or registration. [2003 c 341 § 1; 1981 c 6 § 2; 1947 c 79 § .14.06; Rem. Supp. 1947 § 45.14.06.]

48.14.095 Unlawful or delinquent insurers or taxpayers—Computing the tax payable—Risks, exposures, or enrolled participants only partially in state. (1) This section applies to any insurer or taxpayer, as defined in RCW 48.14.0201, violating or failing to comply with RCW 48.05.030(1), 48.17.060 (1) or (2), 48.36A.290(1), 48.44.015(1), or 48.46.027(1).

(2) Except as provided in subsection (7) of this section, RCW 48.14.020, 48.14.0201, and 48.14.060 apply to insurers or taxpayers identified in subsection (1) of this section.

(3) If an insurance contract, health care services contract, or health maintenance agreement covers risks or exposures, or enrolled participants only partially in this state, the tax payable is computed on the portion of the premium that is properly allocated to a risk or exposure located in this state, or enrolled participants residing in this state.

(4) In determining the amount of taxable premiums under subsection (3) of this section, all premiums, other than premiums properly allocated or apportioned and reported as taxable premiums of another state, that are written, procured, or received in this state, or that are for a policy or contract negotiated in this state, are considered to be written on risks or property resident, situated, or to be performed in this state, or for health care services to be provided to enrolled participants residing in this state.

(5) Insurance on risks or property resident, situated, or to be performed in this state, or health coverage for the provision of health care services for residents of this state, is considered to be insurance procured, continued, renewed, or performed in this state, regardless of the location from which the application is made, the negotiations are conducted, or the premiums are remitted.

(6) Premiums on risks or exposures that are properly allocated to federal waters or international waters or under the jurisdiction of a foreign government are not taxable by this state.

(7) This section does not apply to premiums on insurance procured by a licensed surplus line broker under chapter 48.15 RCW. [2003 c 341 § 3.]

**Chapter 48.15 RCW
UNAUTHORIZED INSURERS**

Sections

- 48.15.020 Solicitation by unauthorized insurer prohibited—Personal liability.
- 48.15.023 Unauthorized activities—Acts committed in this state—Sanctions.
- 48.15.130 Penalty for default.

48.15.020 Solicitation by unauthorized insurer prohibited—Personal liability. (1) An insurer that is not authorized by the commissioner may not solicit insurance business in this state or transact insurance business in this state, except as provided in this chapter.

(2)(a) A person may not, in this state, represent an unauthorized insurer except as provided in this chapter. This subsection does not apply to any adjuster or attorney at law representing an unauthorized insurer from time to time in this state in his or her professional capacity.

(b) A person, other than a duly licensed surplus line broker acting in good faith under his or her license, who makes a contract of insurance in this state, directly or indirectly, on behalf of an unauthorized insurer, without complying with the provisions of this chapter, is personally liable for the performance of such contract.

(3) Each violation of subsection (2) of this section constitutes a separate offense punishable by a fine of not more than twenty-five thousand dollars, and the commissioner, at the commissioner's discretion, may order replacement of policies improperly placed with an unauthorized insurer with policies issued by an authorized insurer. Violations may result in suspension or revocation of a license. [2003 c 250 § 2; 1992 c 149 § 1; 1983 1st ex.s. c 32 § 3; 1980 c 102 § 2; 1947 c 79 § .15.02; Rem. Supp. 1947 § 45.15.02.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.15.023 Unauthorized activities—Acts committed in this state—Sanctions. (1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves an insurance contract.

(3) Any person who knowingly violates RCW 48.15.020(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(5)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.15.020(1), the commissioner may:

- (i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080; and/or
- (ii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and

an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2003 c 250 § 3.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.15.130 Penalty for default. If any surplus line broker fails to file his or her annual statement, or fails to remit the tax provided by RCW 48.15.120, by the last day of the month in which the tax becomes due, the surplus line broker must pay the penalties provided in RCW 48.14.060(1). The tax may be collected by distraint, or the tax and fine may be recovered by an action instituted by the commissioner in any court of competent jurisdiction. Any fine collected by the commissioner must be paid to the state treasurer and credited to the general fund. [2003 c 341 § 2; 1983 1st ex.s. c 32 § 5; 1980 c 102 § 5; 1947 c 79 § .15.13; Rem. Supp. 1947 § 45.15.13.]

**Chapter 48.17 RCW
AGENTS, BROKERS, SOLICITORS,
AND ADJUSTERS**

Sections

- 48.17.060 License required—Exceptions.
- 48.17.063 Unlicensed activities—Acts committed in this state—Sanctions.
- 48.17.067 Determining whether authorization exists—Burden on solicitor, agent, or broker.
- 48.17.480 Reporting and accounting for premiums. (*Effective July 1, 2004.*)

48.17.060 License required—Exceptions. (1) A person may not act as or hold himself or herself out to be an agent, broker, solicitor, or adjuster in this state unless licensed by the commissioner.

(2) An agent, solicitor, or broker may not solicit or take applications for, procure, or place for others any kind of insurance for which he or she is not then licensed.

(3) This section does not apply with respect to any person securing and forwarding information required for the purposes of group credit life and credit disability insurance or credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations in connection with an extension of credit and such other credit life and disability insurance or credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations as the commissioner shall determine, and where no commission or other compensation is payable on account of the securing and forwarding of such information. However, the reimbursement of a creditor's actual expenses for securing and forwarding information required for the purposes of such group insurance will not be considered a commission or other compensation if such reimbursement does not exceed three dollars per certificate issued, or in the case of a monthly premium plan extending beyond twelve months, not to exceed three dollars per loan transaction revision per year. [2003 c 250 § 4; 1995 c 214 § 1; 1975 1st ex.s. c 266 § 7; 1955 c 303 § 9; 1947 c 79 § .17.06; Rem. Supp. 1947 § 45.17.06.]

Severability—2003 c 250: See note following RCW 48.01.080.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.17.063 Unlicensed activities—Acts committed in this state—Sanctions. (1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves an insurance contract, health care services contract, or health maintenance agreement.

(3) Any person who knowingly violates RCW 48.17.060(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any person who knowingly violates RCW 48.17.060(2) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(5) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(6)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.17.060 (1) or (2), the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080;

(ii) Suspend or revoke a license; and/or

(iii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2003 c 250 § 5.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.17.067 Determining whether authorization exists—Burden on solicitor, agent, or broker. Any solicitor, agent, or broker soliciting, negotiating, or procuring an application for insurance or health care services in this state must make a good faith effort to determine whether the entity that is issuing the coverage is:

(1) Authorized to transact insurance or health coverage in this state; or

(2) Conducting business through a surplus lines broker licensed under chapter 48.15 RCW. [2003 c 250 § 6.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.17.480 Reporting and accounting for premiums. (Effective July 1, 2004.) (1) An agent or any other representative of an insurer involved in the procuring or issuance of an insurance contract shall report to the insurer the exact amount of consideration charged as premium for such contract, and such amount shall likewise be shown in the contract and in the records of the agent. Each willful violation of this provision is a misdemeanor.

(2) All funds representing premiums or return premiums received by an agent, solicitor or broker, shall be so received in his or her fiduciary capacity, and shall be promptly

accounted for and paid to the insured, insurer, or agent as entitled thereto.

(3) Any person licensed under this chapter who receives funds which belong to or should be paid to another person as a result of or in connection with an insurance transaction is deemed to have received the funds in a fiduciary capacity. The licensee shall promptly account for and pay the funds to the person entitled to the funds.

(4) Any agent, solicitor, broker, adjuster or other person licensed under this chapter who, not being lawfully entitled thereto, diverts or appropriates funds received in a fiduciary capacity or any portion thereof to his or her own use, is guilty of theft under chapter 9A.56 RCW. [2003 c 53 § 269; 1988 c 248 § 12; 1947 c 79 § .17.48; Rem. Supp. 1947 § 45.17.48.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 48.18 RCW

THE INSURANCE CONTRACT

Sections

48.18.103 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition.

48.18.291 Cancellation of private automobile insurance by insurer—Notice—Requirements.

48.18.543 Single premium credit insurance—Residential mortgage loan—Restrictions—Definitions.

48.18.553 Victims of malicious harassment—Restrictions of underwriting actions—Definitions.

48.18.103 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition. (1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for forms.

(2) Commercial property casualty policies may be issued prior to filing the forms. All commercial property casualty forms shall be filed with the commissioner within thirty days after an insurer issues any policy using them.

(3) If, within thirty days after a commercial property casualty form has been filed, the commissioner finds that the form does not meet the requirements of this chapter, the commissioner shall disapprove the form and give notice to the insurer or rating organization that made the filing, specifying how the form fails to meet the requirements and stating when, within a reasonable period thereafter, the form shall be deemed no longer effective. The commissioner may extend the time for review another fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(4) Upon a final determination of a disapproval of a policy form under subsection (3) of this section, the insurer shall amend any previously issued disapproved form by endorsement to comply with the commissioner's disapproval.

(5) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070.

(6) Except as provided in subsection (4) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(7) In the event a hearing is held on the actions of the commissioner under subsection (3) of this section, the burden of proof shall be on the commissioner. [2003 c 248 § 4; 1997 c 428 § 1.]

48.18.291 Cancellation of private automobile insurance by insurer—Notice—Requirements. (1) A contract of insurance predicated wholly or in part upon the use of a private passenger automobile may not be terminated by cancellation by the insurer until at least twenty days after mailing written notice of cancellation to the named insured at the latest address filed with the insurer by or on behalf of the named insured, accompanied by the reason therefor. If cancellation is for nonpayment of premium, or is within the first thirty days after the contract has been in effect, at least ten days notice of cancellation, accompanied by the reason therefor, shall be given. In case of a contract evidenced by a written binder which has been delivered to the insured, if the binder contains a clearly stated expiration date, no additional notice of cancellation or nonrenewal is required.

(2)(a) A notice of cancellation by the insurer as to a contract of insurance to which subsection (1) of this section applies is not valid if sent more than sixty days after the contract has been in effect unless:

(i) The named insured fails to discharge when due any of his or her obligations in connection with the payment of premium for the policy or any installment thereof, whether payable directly to the insurer or to its agent or indirectly under any premium finance plan or extension of credit; or

(ii) The driver's license of the named insured, or of any other operator who customarily operates an automobile insured under the policy, has been suspended, revoked, or cancelled during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty days immediately preceding the effective date of the renewal policy.

(b) Modification by the insurer of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars is not a cancellation of the coverage or of the policy.

(3) The substance of subsections (1) and (2)(a) of this section must be set forth in each contract of insurance subject to the provisions of subsection (1) of this section, and may be in the form of an attached endorsement.

(4) A notice of cancellation of a policy that may be canceled only pursuant to subsection (2) of this section is not effective unless the reason therefor accompanies or is included in the notice of cancellation. [2003 c 248 § 5; 1985 c 264 § 18; 1979 ex.s. c 199 § 6; 1969 ex.s. c 241 § 19.]

Application—1985 c 264 §§ 17-22: See note following RCW 48.18.290.

Construction—1969 ex.s. c 241: "Sections 19 through 25 of this 1969 amendatory act shall become operative September 1, 1969, and shall apply to policies written or renewed, or which have a renewal anniversary thereafter. Sections 19 through 25 of this 1969 amendatory act shall not apply to or affect the validity of any notice of cancellation mailed or delivered prior to the operative date of this amendatory act. Sections 19 through 25 of this 1969 amendatory act shall not be construed to affect cancellation of a

renewal policy, if notice of cancellation is mailed or delivered within sixty days after the operative date of sections 19 through 25 of this amendatory act. Sections 19 through 25 of this 1969 amendatory act shall not be construed to require notice of intention not to renew any policy which expires less than thirty days after the operative date of sections 19 through 25 of this 1969 amendatory act." [1969 ex.s. c 241 § 25.]

48.18.543 Single premium credit insurance—Residential mortgage loan—Restrictions—Definitions. (1) For the purposes of this section:

(a) "Licensee" means every insurance agent, broker, or solicitor licensed under chapter 48.17 RCW.

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

(c) "Single premium credit insurance" means credit insurance purchased with a single premium payment at inception of coverage.

(2) An insurer or licensee may not issue or sell any single premium credit insurance product in connection with a residential mortgage loan unless:

(a) The term of the single premium credit insurance policy is the same as the term of the loan;

(b) The debtor is given the option to buy credit insurance paid with monthly premiums; and

(c) The single premium credit insurance policy provides for a full refund of premiums to the debtor if the credit insurance is canceled within sixty days of the date of the loan.

(3) This section does not apply to residential mortgage loans if:

(a) The loan amount does not exceed ten thousand dollars, exclusive of fees;

(b) The repayment term of the loan does not exceed five years; and

(c) The term of the single premium credit insurance does not exceed the repayment term of the loan. [2003 c 116 § 1.]

48.18.553 Victims of malicious harassment—Restrictions of underwriting actions—Definitions. (1) For the purposes of this section:

(a) "Insured" means a current policyholder or a person or entity that is covered under the insurance policy.

(b) "Malicious harassment" has the same meaning as RCW 9A.36.080. Under this section, the perpetrator does not have to be identified for an act of malicious harassment to have occurred.

(c) "Underwriting action" means an insurer:

(i) Cancels or refuses to renew an insurance policy; or

(ii) Changes the terms or benefits in an insurance policy.

(2) This section applies to property insurance policies if the insured is:

(a) An individual;

(b) A religious organization;

(c) An educational organization; or

(d) Any other nonprofit organization that is organized and operated for religious, charitable, or educational purposes.

(3) An insurer may not take an underwriting action on a policy described in subsection (2) of this section because an insured has made one or more insurance claims for any loss

that occurred during the preceding sixty months that is the result of malicious harassment. An insurer may take an underwriting action due to other factors that are not prohibited by this subsection.

(4) If an insured sustains a loss that is the result of malicious harassment, the insured must file a report with the police or other law enforcement authority within thirty days of discovery of the incident, and a law enforcement authority must determine that a crime has occurred. The report must contain sufficient information to provide an insurer with reasonable notice that the loss was the result of malicious harassment. The insured has a duty to cooperate with any law enforcement official or insurer investigation. For incidents of malicious harassment occurring prior to July 27, 2003, the insured must file the report within six months of the discovery of the incident.

(5) Annually, each insurer must report underwriting actions to the commissioner if the insurer has taken an underwriting action against any insured who has filed a claim during the preceding sixty months that was the result of malicious harassment. The report must include the policy number, name of the insured, location of the property, and the reason for the underwriting action. [2003 c 117 § 1.]

Chapter 48.18A RCW VARIABLE CONTRACT ACT

Sections

48.18A.050 Applicability of other code provisions—Contract requirements.

48.18A.050 Applicability of other code provisions—Contract requirements. The provisions of RCW 48.23.020, 48.23.030, 48.23.080 through 48.23.120, 48.23.140, 48.23.150, 48.23.200 through 48.23.240, 48.23.310, and 48.23.360, and the provisions of chapters 48.24 and 48.76 RCW are inapplicable to variable contracts. Any provision in the code requiring contracts to be participating is not applicable to variable contracts. Except as otherwise provided in this chapter, all pertinent provisions of the insurance code apply to separate accounts and contracts relating thereto. Any individual variable life insurance or individual variable annuity contract delivered or issued for delivery in this state must contain grace, reinstatement, and nonforfeiture provisions appropriate to those contracts, and any variable life insurance contract must provide that the investment experience of the separate account may not operate to reduce the death benefit below an amount equal to the face amount of the contract at the time the contract was issued. Any individual variable life insurance contract may contain a provision for deduction from the death proceeds of amounts of due and unpaid premiums or of indebtedness which are appropriate to that contract. The reserve liability for variable annuities must be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees. [2003 c 248 § 6; 1983 c 3 § 150; 1979 c 157 § 2; 1973 1st ex.s. c 163 § 6; 1969 c 104 § 5.]

Chapter 48.19 RCW RATES

Sections

[2003 RCW Supp—page 700]

48.19.043 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition.

48.19.043 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition. (1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for rates.

(2) Notwithstanding the provisions of RCW 48.19.040(1), commercial property casualty policies may be issued prior to filing the rates. All commercial property casualty rates shall be filed with the commissioner within thirty days after an insurer issues any policy using them.

(3) If, within thirty days after a commercial property casualty rate has been filed, the commissioner finds that the rate does not meet the requirements of this chapter, the commissioner shall disapprove the filing and give notice to the insurer or rating organization that made the filing, specifying how the filing fails to meet the requirements and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. The commissioner may extend the time for review another fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(4) Upon a final determination of a disapproval of a rate filing under subsection (3) of this section, the insurer shall issue an endorsement changing the rate to comply with the commissioner's disapproval from the date the rate is no longer effective.

(5) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070.

(6) Except as provided in subsection (4) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(7) In the event a hearing is held on the actions of the commissioner under subsection (3) of this section, the burden of proof is on the commissioner. [2003 c 248 § 7; 1997 c 428 § 2.]

Chapter 48.20 RCW DISABILITY INSURANCE

Sections

48.20.025 Schedule of rates for individual health benefit plans—Loss ratio—Remittance of premiums—Definitions.

48.20.025 Schedule of rates for individual health benefit plans—Loss ratio—Remittance of premiums—Definitions. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the insurer of health care services, as defined in RCW 48.43.005, provided to a policyholder or paid to or on behalf of the policyholder in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other

similar payments made to providers for the purpose of paying for health care services for a policyholder.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(d) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(e) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(f) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) An insurer shall file, for informational purposes only, a notice of its schedule of rates for its individual health benefit plans with the commissioner prior to use.

(3) An insurer shall file with the notice required under subsection (2) of this section supporting documentation of its method of determining the rates charged. The commissioner may request only the following supporting documentation:

(a) A description of the insurer's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the insurer's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard established in subsection (7) of this section.

(4) The commissioner may not disapprove or otherwise impede the implementation of the filed rates.

(5) By the last day of May each year any insurer issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio for its individual health benefit plans offered or renewed in the state in aggregate for the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.

(a) At the expiration of a thirty-day period beginning with the date the filing is received by the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.

(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the insurer.

(c) Any dispute regarding the calculation of the actual loss ratio shall, upon written demand of either the commissioner or the insurer, be submitted to hearing under chapters 48.04 and 34.05 RCW.

(6) If the actual loss ratio for the preceding calendar year is less than the loss ratio established in subsection (7) of this section, a remittance is due and the following shall apply:

(a) The insurer shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (7) of this section.

(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.

(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.

(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (5)(a) of this section or the determination by an administrative law judge under subsection (5)(c) of this section.

(7) The loss ratio applicable to this section shall be seventy-four percent minus the premium tax rate applicable to the insurer's individual health benefit plans under RCW 48.14.020. [2003 c 248 § 8; 2001 c 196 § 1; 2000 c 79 § 3.]

Effective date—2001 c 196: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2001]." [2001 c 196 § 14.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Chapter 48.21 RCW

GROUP AND BLANKET DISABILITY INSURANCE

Sections

48.21.180 Chemical dependency benefits—Contracts issued or renewed after January 1, 1988.

48.21.180 Chemical dependency benefits—Contracts issued or renewed after January 1, 1988. Each group disability insurance contract which is delivered or issued for delivery or renewed, on or after January 1, 1988, and which insures for hospital or medical care must contain provisions providing benefits for the treatment of chemical dependency rendered to the insured by a provider which is an "approved treatment program" under RCW 70.96A.020(3). [2003 c 248 § 9; 1990 1st ex.s. c 3 § 7; 1987 c 458 § 14; 1974 ex.s. c 119 § 3.]

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

Chapter 48.22 RCW

CASUALTY INSURANCE

Sections

48.22.005	Definitions.
48.22.085	Automobile liability insurance policy—Optional coverage for personal injury protection—Rejection by insured.
48.22.090	Personal injury protection coverage—Exceptions.
48.22.095	Automobile insurance policies—Minimum personal injury protection coverage.
48.22.100	Automobile insurance policies—Personal injury protection coverage—Request by named insured—Benefit limits.
48.22.110	Vendor single-interest or collateral protection coverage—Definitions.

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

(1) "Automobile" means a passenger car as defined in RCW 46.04.382 registered or principally garaged in this state other than:

- (a) A farm-type tractor or other self-propelled equipment designed for use principally off public roads;
- (b) A vehicle operated on rails or crawler-treads;
- (c) A vehicle located for use as a residence;
- (d) A motor home as defined in RCW 46.04.305; or
- (e) A moped as defined in RCW 46.04.304.

(2) "Bodily injury" means bodily injury, sickness, or disease, including death at any time resulting from the injury, sickness, or disease.

(3) "Income continuation benefits" means payments for the insured's loss of income from work, because of bodily injury sustained by the insured in an automobile accident, less income earned during the benefit payment period. The combined weekly payment an insured may receive under personal injury protection coverage, worker's compensation, disability insurance, or other income continuation benefits may not exceed eighty-five percent of the insured's weekly income from work. The benefit payment period begins fourteen days after the date of the automobile accident and ends at the earliest of the following:

- (a) The date on which the insured is reasonably able to perform the duties of his or her usual occupation;
 - (b) Fifty-four weeks from the date of the automobile accident; or
 - (c) The date of the insured's death.
- (4) "Insured automobile" means an automobile described on the declarations page of the policy.
- (5) "Insured" means:

(a) The named insured or a person who is a resident of the named insured's household and is either related to the named insured by blood, marriage, or adoption, or is the named insured's ward, foster child, or stepchild; or

(b) A person who sustains bodily injury caused by accident while: (i) Occupying or using the insured automobile with the permission of the named insured; or (ii) a pedestrian accidentally struck by the insured automobile.

(6) "Loss of services benefits" means reimbursement for payment to others, not members of the insured's household, for expenses reasonably incurred for services in lieu of those the insured would usually have performed for his or her household without compensation, provided the services are actually rendered. The maximum benefit is forty dollars per day. Reimbursement for loss of services ends the earliest of the following:

- (a) The date on which the insured person is reasonably able to perform those services;

(b) Fifty-two weeks from the date of the automobile accident; or

(c) The date of the insured's death.

(7) "Medical and hospital benefits" means payments for all reasonable and necessary expenses incurred by or on behalf of the insured for injuries sustained as a result of an automobile accident for health care services provided by persons licensed under Title 18 RCW, including pharmaceuticals, prosthetic devices and eye glasses, and necessary ambulance, hospital, and professional nursing service. Medical and hospital benefits are payable for expenses incurred within three years from the date of the automobile accident.

(8) "Automobile liability insurance policy" means a policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage suffered by any person and arising out of the ownership, maintenance, or use of an insured automobile. An automobile liability policy does not include:

(a) Vendors single interest or collateral protection coverage;

(b) General liability insurance; or

(c) Excess liability insurance, commonly known as an umbrella policy, where coverage applies only as excess to an underlying automobile policy.

(9) "Named insured" means the individual named in the declarations of the policy and includes his or her spouse if a resident of the same household.

(10) "Occupying" means in or upon or entering into or alighting from.

(11) "Pedestrian" means a natural person not occupying a motor vehicle as defined in RCW 46.04.320.

(12) "Personal injury protection" means the benefits described in this section and RCW 48.22.085 through 48.22.100. Payments made under personal injury protection coverage are limited to the actual amount of loss or expense incurred. [2003 c 115 § 1; 1993 c 242 § 1.]

Severability—1993 c 242: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 242 § 7.]

Effective date—1993 c 242: "Sections 1 through 5 of this act shall take effect July 1, 1994." [1993 c 242 § 8.]

48.22.085 Automobile liability insurance policy—Optional coverage for personal injury protection—Rejection by insured. (1) No new automobile liability insurance policy or renewal of such an existing policy may be issued unless personal injury protection coverage is offered as an optional coverage.

(2) A named insured may reject, in writing, personal injury protection coverage and the requirements of subsection (1) of this section shall not apply. If a named insured rejects personal injury protection coverage:

(a) That rejection is valid and binding as to all levels of coverage and on all persons who might have otherwise been insured under such coverage; and

(b) The insurer is not required to include personal injury protection coverage in any supplemental, renewal, or replacement policy unless a named insured subsequently requests such coverage in writing. [2003 c 115 § 2; 1993 c 242 § 2.]

Severability—Effective date—1993 c 242: See notes following RCW 48.22.005.

48.22.090 Personal injury protection coverage—

Exceptions. An insurer is not required to provide personal injury protection coverage to or on behalf of:

- (1) A person who intentionally causes injury to himself or herself;
- (2) A person who is injured while participating in a pre-arranged or organized racing or speed contest or in practice or preparation for such a contest;
- (3) A person whose bodily injury is due to war, whether or not declared, or to an act or condition incident to such circumstances;
- (4) A person whose bodily injury results from the radioactive, toxic, explosive, or other hazardous properties of nuclear material;
- (5) The named insured or a relative while occupying a motor vehicle owned by the named insured or furnished for the named insured's regular use, if such motor vehicle is not described on the declaration page of the policy under which a claim is made;
- (6) A relative while occupying a motor vehicle owned by the relative or furnished for the relative's regular use, if such motor vehicle is not described on the declaration page of the policy under which a claim is made; or
- (7) An insured whose bodily injury results or arises from the insured's use of an automobile in the commission of a felony. [2003 c 115 § 3; 1993 c 242 § 3.]

Severability—Effective date—1993 c 242: See notes following RCW 48.22.005.

48.22.095 Automobile insurance policies—Minimum personal injury protection coverage. Insurers providing automobile insurance policies must offer minimum personal injury protection coverage for each insured with benefit limits as follows:

- (1) Medical and hospital benefits of ten thousand dollars;
- (2) A funeral expense benefit of two thousand dollars;
- (3) Income continuation benefits of ten thousand dollars, subject to a limit of two hundred dollars per week; and
- (4) Loss of services benefits of five thousand dollars, subject to a limit of two hundred dollars per week. [2003 c 115 § 4; 1993 c 242 § 4.]

Severability—Effective date—1993 c 242: See notes following RCW 48.22.005.

48.22.100 Automobile insurance policies—Personal injury protection coverage—Request by named insured—Benefit limits. If requested by a named insured, an insurer providing automobile liability insurance policies must offer personal injury protection coverage for each insured with benefit limits as follows:

- (1) Medical and hospital benefits of thirty-five thousand dollars;
- (2) A funeral expense benefit of two thousand dollars;
- (3) Income continuation benefits of thirty-five thousand dollars, subject to a limit of seven hundred dollars per week; and
- (4) Loss of services benefits of fourteen thousand six hundred dollars. [2003 c 115 § 5; 1993 c 242 § 5.]

Severability—Effective date—1993 c 242: See notes following RCW 48.22.005.

48.22.110 Vendor single-interest or collateral protection coverage—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and RCW 48.22.115 through 48.22.135.

(1) "Borrower" means a person who receives a loan or enters into a retail installment contract under chapter 63.14 RCW to purchase a motor vehicle or vessel in which the secured party holds an interest.

(2) "Motor vehicle" means a motor vehicle in this state subject to registration under chapter 46.16 RCW, except motor vehicles governed by RCW 46.16.020 or registered with the Washington utilities and transportation commission as common or contract carriers.

(3) "Secured party" means a person, corporation, association, partnership, or venture that possesses a bona fide security interest in a motor vehicle or vessel.

(4) "Vendor single-interest" or "collateral protection coverage" means insurance coverage insuring primarily or solely the interest of a secured party but which may include the interest of the borrower in a motor vehicle or vessel serving as collateral and obtained by the secured party or its agent after the borrower has failed to obtain or maintain insurance coverage required by the financing agreement for the motor vehicle or vessel. Vendor single-interest or collateral protection coverage does not include insurance coverage purchased by a secured party for which the borrower is not charged.

(5) "Vessel" means a vessel as defined in RCW 88.02.010 and includes personal watercraft as defined in RCW 79A.60.010. [2003 c 248 § 10; 1994 c 186 § 1.]

Effective date—1994 c 186 §§ 1-5: "Sections 1 through 5 of this act take effect January 1, 1995." [1994 c 186 § 8.]

Chapter 48.29 RCW TITLE INSURERS

Sections

48.29.155 Agent license—Financial responsibility—Definitions.

48.29.155 Agent license—Financial responsibility—Definitions. (1) At the time of filing an application for a title insurance agent license, or any renewal or reinstatement of a title insurance agent license, the applicant shall provide satisfactory evidence to the commissioner of having obtained the following as evidence of financial responsibility:

(a) A fidelity bond or fidelity insurance providing coverage in the aggregate amount of two hundred thousand dollars with a deductible no greater than ten thousand dollars covering the applicant and each corporate officer, partner, escrow officer, and employee of the applicant conducting the business of an escrow agent as defined in RCW 18.44.011 and exempt from licensing under RCW 18.44.021(6); and

(b) A surety bond in the amount of ten thousand dollars executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, or some other security approved by the commissioner, unless the fidelity bond or fidelity insurance obtained by the licensee to satisfy the requirement in (a) of this subsection does

not have a deductible. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its employee's violation of this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the commissioner of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the commissioner. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond is not liable for any penalties imposed on the licensee, including but not limited to any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090.

(2) For the purposes of this section, a "fidelity bond" means a primary commercial blanket bond or its equivalent satisfactory to the commissioner and written by an insurer authorized to transact this line of business in the state of Washington. The bond shall provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners as defined in the bond, acting alone or in collusion with others. The bond shall be for the sole benefit of the title insurance agent and under no circumstances whatsoever shall the bonding company be liable under the bond to any other party. The bond shall name the title insurance agent as obligee and shall protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the commissioner and to the title insurance agent.

(3) For the purposes of this section, "fidelity insurance" means employee dishonesty insurance or its equivalent satisfactory to the commissioner and written by an insurer authorized to transact this line of business in the state of Washington. The insurance shall provide coverage for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners as defined in the policy of insurance, acting alone or in collusion with others. The insurance shall be for the sole benefit of the title insurance agent and under no circumstances whatsoever shall the insurance company be liable under the insurance to any other party. The insurance shall name the title insurance agent as the named insured and shall protect the named insured against the loss of money or other real or personal property belonging to the named insured, or in which the named insured has a pecuniary interest, or for which the named insured is legally liable or held by the named insured in any capacity, whether the named insured is legally liable therefor or not. The insur-

ance coverage may be canceled by the insurer upon delivery of thirty days' written notice to the commissioner and to the title insurance agent.

(4) The fidelity bond or fidelity insurance, and the surety bond or other form of security approved by the commissioner, shall be kept in full force and effect as a condition precedent to the title insurance agent's authority to transact business in this state, and the title insurance agent shall supply the commissioner with satisfactory evidence thereof upon request. [2003 c 202 § 1.]

Chapter 48.30 RCW

UNFAIR PRACTICES AND FRAUDS

Sections

- 48.30.230 False claims or proof—Penalty. (*Effective July 1, 2004.*)
 48.30.270 Public building or construction contracts—Surety bonds or insurance—Violations concerning—Exemption. (*Expires December 31, 2006.*)
 48.30.270 Public building or construction contracts—Surety bonds or insurance—Violations concerning—Exemption. (*Effective December 31, 2006.*)

48.30.230 False claims or proof—Penalty. (*Effective July 1, 2004.*) (1) It is unlawful for any person, knowing it to be such, to:

(a) Present, or cause to be presented, a false or fraudulent claim, or any proof in support of such a claim, for the payment of a loss under a contract of insurance; or

(b) Prepare, make, or subscribe any false or fraudulent account, certificate, affidavit, or proof of loss, or other document or writing, with intent that it be presented or used in support of such a claim.

(2)(a) Except as provided in (b) of this subsection, a violation of this section is a gross misdemeanor.

(b) If the claim is in excess of one thousand five hundred dollars, the violation is a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 270; 1990 1st ex.s. c 3 § 11; 1947 c 79 § .30.23; Rem. Supp. 1947 § 45.30.23.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

48.30.270 Public building or construction contracts—Surety bonds or insurance—Violations concerning—Exemption. (*Expires December 31, 2006.*) (1) No officer or employee of this state, or of any public agency, public authority or public corporation except a public corporation or public authority created pursuant to agreement or compact with another state, and no person acting or purporting to act on behalf of such officer or employee, or public agency or public authority or public corporation, shall, with respect to any public building or construction contract which is about to be, or which has been competitively bid, require the bidder to make application to, or to furnish financial data to, or to obtain or procure, any of the surety bonds or contracts of insurance specified in connection with such contract, or specified by any law, general, special or local, from a particular insurer or agent or broker.

(2) No such officer or employee or any person, acting or purporting to act on behalf of such officer or employee shall negotiate, make application for, obtain or procure any of such surety bonds or contracts of insurance, except contracts of insurance for builder's risk or owner's protective liability,

which can be obtained or procured by the bidder, contractor or subcontractor.

(3) This section shall not be construed to prevent the exercise by such officer or employee on behalf of the state or such public agency, public authority, or public corporation of its right to approve the form, sufficiency or manner or execution of the surety bonds or contracts of insurance furnished by the insurer selected by the bidder to underwrite such bonds, or contracts of insurance.

(4) Any provisions in any invitation for bids, or in any of the contract documents, in conflict with this section are declared to be contrary to the public policy of this state.

(5) A violation of this section shall be subject to the penalties provided by RCW 48.01.080.

(6) This section shall not apply to:

(a) The public nonprofit corporation authorized under RCW 67.40.020;

(b) Projects in excess of one hundred million dollars for port districts formed under chapter 53.04 RCW;

(c) A regional transit authority authorized under RCW 81.112.030; or

(d) Projects in excess of one hundred million dollars for counties with a population over one million, for projects administered for public hospitals. [2003 c 323 § 1. Prior: 2000 2nd sp.s. c 4 § 33; 2000 c 143 § 2; 1983 2nd ex.s. c 1 § 6; 1967 ex.s. c 12 § 3.]

Expiration date—2003 c 323 § 1: "Section 1 of this act expires December 31, 2006." [2003 c 323 § 3.]

Expiration date—2000 c 143: See note following RCW 53.08.145.

State convention and trade center—Corporation exempt: RCW 67.40.020.

48.30.270 Public building or construction contracts—Surety bonds or insurance—Violations concerning—Exemption. (Effective December 31, 2006.) (1) No officer or employee of this state, or of any public agency, public authority or public corporation except a public corporation or public authority created pursuant to agreement or compact with another state, and no person acting or purporting to act on behalf of such officer or employee, or public agency or public authority or public corporation, shall, with respect to any public building or construction contract which is about to be, or which has been competitively bid, require the bidder to make application to, or to furnish financial data to, or to obtain or procure, any of the surety bonds or contracts of insurance specified in connection with such contract, or specified by any law, general, special or local, from a particular insurer or agent or broker.

(2) No such officer or employee or any person, acting or purporting to act on behalf of such officer or employee shall negotiate, make application for, obtain or procure any of such surety bonds or contracts of insurance, except contracts of insurance for builder's risk or owner's protective liability, which can be obtained or procured by the bidder, contractor or subcontractor.

(3) This section shall not be construed to prevent the exercise by such officer or employee on behalf of the state or such public agency, public authority, or public corporation of its right to approve the form, sufficiency or manner or execution of the surety bonds or contracts of insurance furnished by the insurer selected by the bidder to underwrite such bonds, or contracts of insurance.

(4) Any provisions in any invitation for bids, or in any of the contract documents, in conflict with this section are declared to be contrary to the public policy of this state.

(5) A violation of this section shall be subject to the penalties provided by RCW 48.01.080.

(6) This section shall not apply to:

(a) The public nonprofit corporation authorized under RCW 67.40.020;

(b) A regional transit authority authorized under RCW 81.112.030; or

(c) Projects in excess of one hundred million dollars for counties with a population over one million, for projects administered for public hospitals. [2003 c 323 § 2; 2000 2nd sp.s. c 4 § 33; 1983 2nd ex.s. c 1 § 6; 1967 ex.s. c 12 § 3.]

Effective date—2003 c 323 § 2: "Section 2 of this act takes effect December 31, 2006." [2003 c 323 § 4.]

State convention and trade center—Corporation exempt: RCW 67.40.020.

Chapter 48.30A RCW INSURANCE FRAUD

Sections

48.30A.015 Unlawful acts—Penalties. (*Effective July 1, 2004.*)

48.30A.025 Repealed. (*Effective July 1, 2004.*)

48.30A.015 Unlawful acts—Penalties. (Effective July 1, 2004.) (1) It is unlawful for a person:

(a) Knowing that the payment is for the referral of a claimant to a service provider, either to accept payment from a service provider or, being a service provider, to pay another; or

(b) To provide or claim or represent to have provided services to a claimant, knowing the claimant was referred in violation of (a) of this subsection.

(2) It is unlawful for a service provider to engage in a regular practice of waiving, rebating, giving, paying, or offering to waive, rebate, give, or pay all or any part of a claimant's casualty or property insurance deductible.

(3) A violation of this section constitutes trafficking in insurance claims.

(4)(a) Trafficking in insurance claims is a gross misdemeanor for a single violation.

(b) Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony. [2003 c 53 § 271; 1995 c 285 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

48.30A.025 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 48.31 RCW

MERGERS, REHABILITATION, LIQUIDATION

Sections

48.31.105 Conduct of proceedings—Requirement to cooperate—Definitions—Violations—Penalties. (*Effective July 1, 2004.*)

48.31.111 Commencement of delinquency proceeding by commissioner—Jurisdiction of courts.

48.31.184 Ancillary receiver in another state or foreign country—Failure to transfer assets.

48.31.185 Receiver's proposal to disperse assets upon liquidation—Application for approval—Contents of proposal—Notice of application.

48.31.105 Conduct of proceedings—Requirement to cooperate—Definitions—Violations—Penalties. (*Effective July 1, 2004.*) (1) An officer, manager, director, trustee, owner, employee, or agent of an insurer or other person with authority over or in charge of a segment of the insurer's affairs shall cooperate with the commissioner in a proceeding under this chapter or an investigation preliminary to the proceeding. The term "person" as used in this section includes a person who exercises control directly or indirectly over activities of the insurer through a holding company or other affiliate of the insurer. "To cooperate" as used in this section includes the following:

(a) To reply promptly in writing to an inquiry from the commissioner requesting such a reply; and

(b) To make available to the commissioner books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his or her possession, custody, or control.

(2) A person may not obstruct or interfere with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental thereto.

(3) This section does not abridge existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

(4) A person included within subsection (1) of this section who fails to cooperate with the commissioner, or a person who obstructs or interferes with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental thereto, or who violates an order the commissioner issued validly under this chapter may:

(a) Be guilty of a gross misdemeanor and sentenced to pay a fine not exceeding ten thousand dollars or to undergo imprisonment for a term of not more than one year, or both; or

(b) After a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed ten thousand dollars and be subject further to the revocation or suspension of insurance licenses issued by the commissioner. [2003 c 53 § 272; 1993 c 462 § 58.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.111 Commencement of delinquency proceeding by commissioner—Jurisdiction of courts. (1) A delinquency proceeding may not be commenced under this chapter by anyone other than the commissioner of this state, and no court has jurisdiction to entertain a proceeding commenced by another person.

(2) No court of this state has jurisdiction to entertain a complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of an insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to the proceedings, other than in accordance with this chapter.

(3) In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction

of the subject matter has jurisdiction over a person served under the rules of civil procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(a) If the person served is an agent, broker, or other person who has written policies of insurance for or has acted in any manner on behalf of an insurer against which a delinquency proceeding has been instituted, in an action resulting from or incident to such a relationship with the insurer;

(b) If the person served is a reinsurer who has entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an agent or broker of or for the reinsurer, in an action on or incident to the reinsurance contract;

(c) If the person served is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding has been instituted, in an action resulting from or incident to such a relationship with the insurer;

(d) If the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in an action concerning the assets; or

(e) If the person served is obligated to the insurer in any way, in an action on or incident to the obligation.

(4) If the court on motion of a party finds that an action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state. [2003 c 248 § 11; 1993 c 462 § 59.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.184 Ancillary receiver in another state or foreign country—Failure to transfer assets. If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state assets within his or her control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, then the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under RCW 48.31.280(8). [2003 c 248 § 12; 1993 c 462 § 74.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.185 Receiver's proposal to disperse assets upon liquidation—Application for approval—Contents of proposal—Notice of application. (1) Within one hundred twenty days of a final determination of insolvency of an insurer and order of liquidation by a court of competent jurisdiction of this state, the receiver shall make application to the court for approval of a proposal to disperse assets out of that insurer's marshalled assets from time to time as assets become available to the Washington insurance guaranty association and the Washington life and disability insurance guaranty association and to any entity or person performing a similar function in another state. For purposes of this section, "associations" means the Washington insurance guaranty association and the Washington life and disability insurance

guaranty association and any entity or person performing a similar function in other states.

(2) Such a proposal must at least include provisions for:

(a) Reserving amounts for the payment of claims falling within the priorities established in RCW 48.31.280;

(b) Disbursement of the assets marshalled to date and subsequent disbursements of assets as they become available;

(c) Equitable allocation of disbursements to each of the associations entitled thereto;

(d) The securing by the receiver from each of the associations entitled to disbursements pursuant to this section an agreement to return to the receiver assets previously disbursed that are required to pay claims of secured creditors and claims falling within the priorities established in RCW 48.31.280. A bond is not required of any association; and

(e) A full report by the association to the receiver accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on those assets, and any other matters as the court may direct.

(3) The receiver's proposal must provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the receiver, and must further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of the claim payments made or to be made by the associations then disbursements must be in the amount of available assets.

(4) The receiver's proposal shall, with respect to an insolvent insurer writing life insurance, disability insurance, or annuities, provide for disbursements of assets to the Washington life and disability insurance guaranty association or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the provisions of the Washington life and disability insurance guaranty association act.

(5) Notice of an application must be given to the associations in and to the commissioners of insurance of each of the states. Notice is effected when deposited in the United States certified mails, first class postage prepaid, at least thirty days prior to submission of the application to the court. [2003 c 248 § 13; 1975-'76 2nd ex.s. c 109 § 10.]

Chapter 48.43 RCW

INSURANCE REFORM

(Formerly: Certified health plans)

Sections

48.43.115 Maternity services—Intent—Definitions—Patient preference—Clinical sovereignty of provider—Notice to policyholders—Application.

48.43.115 Maternity services—Intent—Definitions—Patient preference—Clinical sovereignty of provider—Notice to policyholders—Application. (1) The legislature recognizes the role of health care providers as the appropriate authority to determine and establish the delivery of quality health care services to maternity patients and their newly born children. It is the intent of the legislature to recognize patient preference and the clinical sovereignty of providers as

they make determinations regarding services provided and the length of time individual patients may need to remain in a health care facility after giving birth. It is not the intent of the legislature to diminish a carrier's ability to utilize managed care strategies but to ensure the clinical judgment of the provider is not undermined by restrictive carrier contracts or utilization review criteria that fail to recognize individual postpartum needs.

(2) Unless otherwise specifically provided, the following definitions apply throughout this section:

(a) "Attending provider" means a provider who: Has clinical hospital privileges consistent with RCW 70.43.020; is included in a provider network of the carrier that is providing coverage; and is a physician licensed under chapter 18.57 or 18.71 RCW, a certified nurse midwife licensed under chapter 18.79 RCW, a midwife licensed under chapter 18.50 RCW, a physician's assistant licensed under chapter 18.57A or 18.71A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

(b) "Health carrier" or "carrier" means disability insurers regulated under chapter 48.20 or 48.21 RCW, health care services contractors regulated under chapter 48.44 RCW, health maintenance organizations regulated under chapter 48.46 RCW, plans operating under the health care authority under chapter 41.05 RCW, the state health insurance pool operating under chapter 48.41 RCW, and insuring entities regulated under this chapter.

(3)(a) Every health carrier that provides coverage for maternity services must permit the attending provider, in consultation with the mother, to make decisions on the length of inpatient stay, rather than making such decisions through contracts or agreements between providers, hospitals, and insurers. These decisions must be based on accepted medical practice.

(b) Covered eligible services may not be denied for inpatient, postdelivery care to a mother and her newly born child after a vaginal delivery or a cesarean section delivery for such care as ordered by the attending provider in consultation with the mother.

(c) At the time of discharge, determination of the type and location of follow-up care must be made by the attending provider in consultation with the mother rather than by contract or agreement between the hospital and the insurer. These decisions must be based on accepted medical practice.

(d) Covered eligible services may not be denied for follow-up care, including in-person care, as ordered by the attending provider in consultation with the mother. Coverage for providers of follow-up services must include, but need not be limited to, attending providers as defined in this section, home health agencies licensed under chapter 70.127 RCW, and registered nurses licensed under chapter 18.79 RCW.

(e) This section does not require attending providers to authorize care they believe to be medically unnecessary.

(f) Coverage for the newly born child must be no less than the coverage of the child's mother for no less than three weeks, even if there are separate hospital admissions.

(4) A carrier that provides coverage for maternity services may not deselect, terminate the services of, require additional documentation from, require additional utilization review of, reduce payments to, or otherwise provide financial disincentives to any attending provider or health care facility

solely as a result of the attending provider or health care facility ordering care consistent with this section. This section does not prevent any insurer from reimbursing an attending provider or health care facility on a capitated, case rate, or other financial incentive basis.

(5) Every carrier that provides coverage for maternity services must provide notice to policyholders regarding the coverage required under this section. The notice must be in writing and must be transmitted at the earliest of the next mailing to the policyholder, the yearly summary of benefits sent to the policyholder, or January 1 of the year following June 6, 1996.

(6) This section does not establish a standard of medical care.

(7) This section applies to coverage for maternity services under a contract issued or renewed by a health carrier after June 6, 1996, and applies to plans operating under the health care authority under chapter 41.05 RCW beginning January 1, 1998. [2003 c 248 § 14; 1996 c 281 § 1.]

Short title—1996 c 281: "This act shall be known as "the Erin Act."" [1996 c 281 § 3.]

Chapter 48.44 RCW HEALTH CARE SERVICES

Sections

48.44.015	Registration by health care service contractors required—Penalty.
48.44.016	Unregistered activities—Acts committed in this state—Sanctions.
48.44.024	Requirements for plans offered to small employers—Definitions.
48.44.060	Penalty.

48.44.015 Registration by health care service contractors required—Penalty. (1) A person may not in this state, by mail or otherwise, act as or hold himself or herself out to be a health care service contractor, as defined in RCW 48.44.010 without first being registered with the commissioner.

(2) The issuance, sale, or offer for sale in this state of securities of its own issue by any health care service contractor domiciled in this state other than the memberships and bonds of a nonprofit corporation shall be subject to the provisions of chapter 48.06 RCW relating to obtaining solicitation permits the same as if health care service contractors were domestic insurers.

(3) Any person violating any provision of subsection (2) of this section is guilty of a gross misdemeanor and will, upon conviction, be fined not more than one thousand dollars or imprisoned for not more than six months, or both, for each violation. [2003 c 250 § 7; 1983 c 202 § 2; 1969 c 115 § 6.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.44.016 Unregistered activities—Acts committed in this state—Sanctions. (1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves a health care services contract.

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(3) Any person who knowingly violates RCW 48.44.015(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(5)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.44.015(1), the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080; and/or

(ii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2003 c 250 § 8.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.44.024 Requirements for plans offered to small employers—Definitions. (1) A health care service contractor may not offer any health benefit plan to any small employer without complying with RCW 48.44.023(3).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care are not small employers and the plans are not subject to RCW 48.44.023(3).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in RCW 48.43.005. [2003 c 248 § 15; 1995 c 265 § 23.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.44.060 Penalty. Except as otherwise provided in this chapter, any person who violates any of the provisions of this chapter is guilty of a gross misdemeanor. [2003 c 250 § 9; 1947 c 268 § 6; Rem. Supp. 1947 § 6131-15.]

Severability—2003 c 250: See note following RCW 48.01.080.

Chapter 48.46 RCW HEALTH MAINTENANCE ORGANIZATIONS

Sections

48.46.027	Registration, required—Issuance of securities—Penalty.
48.46.033	Unregistered activities—Acts committed in this state—Sanctions.
48.46.068	Requirements for plans offered to small employers—Definitions.
48.46.170	Effect of chapter as to other laws—Construction.
48.46.225	Financial failure—Supervision of commissioner—Priority of distribution of assets.
48.46.350	Chemical dependency treatment.
48.46.420	Penalty for violations.

48.46.027 Registration, required—Issuance of securities—Penalty. (1) A person may not in this state, by mail or otherwise, act as or hold himself or herself out to be a health maintenance organization as defined in RCW

48.46.020 without first being registered with the commissioner.

(2) The issuance, sale, or offer for sale in this state of securities of its own issue by any health maintenance organization domiciled in this state other than the memberships and bonds of a nonprofit corporation is subject to the provisions of chapter 48.06 RCW relating to obtaining solicitation permits the same as if health maintenance organizations were domestic insurers.

(3) Any person violating any provision of subsection (2) of this section is guilty of a gross misdemeanor and will, upon conviction, be fined not more than one thousand dollars, or imprisoned for not more than six months, or both, for each violation. [2003 c 250 § 10; 1983 c 202 § 9.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.46.033 Unregistered activities—Acts committed in this state—Sanctions. (1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves a health maintenance agreement.

(3) Any person who knowingly violates RCW 48.46.027(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(5)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.46.027(1), the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080; and/or

(ii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2003 c 250 § 11.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.46.068 Requirements for plans offered to small employers—Definitions. (1) A health maintenance organization may not offer any health benefit plan to any small employer without complying with RCW 48.46.066(3).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care are not small employers and are not subject to RCW 48.46.066(3).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in RCW 48.43.005. [2003 c 248 § 16; 1995 c 265 § 24.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.46.170 Effect of chapter as to other laws—Construction. (1) Solicitation of enrolled participants by a health maintenance organization granted a certificate of registration, or its agents or representatives, does not violate any provision of law relating to solicitation or advertising by health professionals.

(2) Any health maintenance organization authorized under this chapter is not violating any law prohibiting the practice by unlicensed persons of podiatric medicine and surgery, chiropractic, dental hygiene, opticianry, dentistry, optometry, osteopathic medicine and surgery, pharmacy, medicine and surgery, physical therapy, nursing, or psychology. This subsection does not expand a health professional's scope of practice or allow employees of a health maintenance organization to practice as a health professional unless licensed.

(3) This chapter does not alter any statutory obligation, or rule adopted thereunder, in chapter 70.38 RCW.

(4) Any health maintenance organization receiving a certificate of registration pursuant to this chapter is exempt from chapter 48.05 RCW. [2003 c 248 § 17; 1996 c 178 § 13; 1983 c 106 § 7; 1975 1st ex.s. c 290 § 18.]

Effective date—1996 c 178: See note following RCW 18.35.110.

48.46.225 Financial failure—Supervision of commissioner—Priority of distribution of assets. (1) Any rehabilitation, liquidation, or conservation of a health maintenance organization is the same as the rehabilitation, liquidation, or conservation of an insurance company and must be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing the commissioner to rehabilitate, liquidate, or conserve a health maintenance organization upon any one or more grounds set out in RCW 48.31.030, 48.31.050, and 48.31.080. Enrolled participants have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

(2) For purposes of determining the priority of distribution of general assets, claims of enrolled participants and enrolled participants' beneficiaries have the same priority as established by RCW 48.31.280 for policyholders and beneficiaries of insureds of insurance companies. If an enrolled participant is liable to any provider for services provided pursuant to and covered by the health maintenance agreement, that liability has the status of an enrolled participant claim for distribution of general assets.

(3) A provider who is obligated by statute or agreement to hold enrolled participants harmless from liability for services provided pursuant to and covered by a health care plan has a priority of distribution of the general assets immediately following that of enrolled participants and enrolled participants' beneficiaries under this section. [2003 c 248 § 18; 1990 c 119 § 4.]

48.46.350 Chemical dependency treatment. Each group agreement for health care services that is delivered or issued for delivery or renewed on or after January 1, 1988, must contain provisions providing benefits for the treatment of chemical dependency rendered to covered persons by a provider which is an "approved treatment program" under

RCW 70.96A.020(3). However, this section does not apply to any agreement written as supplemental coverage to any federal or state programs of health care including, but not limited to, Title XVIII health insurance for the aged, which is commonly referred to as Medicare, Parts A&B, and amendments thereto. Treatment must be covered under the chemical dependency coverage if treatment is rendered by the health maintenance organization or if the health maintenance organization refers the enrolled participant or the enrolled participant's dependents to a physician licensed under chapter 18.57 or 18.71 RCW, or to a qualified counselor employed by an approved treatment program described in RCW 70.96A.020(3). In all cases, a health maintenance organization retains the right to diagnose the presence of chemical dependency and select the modality of treatment that best serves the interest of the health maintenance organization's enrolled participant, or the enrolled participant's covered dependent. [2003 c 248 § 19; 1990 1st ex.s. c 3 § 14; 1987 c 458 § 18; 1983 c 106 § 13.]

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

Chemical dependency benefits, rules: RCW 48.21.197.

48.46.420 Penalty for violations. (1) Except as otherwise provided in this chapter, any health maintenance organization which, or person who, violates any provision of this chapter is guilty of a gross misdemeanor.

(2) A health maintenance organization that fails to comply with the net worth requirements of this chapter must cure that defect in compliance with an order of the commissioner rendered in conformity with rules adopted pursuant to chapter 34.05 RCW. The commissioner is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be hazardous to its enrolled participants. [2003 c 250 § 12; 1990 c 119 § 10; 1983 c 106 § 20.]

Severability—2003 c 250: See note following RCW 48.01.080.

Chapter 48.62 RCW

LOCAL GOVERNMENT INSURANCE TRANSACTIONS

Sections

48.62.111 Investments—Designated treasurer—Deposit requirements—Bond.

48.62.111 Investments—Designated treasurer—Deposit requirements—Bond. (1) The assets of a joint self-insurance program governed by this chapter may be invested only in accordance with the general investment authority that participating local government entities possess as a governmental entity.

(2) Except as provided in subsection (3) of this section, a joint self-insurance program may invest all or a portion of its assets by depositing the assets with the treasurer of a county within whose territorial limits any of its member local government entities lie, to be invested by the treasurer for the joint program.

(3) Local government members of a joint self-insurance program may by resolution of the program designate some other person having experience in financial or fiscal matters

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as treasurer of the program, if that designated treasurer is located in Washington state. The program shall, unless the program's treasurer is a county treasurer, require a bond obtained from a surety company authorized to do business in Washington in an amount and under the terms and conditions that the program finds will protect against loss arising from mismanagement or malfeasance in investing and managing program funds. The program may pay the premium on the bond.

All program funds must be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by the treasurer or a person appointed by the program and upon orders or vouchers approved by the program or as authorized under chapters 35A.40 and 42.24 RCW. The treasurer shall establish a program account, into which shall be recorded all program funds, and the treasurer shall maintain special accounts as may be created by the program into which the treasurer shall record all money as the program may direct by resolution.

(4) The treasurer of the joint program shall deposit all program funds in a public depository or depositories as defined in RCW 39.58.010(2) and under the same restrictions, contracts, and security as provided for any participating local government entity, and the depository shall be designated by resolution of the program.

(5) A joint self-insurance program may invest all or a portion of its assets by depositing the assets with the state investment board, to be invested by the state investment board in accordance with chapter 43.33A RCW. The state investment board shall designate a manager for those funds to whom the program may direct requests for disbursement upon orders or vouchers approved by the program or as authorized under chapters 35A.40 and 42.24 RCW.

(6) All interest and earnings collected on joint program funds belong to the program and must be deposited to the program's credit in the proper program account.

(7) A joint program may require a reasonable bond from any person handling money or securities of the program and may pay the premium for the bond.

(8) Subsections (3) and (4) of this section do not apply to a multistate joint self-insurance program governed by RCW 48.62.081. [2003 c 248 § 20; 1991 sp.s. c 30 § 11.]

Chapter 48.90 RCW

DAY CARE CENTERS—SELF-INSURANCE

Sections

48.90.010 Findings and intent.
48.90.020 Definitions.
48.90.030 Authority to self-insure.
48.90.140 Dissolution of plan and association.

48.90.010 Findings and intent. (1) Day care providers are facing a major crisis in that adequate and affordable business liability insurance is no longer available within this state for persons who care for children. Many child day care centers have been forced to purchase inadequate coverage at prohibitive premium rates from unregulated foreign surplus line carriers over which the state has minimal control.

(2) There is a danger that a substantial number of child day care centers who cannot afford the escalating premiums will be unable or unwilling to remain in business without ade-

quate coverage. As a result the number of available facilities will be drastically reduced forcing some parents to leave the work force to care for their children. A corresponding demand upon the state's resources will result in the form of public assistance to unemployed parents and day care providers.

(3) There is a further danger that a substantial number of child day care centers now licensed pursuant to state law, who currently provide specific safeguards for the health and safety of children but are unable to procure insurance, may choose to continue to operate without state approval, avoiding regulation and payment of legitimate taxes, and forcing some parents to place their children in facilities of unknown quality and questionable levels of safety.

(4) Most child day care centers are small business enterprises with limited resources. The state's policies encourage the growth and development of small businesses.

(5)(a) This chapter is intended to remedy the problem of nonexistent or unaffordable liability coverage for child day care centers, and to encourage compliance with state laws protecting children while meeting the state's sound economic policies of encouraging small business development, sustaining an active work force, and discouraging policies that result in an increased drain on the state's resources through public assistance and other forms of public funding.

(b) This chapter will empower child day care centers to create self-insurance pools, to purchase insurance coverage, and to contract for risk management and administrative services through an association with demonstrated responsible fiscal management.

The intent of this legislation is to allow these associations maximum flexibility to create and administer plans to provide coverage and risk management services to licensed child day care centers. [2003 c 248 § 21; 1986 c 142 § 1.]

48.90.020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Child day care center" means an agency that regularly provides care for one or more children for periods of less than twenty-four hours as defined in RCW 74.15.020(1)(a).

(2) "Association" means a corporation organized under Title 24 RCW, representative of one or more categories of child day care centers not formed for the sole purpose of establishing and operating a self-insurance program that:

(a) Maintains a roster of current names and addresses of member child day care centers and of former member child day care centers or their representatives, and of all employees of member or former member child day care centers;

(b) Has a membership of a size and stability to ensure that it will be able to provide consistent and responsible fiscal management; and

(c) Maintains a regular newsletter or other periodic communication to member child day care centers.

(3) "Subscriber" means a child day care center that:

(a) Subscribes to a plan created pursuant to this chapter;

(b) Complies with all state licensing requirements;

(c) Is a member in good standing of an association;

(d) Has consistently maintained its license free from revocation for cause, except where the revocation was not

later rescinded or vacated by appellate or administrative decision; and

(e) Is prepared to demonstrate the willingness and ability to bear its share of the financial responsibility of its participation in the plan for each applicable contractual period. [2003 c 248 § 22; 1986 c 142 § 2.]

48.90.030 Authority to self-insure. Associations meeting the criteria of RCW 48.90.020 are empowered to create and operate self-insurance plans to provide general liability coverage to member child day care centers who choose to subscribe to the plans. [2003 c 248 § 23; 1986 c 142 § 3.]

48.90.140 Dissolution of plan and association. (1) If at any time the plan can no longer be operated on a sound financial basis, the association may elect to dissolve the plan, subject to explicit approval by the commissioner of a plan for dissolution. Once a plan operated by an association has been dissolved, that association may not again implement a plan pursuant to this chapter for five calendar years.

(2) At dissolution, the assets of the association represented by the contributing trust fund shall be deposited with the commissioner for a period of twenty-one years, to be made available for claims arising during that period based upon occurrences during the term of coverage. At the time of transfer of the funds, the association shall certify to the commissioner a list of all current subscribers, with their correct mailing addresses, and shall have notified all current subscribers of their obligation to keep the commissioner informed of any changes in their mailing addresses over the twenty-one year period, and that this obligation extends to their representatives, successors, assigns, and to the representatives of their estates. Upon dissolution, the association is required to provide to the commissioner a list of all plan subscribers during all of the years of operation of the plan.

At the end of the twenty-one year period, any funds remaining in the trust account must be distributed to those subscribers who were current subscribers in the most recent year of operation of the plan, with each current subscriber receiving an equal share of the distribution, without regard for the length of time each child day care center was a subscriber.

In the alternative, in the discretion of the association, the balance of the contributing trust fund may be used to purchase similar or more liberal coverage from a commercial insurer. Each subscriber shall, however, be given the option to deposit its share of the fund with the commissioner as provided in this section if it elects not to participate in the proposed commercial insurance. [2003 c 248 § 24; 1986 c 142 § 14.]

Chapter 48.99 RCW

UNIFORM INSURERS LIQUIDATION ACT

Sections

48.99.040 Claims of nonresidents against domestic insurer.

48.99.040 Claims of nonresidents against domestic insurer. (1) In a delinquency proceeding begun in this state against an insurer domiciled in this state, claimants residing in reciprocal states may file claims either with the ancillary

receivers, if any, in their respective states, or with the domiciliary receiver. All claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in reciprocal states may either (a) be proved in this state as provided by law, or (b) if ancillary proceedings have been commenced in reciprocal states, be proved in those proceedings. In the event a claimant elects to prove a claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state as provided in RCW 48.99.050 with respect to ancillary proceedings in this state, the final allowance of a claim by the courts in the ancillary state must be accepted in this state as conclusive as to its amount, and must also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state. [2003 c 248 § 25; 1947 c 79 § .31.14; Rem. Supp. 1947 § 45.31.14. Formerly RCW 48.31.140.]

Title 49

LABOR REGULATIONS

Chapters

- 49.04** Apprenticeship.
- 49.12** Industrial welfare.
- 49.26** Health and safety—Asbestos.
- 49.28** Hours of labor.
- 49.44** Violations—Prohibited practices.
- 49.48** Wages—Payment—Collection.
- 49.60** Discrimination—Human rights commission.

Chapter 49.04 RCW APPRENTICESHIP

Sections

- 49.04.141 Transportation opportunities—Report.
- 49.04.150 Associate degree pathway.

49.04.141 Transportation opportunities—Report.

The apprenticeship council shall work with the department of transportation, local transportation jurisdictions, local and statewide joint apprenticeships, other apprenticeship programs, representatives of labor and business organizations with interest and expertise in the transportation work force, and representatives of the state's universities and community and vocational colleges to establish technical apprenticeship opportunities specific to the needs of transportation. The council shall issue a report of findings and recommendations to the transportation committees of the legislature by December 1, 2003. The report must include, but not be limited to, findings and recommendations regarding the establishment of transportation technical training programs within the community and vocational college system and in the state universities. [2003 c 363 § 202.]

Findings—Intent—2003 c 363 §§ 201 through 206: "(1) The legislature finds that a skilled technical work force is necessary for maintaining, preserving, and improving Washington's transportation system. The Blue Ribbon Commission on Transportation found that state and local transportation agencies are showing signs of a work force that is insufficiently skilled to operate the transportation system at its highest level. Sections 201 through 206 of this act are intended to explore methods for fostering a stronger indus-

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try in transportation planning and engineering.

(2) It is the intent of the legislature that the state prevailing wage process operate efficiently, that the process allow contractors and workers to be paid promptly, and that new technologies and innovative outreach methods be used to enhance wage surveys in order to better reflect current wages in counties across the state.

(3) The legislature finds that in order to enhance the prevailing wage process it is appropriate for all intent and affidavit fees paid by contractors be dedicated to the sole purpose of administering the state prevailing wage program.

(4) To accomplish the intent of this section and in order to enhance the response of businesses and labor representatives to the prevailing wage survey process, the department of labor and industries shall undertake the following activities:

(a) Establish a goal of conducting surveys for each trade every three years;

(b) Actively promote increased response rates from all survey recipients in every county both urban and rural. The department shall provide public education and technical assistance to businesses, labor representatives, and public agencies in order to promote a better understanding of prevailing wage laws and increased participation in the prevailing wage survey process;

(c) Actively work with businesses, labor representatives, public agencies, and others to ensure the integrity of information used in the development of prevailing wage rates, and ensure uniform compliance with requirements of sections 201 through 206 of this act;

(d) Maintain a timely processing of intents and affidavits, with a target processing time no greater than seven working days from receipt of completed forms;

(e) Develop and implement electronic processing of intents and affidavits and promote the efficient and effective use of technology to improve the services provided by the prevailing wage program." [2003 c 363 § 201.]

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

49.04.150 Associate degree pathway. (1) An apprenticeship committee may recommend to its community or technical college partner or partners that an associate degree pathway be developed for the committee's program.

(2) In consultation with the state board for community and technical colleges, the apprenticeship committee and the college or colleges involved with the program shall consider the extent apprentices in the program are likely to pursue an associate degree and the extent a pathway could reduce redundancy of course requirements between the apprenticeship and a degree.

(3) If the apprenticeship committee and the college or colleges involved with the program determine that a pathway would be beneficial for apprentices and assist them in obtaining an associate degree, the apprenticeship committee may request that a pathway be established as provided in RCW 28B.50.890. [2003 c 128 § 2.]

Findings—2003 c 128: "The legislature finds that:

(1) Apprenticeships are very rigorous and highly structured programs with specific academic and work training requirements;

(2) There is a misperception that apprenticeships are only for noncollege bound students; and

(3) The state should expand opportunities for individuals to progress from an apprenticeship to college by creating pathways that build on the apprenticeship experience and permit apprentices to earn an associate degree." [2003 c 128 § 1.]

Chapter 49.12 RCW INDUSTRIAL WELFARE

Sections

- 49.12.005 Definitions.
- 49.12.187 Collective bargaining rights not affected.
- 49.12.360 Parental leave—Discrimination prohibited.
- 49.12.410 Child labor laws—Violations—Criminal penalties. (*Effective July 1, 2004.*)

49.12.460 Volunteer fire fighters—Employer duties—Violations.

49.12.005 Definitions. For the purposes of this chapter:

(1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department of labor and industries, or the director's designated representative.

(3)(a) Before May 20, 2003, "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees but does not include the state, any state institution, any state agency, political subdivision of the state, or any municipal corporation or quasi-municipal corporation. However, for the purposes of RCW 49.12.265 through 49.12.295, 49.12.350 through 49.12.370, 49.12.450, and 49.12.460 only, "employer" also includes the state, any state institution, any state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.

(b) On and after May 20, 2003, "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation. However, this chapter and the rules adopted thereunder apply to these public employers only to the extent that this chapter and the rules adopted thereunder do not conflict with: (i) Any state statute or rule; and (ii) respect to political subdivisions of the state and any municipal or quasi-municipal corporation, any local resolution, ordinance, or rule adopted under the authority of the local legislative authority before April 1, 2003.

(4) "Employee" means an employee who is employed in the business of the employee's employer whether by way of manual labor or otherwise.

(5) "Conditions of labor" means and includes the conditions of rest and meal periods for employees including provisions for personal privacy, practices, methods and means by or through which labor or services are performed by employees and includes bona fide physical qualifications in employment, but shall not include conditions of labor otherwise governed by statutes and rules and regulations relating to industrial safety and health administered by the department.

(6) For the purpose of chapter 16, Laws of 1973 2nd ex. sess. a minor is defined to be a person of either sex under the age of eighteen years. [2003 c 401 § 2; 1998 c 334 § 1; 1994 c 164 § 13; 1988 c 236 § 8; 1973 2nd ex.s. c 16 § 1.]

Findings—Purpose—Intent—Effective date—2003 c 401: See notes following RCW 49.12.187.

Construction—1998 c 334: See note following RCW 49.12.450.

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.187 Collective bargaining rights not affected.

This chapter shall not be construed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of

their own choosing concerning wages or standards or conditions of employment. However, rules adopted under this chapter regarding appropriate rest and meal periods as applied to employees in the construction trades may be superseded by a collective bargaining agreement negotiated under the national labor relations act, 29 U.S.C. Sec. 151 et seq., if the terms of the collective bargaining agreement covering such employees specifically require rest and meal periods and prescribe requirements concerning those rest and meal periods.

Employees of public employers may enter into collective bargaining contracts, labor/management agreements, or other mutually agreed to employment agreements that specifically vary from or supersede, in part or in total, rules adopted under this chapter regarding appropriate rest and meal periods. [2003 c 401 § 3; 2003 c 146 § 1; 1973 2nd ex.s. c 16 § 18.]

Reviser's note: This section was amended by 2003 c 146 § 1 and by 2003 c 401 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Purpose—Intent—2003 c 401: "The legislature finds that the enactment of chapter 236, Laws of 1988 amended the definition of employer under the industrial welfare act, chapter 49.12 RCW, to ensure that the family care provisions of that act applied to the state and political subdivisions. The legislature further finds that this amendment of the definition of employer may be interpreted as creating an ambiguity as to whether the other provisions of chapter 49.12 RCW have applied to the state and its political subdivisions. The purpose of this act is to make retroactive, remedial, curative, and technical amendments to clarify the intent of chapter 49.12 RCW and chapter 236, Laws of 1988 and resolve any ambiguity. It is the intent of the legislature to establish that, prior to May 20, 2003, chapter 49.12 RCW and the rules adopted thereunder did not apply to the state or its agencies and political subdivisions except as expressly provided for in RCW 49.12.265 through 49.12.295, 49.12.350 through 49.12.370, 49.12.450, and 49.12.460." [2003 c 401 § 1.]

Effective date—2003 c 401: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 2003]." [2003 c 401 § 6.]

49.12.360 Parental leave—Discrimination prohibited. (1) An employer must grant an adoptive parent or a stepparent, at the time of birth or initial placement for adoption of a child under the age of six, the same leave under the same terms as the employer grants to biological parents. As a term of leave, an employer may restrict leave to those living with the child at the time of birth or initial placement.

(2) An employer must grant the same leave upon the same terms for men as it does for women.

(3) The department shall administer and investigate violations of this section. Notices of infraction, penalties, and appeals shall be administered in the same manner as violations under RCW 49.12.285.

(4) For purposes of this section, "leave" means any leave from employment granted to care for a newborn or a newly adopted child at the time of placement for adoption.

(5) Nothing in this section requires an employer to:

(a) Grant leave equivalent to maternity disability leave; or

(b) Establish a leave policy to care for a newborn or newly placed child if no such leave policy is in place for any of its employees. [2003 c 401 § 4; 1989 1st ex.s. c 11 § 23.]

Findings—Purpose—Intent—Effective date—2003 c 401: See notes following RCW 49.12.187.

Severability—Effective date—1989 1st ex.s. c 11: See RCW 49.78.900 and 49.78.901.

49.12.410 Child labor laws—Violations—Criminal penalties. (*Effective July 1, 2004.*) (1) An employer who knowingly or recklessly violates the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted under RCW 49.12.121 or 49.12.123, is guilty of a gross misdemeanor.

(2) An employer whose practices in violation of the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted under RCW 49.12.121 or 49.12.123, result in the death or permanent disability of a minor employee is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 273; 1991 c 303 § 5.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

49.12.460 Volunteer fire fighters—Employer duties—Violations. (1) An employer may not discharge from employment or discipline a volunteer fire fighter because of leave taken related to an alarm of fire or an emergency call.

(2)(a) A volunteer fire fighter who believes he or she was discharged or disciplined in violation of this section may file a complaint alleging the violation with the director. The volunteer fire fighter may allege a violation only by filing such a complaint within ninety days of the alleged violation.

(b) Upon receipt of the complaint, the director must cause an investigation to be made as the director deems appropriate and must determine whether this section has been violated. Notice of the director's determination must be sent to the complainant and the employer within ninety days of receipt of the complaint.

(c) If the director determines that this section was violated and the employer fails to reinstate the employee or withdraw the disciplinary action taken against the employee, whichever is applicable, within thirty days of receipt of notice of the director's determination, the volunteer fire fighter may bring an action against the employer alleging a violation of this section and seeking reinstatement or withdrawal of the disciplinary action.

(d) In any action brought under this section, the superior court shall have jurisdiction, for cause shown, to restrain violations under this section and to order reinstatement of the employee or withdrawal of the disciplinary action.

(3) For the purposes of this section:

(a) "Alarm of fire or emergency call" means responding to, working at, or returning from a fire alarm or an emergency call, but not participating in training or other nonemergency activities.

(b) "Employer" means an employer who had twenty or more full-time equivalent employees in the previous year.

(c) "Reinstatement" means reinstatement with back pay, without loss of seniority or benefits, and with removal of any related adverse material from the employee's personnel file, if a file is maintained by the employer.

(d) "Withdrawal of disciplinary action" means withdrawal of disciplinary action with back pay, without loss of seniority or benefits, and with removal of any related adverse

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material from the employee's personnel file, if a file is maintained by the employer.

(e) "Volunteer fire fighter" means a fire fighter who:

(i) Is not paid;

(ii) Is not already at his or her place of employment when called to serve as a volunteer, unless the employer agrees to provide such an accommodation; and

(iii) Has been ordered to remain at his or her position by the commanding authority at the scene of the fire.

(4) The legislature declares that the public policies articulated in this section depend on the procedures established in this section and no civil or criminal action may be maintained relying on the public policies articulated in this section without complying with the procedures set forth in this section, and to that end all civil actions and civil causes of action for such injuries and all jurisdiction of the courts of this state over such causes are hereby abolished, except as provided in this section. [2003 c 401 § 5; 2001 c 173 § 1.]

Findings—Purpose—Intent—Effective date—2003 c 401: See notes following RCW 49.12.187.

Chapter 49.26 RCW

HEALTH AND SAFETY—ASBESTOS

Sections

49.26.130 Asbestos projects—Rules—Fees—Asbestos account.

49.26.130 Asbestos projects—Rules—Fees—Asbestos account. (1) The department shall administer this chapter.

(2) The director of the department shall adopt, in accordance with chapters 34.05 and 49.17 RCW, rules necessary to carry out this chapter.

(3) The department shall prescribe fees for the issuance and renewal of certificates, including recertification, and the administration of examinations, and for the review of training courses.

(4) The asbestos account is hereby established in the state treasury. All fees collected under this chapter shall be deposited in the account. Moneys in the account shall be spent after appropriation only for costs incurred by the department in the administration and enforcement of this chapter. Disbursements from the account shall be on authorization of the director of the department or the director's designee.

(5) During the 2003-2005 fiscal biennium, the legislature may transfer from the asbestos account to the state general fund such amounts as reflect the excess fund balance in the account. [2003 1st sp.s. c 25 § 924; 1989 c 154 § 9. Prior: 1988 c 271 § 15; 1987 c 219 § 1; 1985 c 387 § 3.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

Chapter 49.28 RCW

HOURS OF LABOR

Sections

49.28.010 Eight hour day, 1899 act—Public works contracts—Emergency overtime—Penalty. (*Effective July 1, 2004.*)

49.28.020 Repealed. (*Effective July 1, 2004.*)

- 49.28.030 Repealed. (*Effective July 1, 2004.*)
 49.28.080 Hours of domestic employees—Exception—Penalty. (*Effective July 1, 2004.*)
 49.28.082 Repealed. (*Effective July 1, 2004.*)
 49.28.084 Repealed. (*Effective July 1, 2004.*)
 49.28.100 Hours of operators of power equipment in waterfront operations—Penalty. (*Effective July 1, 2004.*)
 49.28.110 Repealed. (*Effective July 1, 2004.*)

49.28.010 Eight hour day, 1899 act—Public works contracts—Emergency overtime—Penalty. (*Effective July 1, 2004.*) (1) Hereafter eight hours in any calendar day shall constitute a day's work on any work done for the state or any county or municipality within the state, subject to conditions hereinafter provided.

(2) All work done by contract or subcontract on any building or improvements or works on roads, bridges, streets, alleys, or buildings for the state or any county or municipality within the state, shall be done under the provisions of this section. In cases of extraordinary emergency such as danger to life or property, the hours for work may be extended, but in such case the rate of pay for time employed in excess of eight hours of each calendar day, shall be one and one-half times the rate of pay allowed for the same amount of time during eight hours' service. And for this purpose this section is made a part of all contracts, subcontracts, or agreements for work done for the state or any county or municipality within the state.

(3) Any contractor, subcontractor, or agent of contractor or subcontractor, foreman, or employer who violates this section is guilty of a misdemeanor and shall be fined a sum not less than twenty-five dollars nor more than two hundred dollars, or imprisoned in the county jail for a period of not less than ten days nor more than ninety days, or both such fine and imprisonment, at the discretion of the court. [2003 c 53 § 274; 1899 c 101 § 1; RRS § 7642.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

49.28.020 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

49.28.030 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

49.28.080 Hours of domestic employees—Exception—Penalty. (*Effective July 1, 2004.*) (1) No male or female household or domestic employee shall be employed by any person for a longer period than sixty hours in any one week. Employed time shall include minutes or hours when the employee has to remain subject to the call of the employer and when the employee is not free to follow his or her inclinations.

(2) In cases of emergency such employee may be employed for a longer period than sixty hours.

(3) Any employer violating this section is guilty of a misdemeanor. [2003 c 53 § 275; 1937 c 129 § 1; RRS § 7651-1. FORMER PARTS OF SECTION: (i) 1937 c 129 § 2; RRS § 7651-2, now codified as RCW 49.28.082. (ii) 1937 c 129 § 4; RRS § 7651-4, now codified as RCW 49.28.084.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1937 c 129: "In the event any part of this act is held invalid such invalidity shall not affect the validity of the remainder of this act." [1937 c 129 § 3.] This applies to RCW 49.28.080 through 49.28.084.

49.28.082 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

49.28.084 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

49.28.100 Hours of operators of power equipment in waterfront operations—Penalty. (*Effective July 1, 2004.*)

(1) It shall be unlawful for any employer to permit any of his or her employees to operate on docks, in warehouses and/or in or on other waterfront properties any power driven mechanical equipment for the purpose of loading cargo on, or unloading cargo from, ships, barges, or other watercraft, or of assisting in such loading or unloading operations, for a period in excess of twelve and one-half hours at any one time without giving such person an interval of eight hours' rest: PROVIDED, HOWEVER, The provisions of this section shall not be applicable in cases of emergency, including fire, violent storms, leaking or sinking ships or services required by the armed forces of the United States.

(2) Any person violating this section is guilty of a misdemeanor. [2003 c 53 § 276; 1953 c 271 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

49.28.110 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 49.44 RCW

VIOLATIONS—PROHIBITED PRACTICES

Sections

- 49.44.100 Bringing in out-of-state persons to replace employees involved in labor dispute—Penalty. (*Effective July 1, 2004.*)
 49.44.110 Repealed. (*Effective July 1, 2004.*)
 49.44.120 Requiring lie detector tests—Penalty. (*Effective July 1, 2004.*)
 49.44.130 Repealed. (*Effective July 1, 2004.*)

49.44.100 Bringing in out-of-state persons to replace employees involved in labor dispute—Penalty. (*Effective July 1, 2004.*)

(1) It shall be unlawful for any person, firm or corporation not directly involved in a labor strike or lockout to recruit and bring into this state from outside this state any person or persons for employment, or to secure or offer to secure for such person or persons any employment, when the purpose of such recruiting, securing or offering to secure employment is to have such persons take the place in employment of employees in a business owned by a person, firm or corporation involved in a labor strike or lockout, or to have such persons act as pickets of a business owned by a person, firm or corporation where a labor strike or lockout exists: PROVIDED, That this section shall not apply to activities

and services offered by or through the Washington employment security department.

(2) Any person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 277; 1961 c 180 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

49.44.110 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

49.44.120 Requiring lie detector tests—Penalty. (Effective July 1, 2004.) (1) It shall be unlawful for any person, firm, corporation or the state of Washington, its political subdivisions or municipal corporations to require, directly or indirectly, that any employee or prospective employee take or be subjected to any lie detector or similar tests as a condition of employment or continued employment: PROVIDED, That this section shall not apply to persons making initial application for employment with any law enforcement agency: PROVIDED FURTHER, That this section shall not apply to either the initial application for employment or continued employment of persons who manufacture, distribute, or dispense controlled substances as defined in chapter 69.50 RCW, or to persons in sensitive positions directly involving national security.

(2) Nothing in this section shall be construed to prohibit the use of psychological tests as defined in RCW 18.83.010.

(3) Any person violating this section is guilty of a misdemeanor.

(4) As used in this section, "person" includes any individual, firm, corporation, or agency or political subdivision of the state.

(5) Nothing in this section may be construed as limiting any statutory or common law rights of any person illegally denied employment or continued employment under this section for purposes of any civil action or injunctive relief. [2003 c 53 § 278; 1985 c 426 § 1; 1973 c 145 § 1; 1965 c 152 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

49.44.130 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 49.48 RCW

WAGES—PAYMENT—COLLECTION

Sections

49.48.120	Payment on employee's death.
49.48.200	Overpayment of wages—State employees.
49.48.210	Overpayment of wages—Notice—Review—Appeal.
49.48.220	Rules.

49.48.120 Payment on employee's death. (1) If at the time of the death of any person, his or her employer is indebted to him or her for work, labor, and services performed, and no executor or administrator of his or her estate has been appointed, the employer shall upon the request of the surviving spouse pay the indebtedness in an amount as may be due not exceeding the sum of two thousand five hun-

dred dollars, to the surviving spouse, or if the decedent leaves no surviving spouse, then to the decedent's child or children, or if no children, then to the decedent's father or mother.

(2) In the event the decedent's employer is the state of Washington, then the amount of the indebtedness that can be paid under subsection (1) of this section shall not exceed ten thousand dollars. At the beginning of each biennium, the director of financial management may by administrative policy adjust the amount of indebtedness that can be paid under this subsection to levels not to exceed the percentage increase in the consumer price index for all urban consumers, CPI-U, for Seattle, or a successor index, for the previous biennium as calculated by the United States department of labor. Adjusted dollar amounts of indebtedness shall be rounded to the nearest five hundred dollar increment.

(3) If the decedent and the surviving spouse have entered into a community property agreement that meets the requirements of RCW 26.16.120, and the right to the indebtedness became the sole property of the surviving spouse upon the death of the decedent, the employer shall pay to the surviving spouse the total of the indebtedness, or that portion which is governed by the community property agreement, upon presentation of the agreement accompanied by an affidavit or declaration of the surviving spouse stating that the agreement was executed in good faith between the parties and had not been rescinded by the parties before the decedent's death.

(4) In all cases, the employer shall require proof of the claimant's relationship to the decedent by affidavit or declaration, and shall require the claimant to acknowledge receipt of the payment in writing.

(5) Any payments made by an employer pursuant to the provisions of RCW 49.48.115 and 49.48.120 shall operate as a full and complete discharge of the employer's indebtedness to the extent of the payment, and no employer shall thereafter be liable to the decedent's estate, or the decedent's executor or administrator thereafter appointed.

(6) The employer may also pay the indebtedness upon presentation of an affidavit as provided in RCW 11.62.010. [2003 c 122 § 1; 1981 c 333 § 2; 1974 ex.s. c 117 § 42; 1967 c 210 § 1; 1939 c 139 § 2; RRS § 1464-2. FORMER PART OF SECTION: 1939 c 139 § 1; RRS § 1464-1 now codified as RCW 49.48.115.]

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

49.48.200 Overpayment of wages—State employees.

(1) Debts due the state for the overpayment of wages to state employees may be recovered by the employer by deductions from subsequent wage payments as provided in RCW 49.48.210, or by civil action. If the overpayment is recovered by deduction from the employee's subsequent wages, each deduction shall not exceed: (a) Five percent of the employee's disposable earnings in a pay period other than the final pay period; or (b) the amount still outstanding from the employee's disposable earnings in the final pay period. The deductions from wages shall continue until the overpayment is fully recouped.

(2) Nothing in chapter 77, Laws of 2003 prevents: (a) An employee from making payments in excess of the amount specified in subsection (1)(a) of this section to an employer; or (b) an employer and employee from agreeing to a different

overpayment amount than that specified in the notice in RCW 49.48.210(1) or to a method other than a deduction from wages for repayment of the overpayment amount. [2003 c 77 § 1.]

49.48.210 Overpayment of wages—Notice—Review—Appeal. (1) When an employer determines that an employee was overpaid wages, the employer shall provide written notice to the employee. The notice shall include the amount of the overpayment, the basis for the claim, a demand for payment within twenty calendar days of the date on which the employee received the notice, and the rights of the employee under this section.

(2) The notice may be served upon the employee in the manner prescribed for the service of a summons in a civil action, or be mailed by certified mail, return receipt requested, to the employee at his or her last known address.

(3) Within twenty calendar days after receiving the notice from the employer that an overpayment has occurred, the employee may request, in writing, that the employer review its finding that an overpayment has occurred. The employee may choose to have the review conducted through written submission of information challenging the overpayment or through a face-to-face meeting with the employer. If the request is not made within the twenty-day period as provided in this subsection, the employee may not further challenge the overpayment and has no right to further agency review, an adjudicative proceeding, or judicial review.

(4) Upon receipt of an employee's written request for review of the overpayment, the employer shall review the employee's challenge to the overpayment. Upon completion of the review, the employer shall notify the employee in writing of the employer's decision regarding the employee's challenge. The notification must be sent by certified mail, return receipt requested, to the employee at his or her last known address.

(5) If the employee is dissatisfied with the employer's decision regarding the employee's challenge to the overpayment, the employee may request an adjudicative proceeding governed by the administrative procedure act, chapter 34.05 RCW. The employee's application for an adjudicative proceeding must be in writing, state the basis for contesting the overpayment notice, and include a copy of the employer's notice of overpayment. The application must be served on and received by the employer within twenty-eight calendar days of the employee's receipt of the employer's decision following review of the employee's challenge. Notwithstanding RCW 34.05.413(3), agencies may not vary the requirements of this subsection (5) by rule or otherwise. The employee must serve the employer by certified mail, return receipt requested.

(6) If the employee does not request an adjudicative proceeding within the twenty-eight-day period, the amount of the overpayment provided in the notice shall be deemed final and the employer may proceed to recoup the overpayment as provided in this section and RCW 49.48.200.

(7) Where an adjudicative proceeding has been requested, the presiding or reviewing officer shall determine the amount, if any, of the overpayment received by the employee.

(8) If the employee fails to attend or participate in the adjudicative proceeding, upon a showing of valid service, the presiding or reviewing officer may enter an administrative order declaring the amount claimed in the notice sent to the employee after the employer's review of the employee's challenge to the overpayment to be assessed against the employee and subject to collection action by the state as provided in RCW 49.48.200.

(9) Failure to make an application for a review by the employer as provided in subsections (3) and (4) of this section or an adjudicative proceeding within twenty-eight calendar days of the date of receiving notice of the employer's decision after review of the overpayment shall result in the establishment of a final debt against the employee in the amount asserted by the employer, which debt shall be collected as provided in RCW 49.48.200.

(10) As used in chapter 77, Laws of 2003:

(a) "Employer" means the state of Washington and any of its agencies, institutions, boards, or commissions; and

(b) "Overpayment" means a payment of wages for a pay period that is greater than the amount earned for a pay period. [2003 c 77 § 2.]

49.48.220 Rules. The office of financial management shall adopt the rules necessary to implement chapter 77, Laws of 2003. [2003 c 77 § 3.]

Chapter 49.60 RCW

DISCRIMINATION—HUMAN RIGHTS COMMISSION

Sections

49.60.172	Unfair practices with respect to HIV or hepatitis C infection.
49.60.174	Evaluation of claim of discrimination—Actual or perceived HIV or hepatitis C infection.

49.60.172 Unfair practices with respect to HIV or hepatitis C infection. (1) No person may require an individual to take an HIV test, as defined in chapter 70.24 RCW, or hepatitis C test, as a condition of hiring, promotion, or continued employment unless the absence of HIV or hepatitis C infection is a bona fide occupational qualification for the job in question.

(2) No person may discharge or fail or refuse to hire any individual, or segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of the results of an HIV test or hepatitis C test unless the absence of HIV or hepatitis C infection is a bona fide occupational qualification of the job in question.

(3) The absence of HIV or hepatitis C infection as a bona fide occupational qualification exists when performance of a particular job can be shown to present a significant risk, as defined by the board of health by rule, of transmitting HIV or hepatitis C infection to other persons, and there exists no means of eliminating the risk by restructuring the job.

(4) For the purpose of this chapter, any person who is actually infected with HIV or hepatitis C, but is not disabled

as a result of the infection, shall not be eligible for any benefits under the affirmative action provisions of chapter 49.74 RCW solely on the basis of such infection.

(5) Employers are immune from civil action for damages arising out of transmission of HIV or hepatitis C to employees or to members of the public unless such transmission occurs as a result of the employer's gross negligence. [2003 c 273 § 2; 1988 c 206 § 903.]

Severability—1988 c 206: See RCW 70.24.900.

49.60.174 Evaluation of claim of discrimination—Actual or perceived HIV or hepatitis C infection. (1) For the purposes of determining whether an unfair practice under this chapter has occurred, claims of discrimination based on actual or perceived HIV or hepatitis C infection shall be evaluated in the same manner as other claims of discrimination based on sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a disabled person.

(2) Subsection (1) of this section shall not apply to transactions with insurance entities, health service contractors, or health maintenance organizations subject to RCW 49.60.030(1)(e) or 49.60.178 to prohibit fair discrimination on the basis of actual HIV or actual hepatitis C infection status when bona fide statistical differences in risk or exposure have been substantiated.

(3) For the purposes of this chapter:

(a) "HIV" means the human immunodeficiency virus, and includes all HIV and HIV-related viruses which damage the cellular branch of the human immune system and leave the infected person immunodeficient; and

(b) "Hepatitis C" means the hepatitis C virus of any genotype. [2003 c 273 § 3; 1997 c 271 § 6; 1993 c 510 § 8; 1988 c 206 § 902.]

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1988 c 206: See RCW 70.24.900.

Title 50

UNEMPLOYMENT COMPENSATION

Reviser's note: *Referendum Bill No. 53 was rejected by the voters at the November 2002 election, after the 2002 print edition of the Revised Code of Washington had been published and distributed. This resulted in several sections of law being returned to the status existing before their amendment by chapter 149, Laws of 2002. The following explains which sections were affected and the resulting changes that were made to this title.*

Referendum Measure No. 53 challenged 2002 c 149 §§ 5, 7, 8, 10, 12, 13, 17, and 18, and was rejected by the voters. Therefore, we have removed the 2002 c 149 amendments from the following sections:

RCW 50.24.010

RCW 50.24.014

RCW 50.29.025

RCW 50.29.062

We removed from this title:

RCW 50.29.055

The application note following RCW 50.24.010.

The expiration dates note following RCW 50.20.125.

The expiration date in the captions of RCW 50.20.125, 50.29.025, and 50.29.045.

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Chapter 50.01 RCW

GENERAL PROVISIONS

Sections

50.01.010 Preamble.

50.01.010 Preamble. Whereas, economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state; involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. Social security requires protection against this greatest hazard of our economic life. This can be provided only by application of the insurance principle of sharing the risks, and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing powers and limiting the serious social consequences of relief assistance. The state of Washington, therefore, exercising herein its police and sovereign power endeavors by this title to remedy any widespread unemployment situation which may occur and to set up safeguards to prevent its recurrence in the years to come. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. [2003 2nd sp.s. c 4 § 1; 1945 c 35 § 2; Rem. Supp. 1945 § 9998-141. Prior: 1937 c 162 § 2.]

Conflict with federal requirements—2003 2nd sp.s. c 4: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2003 2nd sp.s. c 4 § 36.]

Severability—2003 2nd sp.s. c 4: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 2nd sp.s. c 4 § 37.]

Effective date—2003 2nd sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 20, 2003]." [2003 2nd sp.s. c 4 § 39.]

Chapter 50.04 RCW

DEFINITIONS

Sections

50.04.206	Employment—Nonresident alien.
50.04.293	Misconduct.
50.04.294	Misconduct—Gross misconduct.
50.04.335	Wages, remuneration—Stock transfers excepted.
50.04.355	Wages, remuneration—Average annual wage—Average weekly wage—Average annual wage for contributions purposes.

50.04.206 Employment—Nonresident alien. The term "employment" shall not include service that is performed by a nonresident alien for the period he or she is temporarily present in the United States as a nonimmigrant under subparagraph (F), (H)(ii), (H)(iii), or (J) of section 101(a)(15) of the federal immigration and naturalization act, as amended, and that is performed to carry out the purpose specified in the applicable subparagraph of the federal immigration and naturalization act. [2003 2nd sp.s. c 4 § 27; 1990 c 245 § 3.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

50.04.293 Misconduct. With respect to claims that have an effective date before January 4, 2004, "misconduct" means an employee's act or failure to act in willful disregard of his or her employer's interest where the effect of the employee's act or failure to act is to harm the employer's business. [2003 2nd sp.s. c 4 § 5; 1993 c 483 § 1.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Effective dates—Applicability—1993 c 483: "(1) Sections 1 and 8 through 11 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 3, 1993, and shall be effective as to separations occurring after July 3, 1993.

(2) Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 3, 1993, and is effective as to weeks claimed after July 3, 1993.

(3) Section 12 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993], and is effective as to new claims filed after July 3, 1993.

(4) Section 19 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 3, 1993, and is effective as to requests for relief of charges received after July 3, 1993.

(5) Sections 15, 17, and 18 of this act shall be effective as to new extended benefit claims filed after October 2, 1993.

(6) Sections 13 and 14 of this act shall take effect January 1, 1994.

(7) Sections 3, 4, and 5 of this act shall take effect January 2, 1994.

(8) Sections 20 and 21 of this act shall take effect for tax year 1994.

(9) Section 16 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993]." [1993 c 483 § 23.]

Conflict with federal requirements—1993 c 483: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the

state or the granting of federal unemployment tax credits to employers in this state." [1993 c 483 § 24.]

Severability—1993 c 483: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 483 § 25.]

50.04.294 Misconduct—Gross misconduct. With respect to claims that have an effective date on or after January 4, 2004:

(1) "Misconduct" includes, but is not limited to, the following conduct by a claimant:

(a) Willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee;

(b) Deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;

(c) Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or

(d) Carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest.

(2) The following acts are considered misconduct because the acts signify a willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee. These acts include, but are not limited to:

(a) Insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions or instructions of the employer;

(b) Repeated inexcusable tardiness following warnings by the employer;

(c) Dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;

(d) Repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;

(e) Deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;

(f) Violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or

(g) Violations of law by the claimant while acting within the scope of employment that substantially affect the claimant's job performance or that substantially harm the employer's ability to do business.

(3) "Misconduct" does not include:

(a) Inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(b) Inadvertence or ordinary negligence in isolated instances; or

(c) Good faith errors in judgment or discretion.

(4) "Gross misconduct" means a criminal act in connection with an individual's work for which the individual has been convicted in a criminal court, or has admitted committing, or conduct connected with the individual's work that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of the employer or a fellow employee. [2003 2nd sp.s. c 4 § 6.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.04.335 Wages, remuneration—Stock transfers excepted. After December 31, 2003, for the purpose of the payment of contributions, the term "wages" does not include an employee's income attributable to the transfer of shares of stock to the employee pursuant to his or her exercise of a stock option granted for any reason connected with his or her employment. [2003 2nd sp.s. c 4 § 2.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.04.355 Wages, remuneration—Average annual wage—Average weekly wage—Average annual wage for contributions purposes. (1) For computations made before January 1, 2007, the employment security department shall compute, on or before the fifteenth day of June of each year, an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" from information for the specified preceding calendar years including corrections thereof reported within three months after the close of the final year of the specified years by all employers as defined in RCW 50.04.080.

(a) The "average annual wage" is the quotient derived by dividing the total remuneration reported by all employers for the preceding calendar year by the average number of workers reported for all months of the preceding calendar year and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

(b) The "average weekly wage" is the quotient derived by dividing the "average annual wage" obtained under (a) of this subsection by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

(c) The "average annual wage for contributions purposes" is the quotient derived by dividing by three the total remuneration reported by all employers subject to contributions for the preceding three consecutive calendar years and dividing this amount by the average number of workers reported for all months of these three years by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

(2) For computations made on or after January 1, 2007, the employment security department shall compute, on or before the fifteenth day of June of each year, an "average annual wage," an "average weekly wage," and an "average annual wage for contributions purposes" from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080.

(a) The "average annual wage" is the quotient derived by dividing the total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

(b) The "average weekly wage" is the quotient derived by dividing the "average annual wage" obtained under (a) of this subsection by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

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(c) The "average annual wage for contributions purposes" is the quotient derived by dividing the total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [2003 2nd sp.s. c 4 § 15; 2000 c 2 § 1; 1977 ex.s. c 33 § 2; 1975 1st ex.s. c 228 § 1; 1973 c 73 § 3; 1970 ex.s. c 2 § 6.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—2000 c 2: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2000 c 2 s 17.]

Severability—2000 c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 2 § 18.]

Effective date—2000 c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 7, 2000]." [2000 c 2 § 19.]

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1975 1st ex.s. c 228: "All sections of this 1975 amendatory act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on the first Sunday following signature by the governor [June 29, 1975]." [1975 1st ex.s. c 228 § 19.]

Effective dates—1973 c 73: See note following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Chapter 50.12 RCW ADMINISTRATION

Sections

50.12.042	Rules—2003 2nd sp.s. c 4.
50.12.220	Penalties for late reports or contributions—Assessment—Appeal.

50.12.042 Rules—2003 2nd sp.s. c 4. The commissioner of the employment security department may adopt such rules as are necessary to implement chapter 4, Laws of 2003 2nd sp. sess. [2003 2nd sp.s. c 4 § 34.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.12.220 Penalties for late reports or contributions—Assessment—Appeal. (1)(a) If an employer fails to file in a timely and complete manner a report required by RCW 50.12.070, or the rules adopted pursuant thereto, the employer shall be subject to a penalty to be determined by the commissioner, but not to exceed two hundred fifty dollars or ten percent of the quarterly contributions for each such offense, whichever is less.

(b) If an employer knowingly misrepresents to the employment security department the amount of his or her

payroll upon which contributions under this title are based, the employer shall be liable to the state for up to ten times the amount of the difference in contributions paid, if any, and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department.

(c) If any part of a delinquency for which an assessment is made under this title is due to an intent to evade the succession provisions of RCW 50.29.062, the commissioner shall assign to the employer, and to any business found to be promoting the evasion of such provisions, the tax rate determined under RCW 50.29.025 for rate class 20 or rate class 40, as applicable, for five consecutive calendar quarters, beginning with the calendar quarter in which the intent to evade such provision is found.

(2) If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, there shall be assessed a penalty of five percent of the amount of the contributions for the first month or part thereof of delinquency; there shall be assessed a total penalty of ten percent of the amount of the contributions for the second month or part thereof of delinquency; and there shall be assessed a total penalty of twenty percent of the amount of the contributions for the third month or part thereof of delinquency. No penalty so added shall be less than ten dollars. These penalties are in addition to the interest charges assessed under RCW 50.24.040.

(3) Penalties shall not accrue on contributions from an estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall be subject to penalties in the same manner as contributions due from other employers.

(4) Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, penalties shall be waived by the commissioner. Penalties may also be waived for good cause if the commissioner determines that the failure to timely file reports or pay contributions was not due to the employer's fault.

(5) Any decision to assess a penalty as provided by this section shall be made by the chief administrative officer of the tax branch or his or her designee.

(6) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of any penalty. Such appeal shall be made in the manner provided in RCW 50.32.030. [2003 2nd sp.s. c 4 § 22; 1987 c 111 § 2; 1979 ex.s. c 190 § 1.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1987 c 111: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of

the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1987 c 111 § 10.]

Severability—1987 c 111: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 111 § 11.]

Effective date—1987 c 111: "This act shall take effect July 1, 1987. Sections 2 and 8 of this act shall be effective for quarters beginning on and after July 1, 1987." [1987 c 111 § 12.]

Chapter 50.13 RCW RECORDS AND INFORMATION—PRIVACY AND CONFIDENTIALITY

Sections

50.13.060 Access to records or information by governmental agencies.

50.13.060 Access to records or information by governmental agencies. (1) Governmental agencies, including law enforcement agencies, prosecuting agencies, and the executive branch, whether state, local, or federal shall have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:

(a) The agency submits an application in writing to the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the department; and

(b) The director, commissioner, chief executive, or other official of the agency has verified the need for the specific information in writing either on the application or on a separate document; and

(c) The agency requesting access has served a copy of the application for records or information on the individual or employing unit whose records or information are sought and has provided the department with proof of service. Service shall be made in a manner which conforms to the civil rules for superior court. The requesting agency shall include with the copy of the application a statement to the effect that the individual or employing unit may contact the public records officer of the employment security department to state any objections to the release of the records or information. The employment security department shall not act upon the application of the requesting agency until at least five days after service on the concerned individual or employing unit. The employment security department shall consider any objections raised by the concerned individual or employing unit in deciding whether the requesting agency needs the information or records for official purposes.

(2) The requirements of subsections (1) and (9) of this section shall not apply to the state legislative branch. The state legislature shall have access to information or records deemed private and confidential under this chapter, if the legislature or a legislative committee finds that the information or records are necessary and for official purposes. If the employment security department does not make information or records available as provided in this subsection, the legislature may exercise its authority granted by chapter 44.16 RCW.

(3) In cases of emergency the governmental agency requesting access shall not be required to formally comply with the provisions of subsection (1) of this section at the time of the request if the procedures required by subsection (1) of this section are complied with by the requesting agency following the receipt of any records or information deemed private and confidential under this chapter. An emergency is defined as a situation in which irreparable harm or damage could occur if records or information are not released immediately.

(4) The requirements of subsection (1)(c) of this section shall not apply to governmental agencies where the procedures would frustrate the investigation of possible violations of criminal laws or to the release of employing unit names, addresses, number of employees, and aggregate employer wage data for the purpose of state governmental agencies preparing small business economic impact statements under chapter 19.85 RCW or preparing cost-benefit analyses under RCW 34.05.328(1) (c) and (d). Information provided by the department and held to be private and confidential under state or federal laws must not be misused or released to unauthorized parties. A person who misuses such information or releases such information to unauthorized parties is subject to the sanctions in RCW 50.13.080.

(5) Governmental agencies shall have access to certain records or information, limited to such items as names, addresses, social security numbers, and general information about benefit entitlement or employer information possessed by the department, for comparison purposes with records or information possessed by the requesting agency to detect improper or fraudulent claims, or to determine potential tax liability or employer compliance with registration and licensing requirements. In those cases the governmental agency shall not be required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied.

(6) Governmental agencies may have access to certain records and information, limited to employer information possessed by the department for purposes authorized in chapter 50.38 RCW. Access to these records and information is limited to only those individuals conducting authorized statistical analysis, research, and evaluation studies. Only in cases consistent with the purposes of chapter 50.38 RCW are government agencies not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied. Information provided by the department and held to be private and confidential under state or federal laws shall not be misused or released to unauthorized parties subject to the sanctions in RCW 50.13.080.

(7) Disclosure to governmental agencies of information or records obtained by the employment security department from the federal government shall be governed by any applicable federal law or any agreement between the federal government and the employment security department where so required by federal law. When federal law does not apply to the records or information state law shall control.

(8) The department may provide information for purposes of statistical analysis and evaluation of the WorkFirst program or any successor state welfare program to the department of social and health services, the office of financial

management, and other governmental entities with oversight or evaluation responsibilities for the program in accordance with RCW 43.20A.080. The confidential information provided by the department shall remain the property of the department and may be used by the authorized requesting agencies only for statistical analysis, research, and evaluation purposes as provided in RCW 74.08A.410 and 74.08A.420. The department of social and health services, the office of financial management, or other governmental entities with oversight or evaluation responsibilities for the program are not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section and applicable federal laws and regulations must be satisfied. The confidential information used for evaluation and analysis of welfare reform supplied to the authorized requesting entities with regard to the WorkFirst program or any successor state welfare program are exempt from public inspection and copying under RCW 42.17.310.

(9) The disclosure of any records or information by a governmental agency which has obtained the records or information under this section is prohibited unless the disclosure is directly connected to the official purpose for which the records or information were obtained.

(10) In conducting periodic salary or fringe benefit studies pursuant to law, the department of personnel shall have access to records of the employment security department as may be required for such studies. For such purposes, the requirements of subsection (1)(c) of this section need not apply.

(11)(a) To promote the reemployment of job seekers, the commissioner may enter into data-sharing contracts with partners of the one-stop career development system. The contracts shall provide for the transfer of data only to the extent that the transfer is necessary for the efficient provisions of work force programs, including but not limited to public labor exchange, unemployment insurance, worker training and retraining, vocational rehabilitation, vocational education, adult education, transition from public assistance, and support services. The transfer of information under contracts with one-stop partners is exempt from subsection (1)(c) of this section.

(b) An individual who applies for services from the department and whose information will be shared under (a) of this subsection (11) must be notified that his or her private and confidential information in the department's records will be shared among the one-stop partners to facilitate the delivery of one-stop services to the individual. The notice must advise the individual that he or she may request that private and confidential information not be shared among the one-stop partners and the department must honor the request. In addition, the notice must:

(i) Advise the individual that if he or she requests that private and confidential information not be shared among one-stop partners, the request will in no way affect eligibility for services;

(ii) Describe the nature of the information to be shared, the general use of the information by one-stop partner representatives, and among whom the information will be shared;

(iii) Inform the individual that shared information will be used only for the purpose of delivering one-stop services and that further disclosure of the information is prohibited under

contract and is not subject to disclosure under RCW 42.17.310; and

(iv) Be provided in English and an alternative language selected by the one-stop center or job service center as appropriate for the community where the center is located.

If the notice is provided in-person, the individual who does not want private and confidential information shared among the one-stop partners must immediately advise the one-stop partner representative of that decision. The notice must be provided to an individual who applies for services telephonically, electronically, or by mail, in a suitable format and within a reasonable time after applying for services, which shall be no later than ten working days from the department's receipt of the application for services. A one-stop representative must be available to answer specific questions regarding the nature, extent, and purpose for which the information may be shared.

(12) To facilitate improved operation and evaluation of state programs, the commissioner may enter into data-sharing contracts with other state agencies only to the extent that such transfer is necessary for the efficient operation or evaluation of outcomes for those programs. The transfer of information by contract under this subsection is exempt from subsection (1)(c) of this section.

(13) The misuse or unauthorized release of records or information by any person or organization to which access is permitted by this chapter subjects the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [2003 c 165 § 3; 2000 c 134 § 2. Prior: 1997 c 409 § 605; 1997 c 58 § 1004; 1996 c 79 § 1; 1993 c 281 § 59; 1981 c 177 § 1; 1979 ex.s. c 177 § 1; 1977 ex.s. c 153 § 6.]

Findings—2000 c 134: "The legislature finds that individuals in need of employment and related services would be better served by integrating employment and training services to form a comprehensive network of state and local programs, called a one-stop career development system. Successful integration of employment and training services demands prompt and efficient exchange of information among service providers. The legislature further finds that efficient operation of state programs and their evaluation demand at times information held by the employment security department. Current restrictions on information exchange hamper this coordination, resulting in increased administrative costs, reduced levels of service, and fewer positive outcomes than could otherwise be achieved." [2000 c 134 § 1.]

Conflict with federal requirements—2000 c 134: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2000 c 134 § 4.]

Severability—2000 c 134: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 134 § 5.]

Effective date—1997 c 409 § 605: "Section 605 of this act is necessary for the immediate preservation of the public peace, health, or safety, or sup-

port of the state government and its existing public institutions, and takes effect immediately [May 19, 1997]." [1997 c 409 § 608.]

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Conflict with federal requirements—1996 c 79: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 79 § 3.]

Effective date—1996 c 79: "This act shall take effect July 1, 1996." [1996 c 79 § 4.]

Effective date—1993 c 281: See note following RCW 41.06.022.

Chapter 50.16 RCW FUNDS

Sections

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|-----------|---|
| 50.16.010 | Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund. |
| 50.16.015 | Federal interest payment fund—Establishment. |

50.16.010 Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund. (1) There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund, an administrative contingency fund, and a federal interest payment fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 shall not be applicable.

(2)(a) The unemployment compensation fund shall consist of:

(i) All contributions collected under RCW 50.24.010 and payments in lieu of contributions collected pursuant to the provisions of this title;

(ii) Any property or securities acquired through the use of moneys belonging to the fund;

(iii) All earnings of such property or securities;

(iv) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended;

(v) All money recovered on official bonds for losses sustained by the fund;

(vi) All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended;

(vii) All money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304); and

(viii) All moneys received for the fund from any other source.

(b) All moneys in the unemployment compensation fund shall be commingled and undivided.

(3)(a) Except as provided in (b) of this subsection, the administrative contingency fund shall consist of:

(i) All interest on delinquent contributions collected pursuant to this title;

(ii) All fines and penalties collected pursuant to the provisions of this title;

(iii) All sums recovered on official bonds for losses sustained by the fund; and

(iv) Revenue received under RCW 50.24.014.

(b) All fees, fines, forfeitures, and penalties collected or assessed by a district court because of the violation of this title or rules adopted under this title shall be remitted as provided in chapter 3.62 RCW.

(c) Moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014(1)(a), shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him or her that such expenditure is necessary solely for:

(i) The proper administration of this title and no federal funds are available for the specific purpose to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

(ii) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received, provided, the administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation.

(iii) The proper administration of this title for which compliance and audit issues have been identified that establish federal claims requiring the expenditure of state resources in resolution. Claims must be resolved in the following priority: First priority is to provide services to eligible participants within the state; second priority is to provide substitute services or program support; and last priority is the direct payment of funds to the federal government.

(d) During the 2003-2005 fiscal biennium, the cost of the job skills program and the alliance for corporate education at community and technical colleges as appropriated by the legislature.

Money in the special account created under RCW 50.24.014(1)(a) may only be expended, after appropriation, for the purposes specified in this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014, 50.44.053, and 50.22.010. [2003 2nd sp.s. c 4 § 23; 2003 1st sp.s. c 25 § 925; 2002 c 371 § 914. Prior: 1993 c 483 § 7; 1993 c 226 § 10; 1993 c 226 § 9; 1991 sp.s. c 13 § 59; 1987 c 202 § 218; 1985 ex.s. c 5 § 6; 1983 1st ex.s. c 13 § 5; 1980 c 142 § 1; 1977 ex.s. c 292 § 24; 1973 c 73 § 4; 1969 ex.s. c 199 § 27; 1959 c 170 § 1; 1955 c 286 § 2; 1953 ex.s. c 8 § 5; 1945 c 35 § 60; Rem. Supp. 1945 § 9998-198; prior: 1943 c 127 § 6; 1941 c 253 § 7, 10; 1939 c 214 § 11; 1937 c 162 § 13.]

Reviser's note: This section was amended by 2003 1st sp.s. c 25 § 925 and by 2003 2nd sp.s. c 4 § 23, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

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Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective dates—1993 c 226 §§ 10, 12, and 14: "(1) Sections 10 and 12 of this act shall take effect June 30, 1999;

(2) Section 14 of this act shall take effect January 1, 1998." [1993 c 226 § 20.]

Conflict with federal requirements—1993 c 226: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1993 c 226 § 21.]

Severability—1993 c 226: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 226 § 22.]

Application—1993 c 226: "This act applies to tax rate years beginning with tax rate year 1994." [1993 c 226 § 23.]

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

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

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1983 1st ex.s. c 13 § 13.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.16.015 Federal interest payment fund—Establishment. A separate and identifiable fund to provide for the payment of interest on advances received from this state's account in the federal unemployment trust fund shall be established and administered under the direction of the commissioner. This fund shall be known as the federal interest payment fund and shall consist of contributions paid under RCW 50.16.070. All money in this fund shall be expended solely for the payment of interest on advances received from this state's account in the federal unemployment trust fund and for no other purposes whatsoever. [2003 2nd sp.s. c 4 § 24; 1983 1st ex.s. c 13 § 6.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.22.100.

Chapter 50.20 RCW BENEFITS AND CLAIMS

Sections

50.20.010	Benefit eligibility conditions.
50.20.015	Repealed.
50.20.041	Health care professionals who have contracted hepatitis C— Training.
50.20.043	Training provision.

50.20.045	Repealed.
50.20.050	Disqualification for leaving work voluntarily without good cause.
50.20.060	Disqualification from benefits due to misconduct.
50.20.065	Cancellation of hourly wage credits due to felony or gross misdemeanor.
50.20.066	Disqualification from benefits due to misconduct—Cancellation of hourly wage credits due to gross misconduct.
50.20.100	Suitable work factors.
50.20.119	Part-time workers.
50.20.120	Amount of benefits.
50.20.125	Repealed.
50.20.160	Redetermination.
50.20.190	Recovery of benefit payments.
50.20.240	Job search monitoring.

50.20.010 Benefit eligibility conditions. (1) An unemployed individual shall be eligible to receive waiting period credits or benefits with respect to any week in his or her eligibility period only if the commissioner finds that:

(a) He or she has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulation as the commissioner may prescribe, except that the commissioner may by regulation waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the commissioner finds that the compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title;

(b) He or she has filed an application for an initial determination and made a claim for waiting period credit or for benefits in accordance with the provisions of this title;

(c) He or she is able to work, and is available for work in any trade, occupation, profession, or business for which he or she is reasonably fitted.

(i) With respect to claims that have an effective date before January 4, 2004, to be available for work an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him or her and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or the commissioner's agents.

(ii) With respect to claims that have an effective date on or after January 4, 2004, to be available for work an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him or her and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or the commissioner's agents. If a labor agreement or dispatch rules apply, customary trade practices must be in accordance with the applicable agreement or rules;

(d) He or she has been unemployed for a waiting period of one week;

(e) He or she participates in reemployment services if the individual has been referred to reemployment services pursuant to the profiling system established by the commissioner under RCW 50.20.011, unless the commissioner determines that:

(i) The individual has completed such services; or

(ii) There is justifiable cause for the claimant's failure to participate in such services; and

(f) As to weeks beginning after March 31, 1981, which fall within an extended benefit period as defined in RCW 50.22.010, the individual meets the terms and conditions of

RCW 50.22.020 with respect to benefits claimed in excess of twenty-six times the individual's weekly benefit amount.

(2) An individual's eligibility period for regular benefits shall be coincident to his or her established benefit year. An individual's eligibility period for additional or extended benefits shall be the periods prescribed elsewhere in this title for such benefits. [2003 2nd sp.s. c 4 § 3; 1995 c 381 § 1; 1981 c 35 § 3; 1973 c 73 § 6; 1970 ex.s. c 2 § 4; 1959 c 266 § 3; 1953 ex.s. c 8 § 7; 1951 c 265 § 9; 1951 c 215 § 11; 1949 c 214 § 9; 1945 c 35 § 68; Rem. Supp. 1949 § 9998-206. Prior: 1943 c 127 § 2; 1941 c 253 §§ 1, 2; 1939 c 214 § 2; 1937 c 162 § 4.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1995 c 381: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 381 § 5.]

Effective date—1995 c 381: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 16, 1995]." [1995 c 381 § 6.]

Construction—Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Severability—1951 c 265: See note following RCW 50.98.070.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

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

50.20.041 Health care professionals who have contracted hepatitis C—Training. (1) Credentialed health care professionals listed in RCW 18.130.040 shall be deemed to be dislocated workers for the purpose of commissioner approval of training under RCW 50.20.043 if they are unemployed as a result of contracting hepatitis C in the course of employment and are unable to continue to work in their profession because of a significant risk that such work would pose to other persons and that risk cannot be eliminated.

(2) For purposes of subsection (1) of this section, a health care professional who was employed on a full-time basis in their profession shall be presumed to have contracted hepatitis C in the course of employment. This presumption may be rebutted by a preponderance of the evidence that demonstrates that the health care professional contracted hepatitis C as a result of activities or circumstances not related to employment. [2003 c 273 § 4.]

50.20.043 Training provision. No otherwise eligible individual shall be denied benefits for any week because the individual is in training with the approval of the commissioner, nor shall such individual be denied benefits with respect to any week in which the individual is satisfactorily

progressing in a training program with the approval of the commissioner by reason of the application of RCW 50.20.010(1)(c), 50.20.080, or 50.22.020(1) relating to availability for work and active search for work, or failure to apply for or refusal to accept suitable work.

An individual who the commissioner determines to be a dislocated worker as defined by RCW 50.04.075 and who is satisfactorily progressing in a training program approved by the commissioner shall be considered to be in training with the approval of the commissioner. [2003 2nd sp.s. c 4 § 30; 1985 c 40 § 1; 1984 c 181 § 2; 1971 c 3 § 12.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1985 c 40: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 40 § 2.]

Severability—1985 c 40: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 40 § 3.]

Effective date—1985 c 40: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 40 § 4.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

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

50.20.050 Disqualification for leaving work voluntarily without good cause. (1) With respect to claims that have an effective date before January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual shall not be considered to have left work voluntarily without good cause when:

- (i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;
- (ii) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant

took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system;

(iii) He or she has left work to relocate for the spouse's employment that is due to an employer-initiated mandatory transfer that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to the move; or

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.

(c) In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment and where, in the judgment of the department, the distance is customarily traveled by workers in the individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.

(d) Subsection (1)(a) and (c) of this section shall not apply to an individual whose marital status or domestic responsibilities cause him or her to leave employment. Such an individual shall not be eligible for unemployment insurance benefits beginning with the first day of the calendar week in which he or she left work and thereafter for seven calendar weeks and until he or she has requalified, either by obtaining bona fide work in employment covered by this title and earning wages in that employment equal to seven times his or her weekly benefit amount or by reporting in person to the department during ten different calendar weeks and certifying on each occasion that he or she is ready, able, and willing to immediately accept any suitable work which may be offered, is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the department. This subsection does not apply to individuals covered by (b)(ii) or (iii) of this subsection.

(2) With respect to claims that have an effective date on or after January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he

or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual is not disqualified from benefits under (a) of this subsection when:

- (i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;
- (ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) He or she: (A) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: (I) Is outside the existing labor market area; and (II) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and (B) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(v) The individual's usual compensation was reduced by twenty-five percent or more;

(vi) The individual's usual hours were reduced by twenty-five percent or more;

(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such

activities to the employer, and the employer failed to end such activities within a reasonable period of time; or

(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs. [2003 2nd sp.s. c 4 § 4; 2002 c 8 § 1; 2000 c 2 § 12; 1993 c 483 § 8; 1982 1st ex.s. c 18 § 6; 1981 c 35 § 4; 1980 c 74 § 5; 1977 ex.s. c 33 § 4; 1970 ex.s. c 2 § 21; 1953 ex.s. c 8 § 8; 1951 c 215 § 12; 1949 c 214 § 12; 1947 c 215 § 15; 1945 c 35 § 73; Rem. Supp. 1949 § 9998-211. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability—1981 c 35: See note following RCW 50.22.030.

Severability—1980 c 74: See note following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.060 Disqualification from benefits due to misconduct. With respect to claims that have an effective date before January 4, 2004, an individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has been discharged or suspended for misconduct connected with his or her work and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount. Alcoholism shall not constitute a defense to disqualification from benefits due to misconduct. [2003 2nd sp.s. c 4 § 7; 2000 c 2 § 13; 1993 c 483 § 9; 1982 1st ex.s. c 18 § 16; 1977 ex.s. c 33 § 5; 1970 ex.s. c 2 § 22; 1953 ex.s. c 8 § 9; 1951 c 215 § 13; 1949 c 214 § 13; 1947 c 215 § 16; 1945 c 35 § 74; Rem. Supp. 1949 § 9998-212. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.065 Cancellation of hourly wage credits due to felony or gross misdemeanor. With respect to claims that have an effective date before January 4, 2004:

(1) An individual who has been discharged from his or her work because of a felony or gross misdemeanor of which he or she has been convicted, or has admitted committing to a competent authority, and that is connected with his or her work shall have all hourly wage credits based on that employment canceled.

(2) The employer shall notify the department of such an admission or conviction, not later than six months following the admission or conviction.

(3) The claimant shall disclose any conviction of the claimant of a work-connected felony or gross misdemeanor occurring in the previous two years to the department at the time of application for benefits.

(4) All benefits that are paid in error based on wage/hour credits that should have been removed from the claimant's base year are recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other provisions of this title. [2003 2nd sp.s. c 4 § 8; 1993 c 483 § 11.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

50.20.066 Disqualification from benefits due to misconduct—Cancellation of hourly wage credits due to gross misconduct. With respect to claims that have an effective date on or after January 4, 2004:

(1) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has been discharged or suspended for misconduct connected with his or her work and thereafter for ten calendar weeks and until he or she has obtained bona fide work in that employment covered by this title and earned wages in that employment equal to ten times his or her weekly benefit amount. Alcoholism shall not constitute a defense to disqualification from benefits due to misconduct.

(2) An individual who has been discharged from his or her work because of gross misconduct shall have all hourly wage credits based on that employment or six hundred eighty hours of wage credits, whichever is greater, canceled.

(3) The employer shall notify the department of a felony or gross misdemeanor of which an individual has been convicted, or has admitted committing to a competent authority, not later than six months following the admission or conviction.

(4) The claimant shall disclose any conviction of the claimant of a work-connected felony or gross misdemeanor occurring in the previous two years to the department at the time of application for benefits.

(5) All benefits that are paid in error based on this section are recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other provisions of this title. [2003 2nd sp.s. c 4 § 9.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.20.100 Suitable work factors. (1) Suitable work for an individual is employment in an occupation in keeping with the individual's prior work experience, education, or training and if the individual has no prior work experience, special education, or training for employment available in the gen-

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eral area, then employment which the individual would have the physical and mental ability to perform. In determining whether work is suitable for an individual, the commissioner shall also consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and such other factors as the commissioner may deem pertinent, including state and national emergencies.

(2) For individuals with base year work experience in agricultural labor, any agricultural labor available from any employer shall be deemed suitable unless it meets conditions in RCW 50.20.110 or the commissioner finds elements of specific work opportunity unsuitable for a particular individual.

(3) For part-time workers as defined in RCW 50.20.119, suitable work includes suitable work under subsection (1) of this section that is for seventeen or fewer hours per week.

(4) For individuals who have qualified for unemployment compensation benefits under *RCW 50.20.050 (1)(b)(iii) or (2)(b)(v), as applicable, an evaluation of the suitability of the work must consider the individual's need to address the physical, psychological, legal, and other effects of domestic violence or stalking. [2003 2nd sp.s. c 4 § 13; 2002 c 8 § 2; 1989 c 380 § 80; 1977 ex.s. c 33 § 6; 1973 1st ex.s. c 158 § 6; 1945 c 35 § 78; Rem. Supp. 1945 § 9998-216.]

***Reviser's note:** The reference to RCW 50.20.050 (1)(b)(iii) or (2)(b)(v) appears to be erroneous. Reference to RCW 50.20.050 (1)(b)(iv) or (2)(b)(iv) was apparently intended.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942 and 15.58.943.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.20.119 Part-time workers. (1) With respect to claims that have an effective date on or after January 2, 2005, an otherwise eligible individual may not be denied benefits for any week because the individual is a part-time worker and is available for, seeks, applies for, or accepts only work of seventeen or fewer hours per week by reason of the application of RCW 50.20.010(1)(c), 50.20.080, or 50.22.020(1) relating to availability for work and active search for work, or failure to apply for or refusal to accept suitable work.

(2) For purposes of this section, "part-time worker" means an individual who: (a) Earned wages in "employment" in at least forty weeks in the individual's base year; and (b) did not earn wages in "employment" in more than seventeen hours per week in any weeks in the individual's base year. [2003 2nd sp.s. c 4 § 12.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.20.120 Amount of benefits. (1)(a) Subject to the other provisions of this title, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of thirty times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title: PROVIDED, That as to any week which falls in an extended benefit period as defined in RCW 50.22.010(1), an individual's eligibility for maximum benefits in excess of twenty-six times his or her weekly benefit amount will be subject to the terms and conditions set forth in RCW 50.22.020.

(b) With respect to claims that have an effective date on or after the first Sunday of the calendar month immediately following the month in which the commissioner finds that the state unemployment rate is six and eight-tenths percent or less, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of twenty-six times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title.

(2)(a) For claims with an effective date before January 4, 2004, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.

(b) With respect to claims with an effective date on or after January 4, 2004, and before January 2, 2005, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the three quarters of the individual's base year in which such total wages were highest.

(c) With respect to claims with an effective date on or after January 2, 2005, an individual's weekly benefit amount shall be an amount equal to one percent of the total wages paid in the individual's base year.

(3) The maximum and minimum amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th.

(a)(i) With respect to claims that have an effective date before January 4, 2004, the maximum amount payable weekly shall be seventy percent of the "average weekly wage" for the calendar year preceding such June 30th.

(ii) With respect to claims that have an effective date on or after January 4, 2004, the maximum amount payable weekly shall be either four hundred ninety-six dollars or sixty-three percent of the "average weekly wage" for the calendar year preceding such June 30th, whichever is greater.

(b) The minimum amount payable weekly shall be fifteen percent of the "average weekly wage" for the calendar year preceding such June 30th.

(4) If any weekly benefit, maximum benefit, or minimum benefit amount computed herein is not a multiple of one dollar, it shall be reduced to the next lower multiple of one dollar. [2003 2nd sp.s. c 4 § 11; 2002 c 149 § 4; 1993 c 483 § 12; 1984 c 205 § 1; 1983 1st ex.s. c 23 § 11; 1981 c 35 § 5; 1980 c 74 § 3; 1977 ex.s. c 33 § 7; 1970 ex.s. c 2 § 5; 1959 c 321 § 2; 1955 c 209 § 1; 1951 c 265 § 11; 1949 c 214 § 16;

1945 c 35 § 80; Rem. Supp. 1949 § 9998-218. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—1984 c 205: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1984 c 205 § 11.]

Severability—1984 c 205: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 205 § 12.]

Effective dates—1984 c 205: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1984], except as follows:

(1) Sections 6 and 13 of this act shall take effect on January 1, 1985;

(2) Section 7 of this act shall be effective for compensable weeks of unemployment beginning on or after January 6, 1985; and

(3) Section 9 of this act shall take effect on July 1, 1985." [1984 c 205 § 14.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Construction—Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Severability—Effective dates—1980 c 74: See notes following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Effective date—1959 c 321: See note following RCW 50.20.080.

Severability—1951 c 265: See note following RCW 50.98.070.

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

50.20.160 Redetermination. (1) A determination of amount of benefits potentially payable issued pursuant to the provisions of RCW 50.20.120 and 50.20.140 shall not serve as a basis for appeal but shall be subject to request by the claimant for reconsideration and/or for redetermination by the commissioner at any time within one year from the date of delivery or mailing of such determination, or any redetermination thereof: PROVIDED, That in the absence of fraud or misrepresentation on the part of the claimant, any benefits paid prior to the date of any redetermination which reduces the amount of benefits payable shall not be subject to recovery under the provisions of RCW 50.20.190. A denial of a request to reconsider or a redetermination shall be furnished the claimant in writing and provide the basis for appeal under the provisions of RCW 50.32.020.

(2) A determination of denial of benefits issued under the provisions of RCW 50.20.180 shall become final, in absence of timely appeal therefrom: PROVIDED, That the commissioner may reconsider and redetermine such determinations

at any time within one year from delivery or mailing to correct an error in identity, omission of fact, or misapplication of law with respect to the facts.

(3) A determination of allowance of benefits shall become final, in absence of a timely appeal therefrom: PROVIDED, That the commissioner may redetermine such allowance at any time within two years following the benefit year in which such allowance was made in order to recover any benefits improperly paid and for which recovery is provided under the provisions of RCW 50.20.190: AND PROVIDED FURTHER, That in the absence of fraud, misrepresentation, or nondisclosure, this provision or the provisions of RCW 50.20.190 shall not be construed so as to permit redetermination or recovery of an allowance of benefits which having been made after consideration of the provisions of RCW 50.20.010(1)(c), or the provisions of RCW 50.20.050, 50.20.060, 50.20.080, or 50.20.090 has become final.

(4) A redetermination may be made at any time: (a) To conform to a final court decision applicable to either an initial determination or a determination of denial or allowance of benefits; (b) in the event of a back pay award or settlement affecting the allowance of benefits; or (c) in the case of fraud, misrepresentation, or willful nondisclosure. Written notice of any such redetermination shall be promptly given by mail or delivered to such interested parties as were notified of the initial determination or determination of denial or allowance of benefits and any new interested party or parties who, pursuant to such regulation as the commissioner may prescribe, would be an interested party. [2003 2nd sp.s. c 4 § 31; 1990 c 245 § 4; 1959 c 266 § 4; 1953 ex.s. c 8 § 13; 1951 c 215 § 6; 1945 c 35 § 84; Rem. Supp. 1945 § 9998-222. Prior: 1941 c 253 § 4.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1990 c 245: See note following RCW 50.04.030.

50.20.190 Recovery of benefit payments. (1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable benefit year for which the purported overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof

would be against equity and good conscience: PROVIDED, HOWEVER, That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

(4) On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of the individual's monthly payments either partially or in full. The interest penalty shall be used, first, to fully fund either social security number cross-match audits or other more effective activities that ensure that individuals are entitled to all amounts of benefits that they are paid and, second, to fund other detection and recovery of overpayment and collection activities. [2003 2nd sp.s. c 4 § 26; 2002 c 371 § 915; 2001 c 146 § 7; 1995 c 90 § 1; 1993 c 483 § 13; 1991 c 117 § 3; 1990 c 245 § 5; 1989 c 92 § 2; 1981 c 35 § 6; 1975 1st ex.s. c 228 § 3; 1973 1st ex.s. c 158 § 7; 1953 ex.s. c 8 § 14; 1951 c 215 § 8; 1947 c 215 § 18; 1945 c 35 § 87; Rem. Supp. 1947 § 9998-225. Prior: 1943 c 127 § 12; 1941 c 253 § 13; 1939 c 214 § 14; 1937 c 162 § 16.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Conflict with federal requirements—1995 c 90: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 90 § 2.]

Application—1995 c 90: "This act applies to job separations occurring after July 1, 1995." [1995 c 90 § 3.]

Effective date—1995 c 90: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 18, 1995]." [1995 c 90 § 4.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—Effective dates—1991 c 117: See notes following RCW 50.04.030.

Conflict with federal requirements—1990 c 245: See note following RCW 50.04.030.

Severability—1981 c 35: See note following RCW 50.22.030.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.20.240 Job search monitoring. (1)(a) To ensure that following the initial application for benefits, an individual is actively engaged in searching for work, the employment security department shall implement a job search monitoring program. Effective January 4, 2004, the department shall contract with employment security agencies in other states to ensure that individuals residing in those states and receiving benefits under this title are actively engaged in searching for work in accordance with the requirements of this section. The department may use interactive voice technology and other electronic means to ensure that individuals are subject to comparable job search monitoring, regardless of whether they reside in Washington or elsewhere.

(b) Except for those individuals with employer attachment or union referral, individuals who qualify for unemployment compensation under *RCW 50.20.050 (1)(b)(iii) or (2)(b)(v), as applicable, and individuals in commissioner-approved training, an individual who has received five or more weeks of benefits under this title, regardless of whether the individual resides in Washington or elsewhere, must provide evidence of seeking work, as directed by the commissioner or the commissioner's agents, for each week beyond five in which a claim is filed. With regard to claims with an effective date before January 4, 2004, the evidence must demonstrate contacts with at least three employers per week or documented in-person job search activity at the local reemployment center. With regard to claims with an effective date on or after January 4, 2004, the evidence must demonstrate contacts with at least three employers per week or documented in-person job search activities at the local reemployment center at least three times per week.

(c) In developing the requirements for the job search monitoring program, the commissioner or the commissioner's agents shall utilize an existing advisory committee having equal representation of employers and workers.

(2) Effective January 4, 2004, an individual who fails to comply fully with the requirements for actively seeking work under RCW 50.20.010 shall lose all benefits for all weeks during which the individual was not in compliance, and the individual shall be liable for repayment of all such benefits under RCW 50.20.190. [2003 2nd sp.s. c 4 § 10; 2002 c 8 § 3; 1998 c 161 § 4.]

***Reviser's note:** The reference to RCW 50.20.050 (1)(b)(iii) or (2)(b)(v) appears to be erroneous. Reference to RCW 50.20.050 (1)(b)(iv) or (2)(b)(iv) was apparently intended.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Finding—Intent—1998 c 161: See note following RCW 50.20.140.

Chapter 50.24 RCW

CONTRIBUTIONS BY EMPLOYERS

Sections

- 50.24.010 Payment of contributions—Amount of wages subject to tax—Wages paid by employers making payments in lieu of contributions not remuneration.
- 50.24.014 Financing special unemployment assistance—Financing the employment security department's administrative costs—Accounts—Contributions.

50.24.010 Payment of contributions—Amount of wages subject to tax—Wages paid by employers making payments in lieu of contributions not remuneration. Contributions shall accrue and become payable by each employer (except employers as described in RCW 50.44.010 who have properly elected to make payments in lieu of contributions and those employers who are required to make payments in lieu of contributions) for each calendar year in which the employer is subject to this title at the rate established pursuant to chapter 50.29 RCW.

In each rate year, the amount of wages subject to tax for each individual shall be one hundred fifteen percent of the amount of wages subject to tax for the previous year rounded to the next lower one hundred dollars, except that the amount of wages subject to tax in any rate year shall not exceed eighty percent of the "average annual wage for contributions purposes" for the second preceding calendar year rounded to the next lower one hundred dollars. However, the amount subject to tax shall be twenty-four thousand three hundred dollars for rate year 2000.

In making computations under this section and RCW 50.29.010, wages paid based on services for employers making payments in lieu of contributions shall not be considered remuneration. Moneys paid from the fund, based on services performed for employers who make payments in lieu of contributions, which have not been reimbursed to the fund as of any June 30 shall be deemed an asset of the unemployment compensation fund, to the extent that such moneys exceed the amount of payments in lieu of contributions which the commissioner has previously determined to be uncollectible: PROVIDED, FURTHER, That the amount attributable to employment with the state shall also include interest as provided for in RCW 50.44.020.

Contributions shall become due and be paid by each employer to the treasurer for the unemployment compensation fund in accordance with such regulations as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in employment of the employer. Any deduction in violation of the provisions of this section shall be unlawful.

In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. [2000 c 2 § 2; 1984 c 205 § 2; 1977 ex.s. c 33 § 9; 1971 c 3 § 13; 1970 ex.s. c 2 § 8; 1949 c 214 § 18; 1945 c 35 § 89; Rem. Supp. 1949 § 9998-227. Prior: 1943 c 127 § 5; 1941 c 253 § 5; 1939 c 214 § 5; 1937 c 162 § 7.]

Reviser's note: Referendum Measure No. 53 was rejected by the voters at the November 2002 election. This section has been returned to the status existing before its amendment by 2002 c 149.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.24.014 Financing special unemployment assistance—Financing the employment security department's administrative costs—Accounts—Contributions. (1)(a) A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, at a basic rate of two one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

(b) A separate and identifiable account is established in the administrative contingency fund for financing the employment security department's administrative cost under RCW 50.22.150 and the costs under RCW 50.22.150(9). All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, those employers who are required to make payments in lieu of contributions, those employers described under RCW 50.29.025(1)(f)(ii), and those qualified employers assigned rate class 20 or rate class 40, as applicable, under RCW 50.29.025, at a basic rate

of one one-hundredth of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010. Any amount of contributions payable under this subsection (1)(b) that exceeds the amount that would have been collected at a rate of four one-thousandths of one percent must be deposited in the unemployment compensation trust fund.

(c) For the first calendar quarter of 1994 only, the basic two one-hundredths of one percent contribution payable under (a) of this subsection shall be increased by one-hundredth of one percent to a total rate of three one-hundredths of one percent. The proceeds of this incremental one-hundredth of one percent shall be used solely for the purposes described in section 22, chapter 483, Laws of 1993, and for the purposes of conducting an evaluation of the call center approach to unemployment insurance under section 5, chapter 161, Laws of 1998. During the 1997-1999 fiscal biennium, any surplus from contributions payable under this subsection (c) may be deposited in the unemployment compensation trust fund, used to support tax and wage automated systems projects that simplify and streamline employer reporting, or both.

(2)(a) Contributions under this section shall become due and be paid by each employer under rules as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

(b) In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) If the commissioner determines that federal funding has been increased to provide financing for the services specified in chapter 50.62 RCW, the commissioner shall direct that collection of contributions under this section be terminated on the following January 1st. [2003 2nd sp.s. c 4 § 25; 2000 c 2 § 15. Prior: 1998 c 346 § 901; 1998 c 161 § 7; 1994 c 187 § 3; 1993 c 483 § 20; 1987 c 171 § 4; 1985 ex.s. c 5 § 8.]

Reviser's note: Referendum Measure No. 53 was rejected by the voters at the November 2002 election. This section has been returned to the status existing before its amendment by 2002 c 149.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Construction—1998 c 346: "This act shall not be construed as affecting any right or cause of action asserted in *Washington State Legislature v. State of Washington* (Thurston county superior court cause no. 98-2-00105-1)." [1998 c 346 § 912.]

Severability—1998 c 346: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 346 § 914.]

Effective date—1998 c 346: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 3, 1998]." [1998 c 346 § 915.]

Finding—Intent—1998 c 161: See note following RCW 50.20.140.

Conflict with federal requirements—1994 c 187: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of

employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1994 c 187 § 6.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Chapter 50.29 RCW

EMPLOYER EXPERIENCE RATING

Sections

50.29.020	Experience rating accounts—Benefits not charged—Claims with an effective date before January 4, 2004.
50.29.021	Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004.
50.29.025	Contribution rate.
50.29.026	Modification of contribution rate.
50.29.041	Contribution rate—Solvency surcharge.
50.29.045	Repealed.
50.29.062	Contribution rates for predecessor and successor employers.
50.29.070	Notice of employer benefit charges and rate of contribution—Review and appeal.

50.29.020 Experience rating accounts—Benefits not charged—Claims with an effective date before January 4, 2004. (1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date before January 4, 2004.

(2) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department. Benefits paid to any eligible individuals shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individuals later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Individuals who qualify for benefits under RCW 50.20.050(1)(b)(iii) shall not have their benefits charged to the experience rating account of any contribution paying employer.

(f) In the case of individuals identified under *RCW 50.20.015, benefits paid with respect to a calendar quarter, which exceed the total amount of wages earned in the state of Washington in the higher of two corresponding calendar quarters included within the individual's determination period, as defined in *RCW 50.20.015, shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution-paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, work-site, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted. [2003 2nd sp.s. c 4 § 20. Prior: 2002 c 149 § 6; 2002 c 8 § 4; 2000 c 2 § 3; 1995 c 57 § 3; 1993 c 483 § 19; 1991 c 129 § 1; 1988 c 27 § 1; prior: 1987 c 213 § 3; 1987 c 2 § 2; prior: 1985 c 299 § 1; 1985 c 270 § 2; 1985 c 42 § 1; 1984 c 205 § 7; 1975 1st ex.s. c 228 § 6; 1970 ex.s. c 2 § 11.]

*Reviser's note: RCW 50.20.015 was repealed by 2003 2nd sp.s. c 4 § 35.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Application—1995 c 57: "This act applies only to benefit charges attributable to new claims effective after July 1, 1995." [1995 c 57 § 4.]

Effective date—1995 c 57: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 17, 1995]." [1995 c 57 § 5.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—1988 c 27: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1988 c 27 § 2.]

Construction—1987 c 213: See note following RCW 50.29.010.

Applicability—Effective date—Severability—1987 c 2: See notes following RCW 50.20.090.

Conflict with federal requirements—1985 c 42: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 42 § 2.]

Severability—1985 c 42: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 42 § 3.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004. (1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050(2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050(2)(b)(v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Individuals who qualify for benefits under RCW 50.20.050(2)(b)(iv), as applicable, shall not have their benefits charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, work-site, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the

claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted. [2003 2nd sp.s. c 4 § 21.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.29.025 Contribution rate. (1) Except as provided in subsection (2) of this section, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be determined under this subsection.

(a) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the September 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(b) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in (e) of this subsection shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
2.90 and above	AA
2.10 to 2.89	A
1.70 to 2.09	B
1.40 to 1.69	C
1.00 to 1.39	D
0.70 to 0.99	E
Less than 0.70	F

(c) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (i) Identification number; (ii) benefit ratio; (iii) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (iv) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (v) the percentage equivalent of the cumulative total of taxable payrolls.

(d) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in (e) of this subsection: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other

employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(e) Except as provided in RCW 50.29.026, the contribution rate for each employer in the array shall be the rate specified in the following tables for the rate class to which he or she has been assigned, as determined under (d) of this subsection, within the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls			Schedules of Contributions Rates for Effective Tax Schedule						
From	To	Rate Class	AA	A	B	C	D	E	F
0.00	5.00	1	0.47	0.47	0.57	0.97	1.47	1.87	2.47
5.01	10.00	2	0.47	0.47	0.77	1.17	1.67	2.07	2.67
10.01	15.00	3	0.57	0.57	0.97	1.37	1.77	2.27	2.87
15.01	20.00	4	0.57	0.73	1.11	1.51	1.90	2.40	2.98
20.01	25.00	5	0.72	0.92	1.30	1.70	2.09	2.59	3.08
25.01	30.00	6	0.91	1.11	1.49	1.89	2.29	2.69	3.18
30.01	35.00	7	1.00	1.29	1.69	2.08	2.48	2.88	3.27
35.01	40.00	8	1.19	1.48	1.88	2.27	2.67	3.07	3.47
40.01	45.00	9	1.37	1.67	2.07	2.47	2.87	3.27	3.66
45.01	50.00	10	1.56	1.86	2.26	2.66	3.06	3.46	3.86
50.01	55.00	11	1.84	2.14	2.45	2.85	3.25	3.66	3.95
55.01	60.00	12	2.03	2.33	2.64	3.04	3.44	3.85	4.15
60.01	65.00	13	2.22	2.52	2.83	3.23	3.64	4.04	4.34
65.01	70.00	14	2.40	2.71	3.02	3.43	3.83	4.24	4.54
70.01	75.00	15	2.68	2.90	3.21	3.62	4.02	4.43	4.63
75.01	80.00	16	2.87	3.09	3.42	3.81	4.22	4.53	4.73
80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97
85.01	90.00	18	3.67	3.87	4.17	4.57	4.87	4.97	5.17
90.01	95.00	19	4.07	4.27	4.57	4.97	5.07	5.17	5.37
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40

(f) The contribution rate for each employer not qualified to be in the array shall be as follows:

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year; and

(ii) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent.

(2) Beginning with contributions assessed for rate year 2005, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio		Rate Class	Rate (percent)
At least	Less than		
	0.000001	1	0.00
0.000001	0.001250	2	0.13
0.001250	0.002500	3	0.25
0.002500	0.003750	4	0.38
0.003750	0.005000	5	0.50
0.005000	0.006250	6	0.63
0.006250	0.007500	7	0.75
0.007500	0.008750	8	0.88
0.008750	0.010000	9	1.00
0.010000	0.011250	10	1.15
0.011250	0.012500	11	1.30
0.012500	0.013750	12	1.45
0.013750	0.015000	13	1.60
0.015000	0.016250	14	1.75
0.016250	0.017500	15	1.90
0.017500	0.018750	16	2.05
0.018750	0.020000	17	2.20
0.020000	0.021250	18	2.35
0.021250	0.022500	19	2.50
0.022500	0.023750	20	2.65
0.023750	0.025000	21	2.80
0.025000	0.026250	22	2.95
0.026250	0.027500	23	3.10
0.027500	0.028750	24	3.25
0.028750	0.030000	25	3.40
0.030000	0.031250	26	3.55
0.031250	0.032500	27	3.70
0.032500	0.033750	28	3.85
0.033750	0.035000	29	4.00
0.035000	0.036250	30	4.15
0.036250	0.037500	31	4.30
0.037500	0.040000	32	4.45
0.040000	0.042500	33	4.60

0.042500	0.045000	34	4.75
0.045000	0.047500	35	4.90
0.047500	0.050000	36	5.05
0.050000	0.052500	37	5.20
0.052500	0.055000	38	5.30
0.055000	0.057500	39	5.35
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) and (C) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (2)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than two-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year. For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (2)(b) shall be six-tenths of one percent.

(ii) The graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six and five-tenths percent or, for employers whose standard industrial classification code is within major group "01," "02," "07," "091," "203," "209," or "5148," or the equivalent code in the North American industry classification system code, may not exceed six percent:

- (A) Rate class 1 - 78 percent;
- (B) Rate class 2 - 82 percent;
- (C) Rate class 3 - 86 percent;
- (D) Rate class 4 - 90 percent;
- (E) Rate class 5 - 94 percent;

- (F) Rate class 6 - 98 percent;
 - (G) Rate class 7 - 102 percent;
 - (H) Rate class 8 - 106 percent;
 - (I) Rate class 9 - 110 percent;
 - (J) Rate class 10 - 114 percent;
 - (K) Rate class 11 - 118 percent; and
 - (L) Rate classes 12 through 40 - 120 percent.
- (iii) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters. To calculate the flat social cost factor for rate year 2005, the commissioner shall calculate the total social cost using the array calculation factor contributions that would have been required to be paid by all employers in the calculation period if (a) of this subsection had been in effect for the relevant period.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) The array calculation factor rate for each employer not qualified to be in the array shall be as follows:

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(ii) For all other employers not qualified to be in the array, the array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, plus fifteen percent of that amount; however, the rate may not be less than one percent or more than the array calculation factor rate in rate class 40.

(d) The graduated social cost factor rate for each employer not qualified to be in the array shall be as follows:

(i) For employers whose array calculation factor rate is determined under (c)(i) of this subsection, the social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(ii) For employers whose array calculation factor rate is determined under (c)(ii) of this subsection, the social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, plus fifteen percent of that amount, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(3) Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found

in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the standard industrial classification code, or in the North American industry classification system code. [2003 2nd sp.s. c 4 § 14; 2003 c 4 § 1; 2000 c 2 § 4; 1995 c 4 § 2; (1995 c 4 § 1 expired January 1, 1998). Prior: 1993 c 483 § 21; 1993 c 226 § 14; 1993 c 226 § 13; 1990 c 245 § 7; 1989 c 380 § 79; 1987 c 171 § 3; 1985 ex.s. c 5 § 7; 1984 c 205 § 5.]

Reviser's note: (1) Referendum Measure No. 53 was rejected by the voters at the November 2002 election. This section has been returned to the status existing before its amendment by 2002 c 149.

(2) The 2002 c 149 § 18 expiration date no longer applies to this section.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2003 c 4 § 1: "Section 1 of this act applies to rate years beginning on or after January 1, 2003." [2003 c 4 § 2.]

Effective date—2003 c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2003]." [2003 c 4 § 3.]

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates—1995 c 4: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 16, 1995].

(2) Section 2 of this act shall take effect January 1, 1998." [1995 c 4 § 4.]

Expiration date—1995 c 4 § 1: "Section 1 of this act shall expire January 1, 1998." [1995 c 4 § 5.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Elevation of employer contribution rates—Report by commissioner—1993 c 226: "Prior to any increase in the employer tax schedule as provided in section 13, chapter 226, Laws of 1993, the commissioner shall provide a report to the appropriate committees of the legislature specifying to what extent the work force training expenditures in chapter 226, Laws of 1993 elevated employer contribution rates for the effective tax schedule." [1993 c 226 § 16.]

Effective dates—1993 c 226 §§ 10, 12, and 14: See note following RCW 50.16.010.

Conflict with federal requirements—Severability—Application—1993 c 226: See notes following RCW 50.16.010.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.026 Modification of contribution rate. (1) Beginning with contributions assessed for rate year 1996, a qualified employer's contribution rate applicable for rate years beginning before January 1, 2005, or array calculation factor rate applicable for rate years beginning on or after Jan-

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uary 1, 2005, determined under RCW 50.29.025 may be modified as follows:

(a) Subject to the limitations of this subsection, an employer may make a voluntary contribution of an amount equal to part or all of the benefits charged to the employer's account during the two years most recently ended on June 30th that were used for the purpose of computing the employer's contribution rate applicable for rate years beginning before January 1, 2005, or array calculation factor rate applicable for rate years beginning on or after January 1, 2005. On receiving timely payment of a voluntary contribution, plus a surcharge of ten percent of the amount of the voluntary contribution, the commissioner shall cancel the benefits equal to the amount of the voluntary contribution, excluding the surcharge, and compute a new benefit ratio for the employer. The employer shall then be assigned the contribution rate applicable for rate years beginning before January 1, 2005, or array calculation factor rate applicable for rate years beginning on or after January 1, 2005, applicable to the rate class within which the recomputed benefit ratio is included. The minimum amount of a voluntary contribution, excluding the surcharge, must be an amount that will result in a recomputed benefit ratio that is in a rate class at least four rate classes lower than the rate class that included the employer's original benefit ratio.

(b) Payment of a voluntary contribution is considered timely if received by the department during the period beginning on the date of mailing to the employer the notice of contribution rate applicable for rate years beginning before January 1, 2005, or notice of array calculation factor rate applicable for rate years beginning on or after January 1, 2005, required under this title for the rate year for which the employer is seeking a modification of his or her rate and ending on February 15th of that rate year or, for voluntary contributions for rate year 2000, ending on March 31, 2000.

(c) A benefit ratio may not be recomputed nor a rate be reduced under this section as a result of a voluntary contribution received after the payment period prescribed in (b) of this subsection.

(2) This section does not apply to any employer who has not had an increase of at least twelve rate classes from the previous tax rate year. [2003 2nd sp.s. c 4 § 17; 2000 c 2 § 5; 1995 c 322 § 1.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Conflict with federal requirements—1995 c 322: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 322 § 2.]

50.29.041 Contribution rate—Solvency surcharge. Beginning with contributions assessed for rate year 2005, the contribution rate of each employer subject to contributions

under RCW 50.24.010 shall include a solvency surcharge determined as follows:

(1) This section shall apply to employers' contributions for a rate year immediately following a cut-off date only if, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide fewer than six months of unemployment benefits.

(2) The solvency surcharge shall be the lowest rate necessary, as determined by the commissioner, but not more than two-tenths of one percent, to provide revenue during the applicable rate year that will fund unemployment benefits for the number of months that is the difference between eight months and the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits.

(3) The basis for determining the number of months of unemployment benefits shall be the same basis used in RCW 50.29.025(2)(b)(i)(B). [2003 2nd sp.s. c 4 § 16.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

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

50.29.062 Contribution rates for predecessor and successor employers. Predecessor and successor employer contribution rates shall be computed in the following manner:

(1) If the successor is an employer, as defined in RCW 50.04.080, at the time of the transfer, its contribution rate shall remain unchanged for the remainder of the rate year in which the transfer occurs. From and after January 1 following the transfer, the successor's contribution rate for each rate year shall be based on its experience with payrolls and benefits including the experience of the acquired business or portion of a business from the date of transfer, as of the regular computation date for that rate year.

(2) For transfers before January 1, 2005, the following applies if the successor is not an employer at the time of the transfer. The successor shall pay contributions at the lowest rate determined under either of the following:

(a)(i) For transfers before January 1, 1997, the contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year and continuing until the successor qualifies for a different rate in its own right;

(ii) For transfers on or after January 1, 1997, the contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience relating to the assignment of that rate class attributable to the predecessor is transferred to the successor. Beginning with the January 1 following the transfer, the successor's contribution rate shall be based on the transferred experience of the acquired business and the successor's experience after the transfer; or

(b) The contribution rate equal to the average industry rate as determined by the commissioner, but not less than one percent, and continuing until the successor qualifies for a different rate in its own right. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, must be in accordance with established classifica-

tion practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the standard industrial classification code, or in the North American industry classification code system.

(3) For transfers before January 1, 2005, if the successor is not an employer at the time of the transfer and simultaneously acquires the business or a portion of the business of two or more employers in different rate classes, its rate from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the highest rate class applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition, but not less than one percent.

(4) For transfers on or after January 1, 2005, the following applies if the successor is not an employer at the time of the transfer:

(a) Except as provided in (b) of this subsection, the successor shall pay contributions:

(i) At the contribution rate determined for the predecessor employer at the time of the transfer for the remainder of the rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor. On and after January 1st following the transfer, the successor's array calculation factor rate shall be based on the transferred experience of the acquired business and the successor's experience after the transfer; or

(ii) At the contribution rate equal to the sum of the rates determined by the commissioner under RCW 50.29.025(2)(c)(ii) and (d)(ii), and 50.29.041, if applicable, and continuing until the successor qualifies for a different rate in its own right.

(b) If there is a substantial continuity of ownership or management by the successor of the business of the predecessor, the successor shall pay contributions at the contribution rate determined for the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor. On and after January 1st following the transfer, the successor's array calculation factor rate shall be based on the transferred experience of the acquired business and the successor's experience after the transfer.

(c) If the successor simultaneously acquires the business or a portion of the business of two or more employers with different contribution rates, the successor's rate from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the sum of the rates determined by the commissioner under RCW 50.29.025(2)(a) and (b), and 50.29.041, applicable at the time of the acquisition to the predecessor employer who, among the parties to the acquisition, had the largest taxable payroll in the completed calendar quarter immediately preceding the date of transfer, but not less than the sum of the rates determined by the commissioner under RCW 50.29.025(2)(c)(ii) and (d)(ii), and 50.29.041, if applicable.

(5) The contribution rate on any payroll retained by a predecessor employer shall remain unchanged for the remainder of the rate year in which the transfer occurs.

(6) In all cases, from and after January 1 following the transfer, the predecessor's contribution rate or, beginning

January 1, 2005, the predecessor's array calculation factor for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year including the experience of the acquired business or portion of business up to the date of transfer: PROVIDED, That if all of the predecessor's business is transferred to a successor or successors, the predecessor shall not be a qualified employer until it satisfies the requirements of a "qualified employer" as set forth in RCW 50.29.010. [2003 2nd sp.s. c 4 § 18; 1996 c 238 § 1; 1995 c 56 § 1; 1989 c 380 § 81; 1984 c 205 § 6.]

Reviser's note: Referendum Measure No. 53 was rejected by the voters at the November 2002 election. This section has been returned to the status existing before its amendment by 2002 c 149.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—1996 c 238: "This act applies to unemployment contribution rates effective on and after January 1, 1996." [1996 c 238 § 2.]

Conflict with federal requirements—1996 c 238: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 238 § 3.]

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.070 Notice of employer benefit charges and rate of contribution—Review and appeal. (1) Within a reasonable time after the computation date each employer shall be notified of the employer's rate of contribution as determined for the succeeding rate year and factors used in the calculation. Beginning with rate year 2005, the notice must include the amount of the contribution rate that is attributable to each component of the rate under RCW 50.29.025(2).

(2) Any employer dissatisfied with the benefit charges made to the employer's account for the twelve-month period immediately preceding the computation date or with his or her determined rate may file a request for review and redetermination with the commissioner within thirty days of the mailing of the notice to the employer, showing the reason for such request. Should such request for review and redetermination be denied, the employer may, within thirty days of the mailing of such notice of denial, file with the appeal tribunal a petition for hearing which shall be heard in the same manner as a petition for denial of refund. The appellate procedure prescribed by this title for further appeal shall apply to all denials of review and redetermination under this section. [2003 2nd sp.s. c 4 § 19; 1990 c 245 § 8; 1983 1st ex.s. c 23 § 19; 1973 1st ex.s. c 158 § 14; 1970 ex.s. c 2 § 16.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

[2003 RCW Supp—page 740]

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Appeal on denial of refund: RCW 50.32.030, 50.32.050.

Appeal to the courts: RCW 50.32.120.

Review by commissioner: RCW 50.32.070.

Chapter 50.32 RCW

REVIEW, HEARINGS, AND APPEALS

Sections

50.32.040 Benefit appeal procedure.

50.32.040 Benefit appeal procedure. In any proceeding before an appeal tribunal involving a dispute of an individual's initial determination, all matters covered by such initial determination shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal.

In any proceeding before an appeal tribunal involving a dispute of an individual's claim for waiting period credit or claim for benefits, all matters and provisions of this title relating to the individual's right to receive such credit or benefits for the period in question, including but not limited to the question and nature of the claimant's availability for work within the meaning of RCW 50.20.010(1)(c) and 50.20.080, shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal in single claimant cases. The claimant's availability for work shall be determined apart from all other matters.

In any proceeding before an appeal tribunal involving an individual's right to benefits, all parties shall be afforded an opportunity for hearing after not less than seven days' notice in accordance with RCW 34.05.434.

In any proceeding involving an appeal relating to benefit determinations or benefit claims, the appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall render its decision affirming, modifying, or setting aside the determination or decisions of the unemployment compensation division. The parties shall be duly notified of such appeal tribunal's decision together with its reasons therefor, which shall be deemed to be the final decision on the initial determination or the claim for waiting period credit or the claim for benefits unless, within thirty days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to the provisions of this title relating to review by the commissioner. [2003 2nd sp.s. c 4 § 32; 1989 c 175 § 117; 1987 c 61 § 3; 1981 c 35 § 10; 1973 c 73 § 8; 1945 c 35 § 120; Rem. Supp. 1945 § 9998-258. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

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

Severability—1981 c 35: See note following RCW 50.22.030.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Chapter 50.36 RCW

PENALTIES

Sections

- 50.36.010 Violations generally. (*Effective July 1, 2004.*)
 50.36.020 Violations by employers. (*Effective July 1, 2004.*)

50.36.010 Violations generally. (*Effective July 1, 2004.*) (1) It shall be unlawful for any person to knowingly give any false information or withhold any material information required under the provisions of this title.

(2) Any person who violates any of the provisions of this title which violation is declared to be unlawful, and for which no contrary provision is made, is guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days.

(3) Any person who in connection with any compromise or offer of compromise willfully conceals from any officer or employee of the state any property belonging to an employing unit which is liable for contributions, interest, or penalties, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement relating to the financial condition of the employing unit which is liable for contributions, is guilty of a gross misdemeanor and shall upon conviction thereof be fined not more than five thousand dollars or be imprisoned for not more than one year, or both.

(4) The penalty prescribed in this section shall not be deemed exclusive, but any act which shall constitute a crime under any law of this state may be the basis of prosecution under such law notwithstanding that it may also be the basis for prosecution under this section. [2003 c 53 § 279; 1953 ex.s. c 8 § 22; 1945 c 35 § 180; Rem. Supp. 1945 § 9998-319. Prior: 1943 c 127 § 12; 1941 c 253 § 13.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

50.36.020 Violations by employers. (*Effective July 1, 2004.*) (1) Any person required under this title to collect, account for and pay over any contributions imposed by this title, who willfully fails to collect or truthfully account for and pay over such contributions, and any person who willfully attempts in any manner to evade or defeat any contributions imposed by this title or the payment thereof, is guilty of a gross misdemeanor and shall, in addition to other penalties provided by law, upon conviction thereof, be fined not more than five thousand dollars, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(2) The term "person" as used in this section includes an officer or individual in the employment of a corporation, or a member or individual in the employment of a partnership, who as such officer, individual or member is under a duty to perform the act in respect of which the violation occurs. A corporation may likewise be prosecuted under this section and may be subjected to fine and payment of costs of prosecution as prescribed herein for a person. [2003 c 53 § 280; 1953 ex.s. c 8 § 23; 1945 c 35 § 181; Rem. Supp. 1945 § 9998-320. Prior: 1943 c 127 § 12; 1941 c 253 § 13.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Crimes and punishment: Titles 9, 9A RCW.

Chapter 50.40 RCW

MISCELLANEOUS PROVISIONS

Sections

- 50.40.010 Waiver of rights void. (*Effective July 1, 2004.*)
 50.40.065 "Vendors in good standing"—Determination by governor's committee on disability issues and employment—Advisory subcommittee—Rules. (*Expires December 31, 2007.*)
 50.40.066 Rules to implement RCW 50.40.065—Fees authorized—Vendors in good standing account. (*Expires December 31, 2007.*)

50.40.010 Waiver of rights void. (*Effective July 1, 2004.*) (1) Any agreement by an individual to waive, release, or commute his or her rights to benefits or any other rights under this title shall be void.

(2) Any agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this title from such employer, shall be void.

(3) No employer shall directly or indirectly make or require or accept any deduction from remuneration for services to finance the employer's contributions required from him or her, or require or accept any waiver of any right hereunder by any individual in his or her employ.

(4) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 281; 1945 c 35 § 182; Rem. Supp. 1945 § 9998-321. Prior: 1943 c 127 § 11; 1941 c 253 § 12; 1939 c 214 § 13; 1937 c 162 § 15.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

50.40.065 "Vendors in good standing"—Determination by governor's committee on disability issues and employment—Advisory subcommittee—Rules. (*Expires December 31, 2007.*) (1) No less frequently than once each year, the governor's committee on disability issues and employment shall determine whether entities seeking to qualify as vendors in good standing, pursuant to this section and RCW 43.19.531, have achieved, or continue to work towards, the goal of enhancing opportunities for persons of disabilities to maximize their employment and career advancement, and increase the number employed and their wages.

(2) In making the determination provided for in subsection (1) of this section, the governor's committee on disability issues and employment shall appoint and, except in the case of malfeasance or misfeasance, shall rely upon the conclusions of an advisory subcommittee consisting of: (a) Three members chosen from among those current or former clients of a community rehabilitation program who have nominated themselves, at least one of whom must be a person with a developmental disability; (b) one member chosen from among those guardians, parents, or other relatives of a current client or employee of a community rehabilitation program who have nominated themselves; (c) one member chosen from among those who have been nominated by a community rehabilitation program; (d) one member chosen from among those owners of a business owned and operated by persons with disabilities who have nominated themselves; (e) one member who is designated by the developmental disabilities council; (f) one member who is a member of and selected by

the governor's committee on disability issues and employment; (g) one member who is designated by the secretary of the department of social and health services; and (h) one member who is designated by the director of the department of services for the blind.

(3) The advisory subcommittee appointed by the governor's committee on disability issues and employment shall conclude that entities seeking to qualify, pursuant to this section and RCW 43.19.531, as vendors in good standing, have achieved, or continue to work towards, the goal of enhancing opportunities for persons of disabilities to maximize their employment and career advancement, and increase the number employed and their wages if, and only if, the entity provides reasonably conclusive evidence that, during the twelve-month period immediately preceding the entity's application, at least one-half of the following measurement categories applicable to the entity have been either achieved, pursuant to rules established under subsection (4) of this section, or have been improved as compared to the entity's condition with respect to that measurement category one year ago:

(a) The number of people with disabilities in the entity's total work force who are working in integrated settings;

(b) The percentage of the people with disabilities in the entity's total work force who are working in integrated settings;

(c) The number of people with disabilities in the entity's total work force who are working in individual supported employment settings;

(d) The percentage of the people with disabilities in the entity's total work force who are working in individual supported employment settings;

(e) The number of people with disabilities in the entity's total work force who, during the last twelve months, have transitioned to less restrictive employment settings either within the entity or with other community employers;

(f) The number of people with disabilities in the entity's total work force who are earning at least the state minimum wage;

(g) The percentage of the people with disabilities in the entity's total work force who are earning at least the state minimum wage;

(h) The number of people with disabilities serving in supervisory capacities within the entity;

(i) The percentage of supervisory positions within the entity that are occupied by people with disabilities;

(j) The number of people with disabilities serving in an ownership capacity or on the governing board of the entity;

(k) The ratio of the total amount paid by the entity in wages, salaries, and related employment benefits to people with disabilities, as compared to the amount paid by the entity in wages, salaries, and related employment benefits paid by the entity to persons without disabilities during the previous year; and

(l) The percentage of people with disabilities in the entity's total work force for whom the entity has developed a reasonable, achievable, and written career plan.

(4) The commissioner shall consult with the advisory subcommittee established in subsection (2) of this section to develop and adopt rules establishing the measurement at which it is deemed that the measurement categories identified

in subsection (3)(b), (d), (e), (g), (h), (j), (k), and (l) of this section have been achieved.

(5) This section expires December 31, 2007. [2003 c 136 § 7.]

50.40.066 Rules to implement RCW 50.40.065—Fees authorized—Vendors in good standing account. (Expires December 31, 2007.)

(1) The commissioner is authorized to adopt rules to implement RCW 50.40.065, including but not limited to authority to establish (a) a nonrefundable application fee of not more than five hundred dollars to be paid by each entity seeking to establish or renew qualification as a vendor in good standing, pursuant to RCW 43.19.531 and 50.40.065; (b) a fee of not more than two percent of the face amount of any contract awarded under chapter 136, Laws of 2003; or (c) both fees identified in (a) and (b) of this subsection.

(2) The fee or fees established pursuant to subsection (1) of this section must set a level of revenue sufficient to recover costs incurred by the department of general administration in fulfilling the duties identified in RCW 43.19.531 and the governor's committee on disability issues and employment in fulfilling the duties identified in RCW 50.40.065.

(3) The vendors in good standing account is created in the custody of the state treasurer. All receipts from the fee or fees established pursuant to subsection (1) of this section must be deposited into the account. Expenditures from the account may be used only for the purpose described in subsection (2) of this section. Expenditures from the account may be authorized only upon the approval of both the director of the department of general administration and the commissioner, or their respective designees. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) This section expires December 31, 2007, and any unencumbered funds remaining in the vendors in good standing account on that date shall revert to the general fund. [2003 c 136 § 8.]

Title 51

INDUSTRIAL INSURANCE

Chapters

51.28 Notice and report of accident—Application for compensation.

51.32 Compensation—Right to and amount.

51.44 Funds.

51.48 Penalties.

51.52 Appeals.

Chapter 51.28 RCW

NOTICE AND REPORT OF ACCIDENT— APPLICATION FOR COMPENSATION

Sections

51.28.055 Time limitation for filing claim for occupational disease—
Notice—Hearing loss claims—Rules.

51.28.055 Time limitation for filing claim for occupational disease—Notice—Hearing loss claims—Rules. (1)

Except as provided in subsection (2) of this section for claims filed for occupational hearing loss, claims for occupational disease or infection to be valid and compensable must be filed within two years following the date the worker had written notice from a physician: (a) Of the existence of his or her occupational disease, and (b) that a claim for disability benefits may be filed. The notice shall also contain a statement that the worker has two years from the date of the notice to file a claim. The physician shall file the notice with the department. The department shall send a copy to the worker and to the self-insurer if the worker's employer is self-insured. However, a claim is valid if it is filed within two years from the date of death of the worker suffering from an occupational disease.

(2)(a) Except as provided in (b) of this subsection, to be valid and compensable, claims for hearing loss due to occupational noise exposure must be filed within two years of the date of the worker's last injurious exposure to occupational noise in employment covered under this title or within one year of September 10, 2003, whichever is later.

(b) A claim for hearing loss due to occupational noise exposure that is not timely filed under (a) of this subsection can only be allowed for medical aid benefits under chapter 51.36 RCW.

(3) The department may adopt rules to implement this section. [2003 2nd sp.s. c 2 § 1; 1984 c 159 § 2; 1977 ex.s. c 350 § 34; 1961 c 23 § 51.28.055. Prior: 1959 c 308 § 18; prior: 1957 c 70 § 16, part; 1951 c 236 § 1, part.]

Chapter 51.32 RCW

COMPENSATION—RIGHT TO AND AMOUNT

Sections

- 51.32.040 Protection of awards—Payment after death—Time limitations for filing—Confinement in institution.
- 51.32.380 Injured offenders—Benefits sent in the care of the department of corrections—Exception—Liability.

51.32.040 Protection of awards—Payment after death—Time limitations for filing—Confinement in institution. (1) Except as provided in RCW 43.20B.720, 72.09.111, 74.20A.260, and 51.32.380, no money paid or payable under this title shall, before the issuance and delivery of the check or warrant, be assigned, charged, or taken in execution, attached, garnished, or pass or be paid to any other person by operation of law, any form of voluntary assignment, or power of attorney. Any such assignment or charge is void unless the transfer is to a financial institution at the request of a worker or other beneficiary and made in accordance with RCW 51.32.045.

(2)(a) If any worker suffers (i) a permanent partial injury and dies from some other cause than the accident which produced the injury before he or she receives payment of the award for the permanent partial injury or (ii) any other injury before he or she receives payment of any monthly installment covering any period of time before his or her death, the amount of the permanent partial disability award or the monthly payment, or both, shall be paid to the surviving spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the award or the amount of the monthly payment shall be paid by the department or self-insurer and distributed consistent with

the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

(b) If any worker suffers an injury and dies from it before he or she receives payment of any monthly installment covering time loss for any period of time before his or her death, the amount of the monthly payment shall be paid to the surviving spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the amount of the monthly payment shall be paid by the department or self-insurer and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

(c) Any application for compensation under this subsection (2) shall be filed with the department or self-insuring employer within one year of the date of death. The department or self-insurer may satisfy its responsibilities under this subsection (2) by sending any payment due in the name of the decedent and to the last known address of the decedent.

(3)(a) Any worker or beneficiary receiving benefits under this title who is subsequently confined in, or who subsequently becomes eligible for benefits under this title while confined in, any institution under conviction and sentence shall have all payments of the compensation canceled during the period of confinement. After discharge from the institution, payment of benefits due afterward shall be paid if the worker or beneficiary would, except for the provisions of this subsection (3), otherwise be entitled to them.

(b) If any prisoner is injured in the course of his or her employment while participating in a work or training release program authorized by chapter 72.65 RCW and is subject to the provisions of this title, he or she is entitled to payments under this title, subject to the requirements of chapter 72.65 RCW, unless his or her participation in the program has been canceled, or unless he or she is returned to a state correctional institution, as defined in RCW 72.65.010(3), as a result of revocation of parole or new sentence.

(c) If the confined worker has any beneficiaries during the confinement period during which benefits are canceled under (a) or (b) of this subsection, they shall be paid directly the monthly benefits which would have been paid to the worker for himself or herself and the worker's beneficiaries had the worker not been confined.

(4) Any lump sum benefits to which a worker would otherwise be entitled but for the provisions of this section shall be paid on a monthly basis to his or her beneficiaries. [2003 c 379 § 27; 1999 c 185 § 1; 1996 c 47 § 1; 1995 c 160 § 3; 1987 c 75 § 7; 1983 c 2 § 13. Prior: 1982 c 201 § 8; 1982 c 109 § 10; 1979 ex.s. c 171 § 11; 1977 ex.s. c 350 § 41; 1975 1st ex.s. c 224 § 8; 1974 ex.s. c 30 § 1; prior: 1973 1st ex.s. c 154 § 95; 1972 ex.s. c 43 § 18; 1971 ex.s. c 289 § 43; 1965 ex.s. c 165 § 2; 1961 c 23 § 51.32.040; prior: 1957 c 70 § 29; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Application—1995 c 160 §§ 2 and 3: See note following RCW 51.32.020.

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

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

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

51.32.380 Injured offenders—Benefits sent in the care of the department of corrections—Exception—Liability. If the department of labor and industries has received notice that an injured worker entitled to benefits payable under this chapter is in the custody of the department of corrections pursuant to a conviction and sentence, the department shall send all such benefits to the worker in care of the department of corrections, except those benefits payable to a beneficiary as provided in RCW 51.32.040 (3)(c) and (4). Failure of the department to send such benefits to the department of corrections shall not result in liability to any party for either department. [2003 c 379 § 26.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Chapter 51.44 RCW

FUNDS

Sections

51.44.170 Industrial insurance premium refund account.

51.44.170 Industrial insurance premium refund account. The industrial insurance premium refund account is created in the custody of the state treasurer. All industrial insurance refunds earned by state agencies or institutions of higher education under the state fund retrospective rating program shall be deposited into the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures from the account. Only the executive head of the agency or institution of higher education, or designee, may authorize expenditures from the account. No agency or institution of higher education may make an expenditure from the account for an amount greater than the refund earned by the agency. If the agency or institution of higher education has staff dedicated to workers' compensation claims management, expenditures from the account must be used to pay for that staff, but additional expenditure from the account may be used for any program within an agency or institution of higher education that promotes or provides incentives for employee workplace safety and health and early, appropriate return-to-work for injured employees. During the 2003-2005 fiscal biennium, the legislature may transfer from the industrial insurance premium refund account to the state general fund such amounts as reflect the excess fund balance of the account. [2003 1st sp.s. c 25 § 926; 2002 c 371 § 916; 1997 c 327 § 1; 1991 sp.s. c 13 § 29; 1990 c 204 § 2.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

[2003 RCW Supp—page 744]

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

Findings—Purpose—1990 c 204: "The legislature finds that workplace safety in state employment is of paramount importance in maintaining a productive and committed state work force. The legislature also finds that recognition in state agencies and institutions of higher education of industrial insurance programs that provide safe working environments and promote early return-to-work for injured employees will encourage agencies and institutions of higher education to develop these programs. A purpose of this act is to provide incentives for agencies and institutions of higher education to participate in industrial insurance safety programs and return-to-work programs by authorizing use of the industrial insurance premium refunds earned by agencies or institutions of higher education participating in industrial insurance retrospective rating programs. Since agency and institution of higher education retrospective rating refunds are generated from safety performance and cannot be set at predictable levels determined by the budget process, the incentive awards should not impact an agency's or institution of higher education's legislatively approved budget." [1997 c 327 § 2; 1990 c 204 § 1.]

Effective date—1990 c 204 § 2: "Section 2 of this act shall take effect July 1, 1990." [1990 c 204 § 6.]

Chapter 51.48 RCW

PENALTIES

Sections

51.48.040 Inspection of employer's records. (*Effective July 1, 2004.*)
 51.48.103 Engaging in business without certificate of coverage. (*Effective July 1, 2004.*)
 51.48.280 Kickbacks, bribes, and rebates—Representation fees—Criminal liability—Exceptions. (*Effective July 1, 2004.*)

51.48.040 Inspection of employer's records. (*Effective July 1, 2004.*) (1) The books, records and payrolls of the employer pertinent to the administration of this title shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the payroll, the persons employed, and such other information as may be necessary for the department and its management under this title.

(2) Refusal on the part of the employer to submit his or her books, records and payrolls for such inspection to the department, or any assistant presenting written authority from the director, shall subject the offending employer to a penalty determined by the director but not to exceed two hundred fifty dollars for each offense and the individual who personally gives such refusal is guilty of a misdemeanor.

(3) Any employer who fails to allow adequate inspection in accordance with the requirements of this section is subject to having its certificate of coverage revoked by order of the department and is forever barred from questioning in any proceeding in front of the board of industrial insurance appeals or any court, the correctness of any assessment by the department based on any period for which such records have not been produced for inspection. [2003 c 53 § 282; 1986 c 9 § 9; 1985 c 347 § 5; 1961 c 23 § 51.48.040. Prior: 1911 c 74 § 15, part; RRS § 7690, part.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

51.48.103 Engaging in business without certificate of coverage. (*Effective July 1, 2004.*) (1) It is a gross misdemeanor:

(a) For any employer to engage in business subject to this title without having obtained a certificate of coverage as provided for in this title;

(b) For the president, vice-president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business subject to this title without having obtained a certificate of coverage as provided for in this title.

(2) It is a class C felony punishable according to chapter 9A.20 RCW:

(a) For any employer to engage in business subject to this title after the employer's certificate of coverage has been revoked by order of the department;

(b) For the president, vice-president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business subject to this title after revocation of a certificate of coverage. [2003 c 53 § 283; 1986 c 9 § 12.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

51.48.280 Kickbacks, bribes, and rebates—Representation fees—Criminal liability—Exceptions. (*Effective July 1, 2004.*) (1) It is a class C felony for any person, firm, corporation, partnership, association, agency, institution, or other legal entity to solicit or receive any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind:

(a) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this chapter; or

(b) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter.

(2) It is a class C felony for any person, firm, corporation, partnership, association, agency, institution, or other legal entity to offer or pay any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

(a) To refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under this chapter; or

(b) To purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter.

(3) A health services provider who (a) provides a health care service to a claimant, while acting as the claimant's representative for the purpose of obtaining authorization for the services, and (b) charges a percentage of the claimant's benefits or other fee for acting as the claimant's representative under this title is guilty of a gross misdemeanor.

(4) Any fine imposed as a result of a violation of subsection (1), (2), or (3) of this section shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(5) Subsections (1) and (2) of this section shall not apply to:

(a) A discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately

reflected in the costs claimed or charges made by the provider or entity under this chapter; and

(b) Any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(6) Subsections (1) and (2) of this section, if applicable to the conduct involved, shall supersede the criminal provisions of chapter 19.68 RCW, but shall not preclude administrative proceedings authorized by chapter 19.68 RCW. [2003 c 53 § 284; 1997 c 336 § 1; 1986 c 200 § 6.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 51.52 RCW

APPEALS

Sections

- 51.52.010 Board of industrial insurance appeals.
- 51.52.104 Industrial appeals judge—Recommended decision and order—Petition for review—Finality of order.
- 51.52.120 Attorney's fee before department or board—Unlawful attorney's fees. (*Effective July 1, 2004.*)

51.52.010 Board of industrial insurance appeals.

There shall be a "board of industrial insurance appeals," hereinafter called the "board," consisting of three members appointed by the governor, with the advice and consent of the senate, as hereinafter provided. One shall be a representative of the public and a lawyer, appointed from a mutually agreed to list of not less than three active or judicial members of the Washington state bar association, submitted to the governor by the two organizations defined below, and such member shall be the chairperson of said board. The second member shall be a representative of the majority of workers engaged in employment under this title and selected from a list of not less than three names submitted to the governor by an organization, statewide in scope, which through its affiliates embraces a cross section and a majority of the organized labor of the state. The third member shall be a representative of employers under this title, and appointed from a list of at least three names submitted to the governor by a recognized statewide organization of employers, representing a majority of employers. The initial terms of office of the members of the board shall be for six, four, and two years respectively. Thereafter all terms shall be for a period of six years. Each member of the board shall be eligible for reappointment and shall hold office until his or her successor is appointed and qualified. In the event of a vacancy the governor is authorized to appoint a successor to fill the unexpired term of his or her predecessor. All appointments to the board shall be made in conformity with the foregoing plan. In the event a board member becomes incapacitated in excess of thirty days either due to his or her illness or that of an immediate family member as determined by a request for family leave or as certified by the affected member's treating physician, the governor shall appoint an acting member to serve pro tem. Such an appointment shall be made in conformity with the foregoing plan, except that the list of candidates shall be submitted to the governor not more than fifteen days after the affected organizations are notified of the incapacity and the governor shall make the appointment within fifteen days after the list is

submitted. The temporary member shall serve until such time as the affected member is able to reassume his or her duties by returning from requested family leave or as determined by the treating physician or until the affected member's term expires, whichever occurs first. Whenever the workload of the board and its orderly and expeditious disposition shall necessitate, the governor may appoint two additional pro-tem members in addition to the regular members. Such appointments shall be for a definite period of time, and shall be made from lists submitted respectively by labor and industry as in the case of regular members. One pro-tem member shall be a representative of labor and one shall be a representative of industry. Members shall devote their entire time to the duties of the board and shall receive for their services a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 which shall be in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Headquarters for the board shall be located in Olympia. The board shall adopt a seal which shall be judicially recognized. [2003 c 224 § 1; 1999 c 149 § 1; 1981 c 338 § 10; 1977 ex.s. c 350 § 74; 1975-'76 2nd ex.s. c 34 § 151; 1971 ex.s. c 289 § 68; 1965 ex.s. c 165 § 3; 1961 c 307 § 8; 1961 c 23 § 51.52.010. Prior: 1951 c 225 § 1; prior: 1949 c 219 § 2; Rem. Supp. 1949 § 10837-1.]

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

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.104 Industrial appeals judge—Recommended decision and order—Petition for review—Finality of order. After all evidence has been presented at hearings conducted by an industrial appeals judge, who shall be an active or judicial member of the Washington state bar association, the industrial appeals judge shall enter a proposed or recommended decision and order which shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon. The industrial appeals judge shall file the signed original of the proposed decision and order with the board, and copies thereof shall be mailed by the board to each party to the appeal and to each party's attorney or representative of record. Within twenty days, or such further time as the board may allow on written application of a party, filed within said twenty days from the date of communication of the proposed decision and order to the parties or their attorneys or representatives of record, any party may file with the board a written petition for review of the same. Filing of a petition for review is perfected by mailing or personally delivering the petition to the board's offices in Olympia. Such petition for review shall set forth in detail the grounds therefor and the party or parties filing the same shall be deemed to have waived all objections or irregularities not specifically set forth therein.

In the event no petition for review is filed as provided herein by any party, the proposed decision and order of the industrial appeals judge shall be adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. If an order adopting the proposed decision and order is not formally signed by the board on the day following the date the petition for review of

the proposed decision and order is due, said proposed decision and order shall be deemed adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. [2003 c 224 § 2; 1985 c 314 § 1; 1982 c 109 § 5; 1971 ex.s. c 289 § 22; 1963 c 148 § 6.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.120 Attorney's fee before department or board—Unlawful attorney's fees. (Effective July 1, 2004.)

(1) It shall be unlawful for an attorney engaged in the representation of any worker or beneficiary to charge for services in the department any fee in excess of a reasonable fee, of not more than thirty percent of the increase in the award secured by the attorney's services. Such reasonable fee shall be fixed by the director or the director's designee for services performed by an attorney for such worker or beneficiary, if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the department is communicated to the party making the application.

(2) If, on appeal to the board, the order, decision, or award of the department is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained by the board, the board shall fix a reasonable fee for the services of his or her attorney in proceedings before the board if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the board is communicated to the party making the application. In fixing the amount of such attorney's fee, the board shall take into consideration the fee allowed, if any, by the director, for services before the department, and the board may review the fee fixed by the director. Any attorney's fee set by the department or the board may be reviewed by the superior court upon application of such attorney, worker, or beneficiary. The department or self-insured employer, as the case may be, shall be served a copy of the application and shall be entitled to appear and take part in the proceedings. Where the board, pursuant to this section, fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee for services before the board in excess of that fee fixed by the board.

(3) Any person who violates this section is guilty of a misdemeanor. [2003 c 53 § 285; 1990 c 15 § 1; 1982 c 63 § 22; 1977 ex.s. c 350 § 81; 1965 ex.s. c 63 § 1; 1961 c 23 § 51.52.120. Prior: 1951 c 225 § 16; prior: 1947 c 246 § 3; Rem. Supp. 1947 § 7679-3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Title 52

FIRE PROTECTION DISTRICTS

Chapters

52.02 Formation.

52.04 Annexation.
52.12 Powers—Burning permits.

Chapter 52.02 RCW
FORMATION

Sections

52.02.020 Districts authorized—Health clinic services.

52.02.020 Districts authorized—Health clinic services. (1) Fire protection districts for the provision of fire prevention services, fire suppression services, emergency medical services, and for the protection of life and property in areas outside of cities and towns, except where the cities and towns have been annexed into a fire protection district or where the district is continuing service pursuant to RCW 35.02.202, are authorized to be established as provided in this title.

(2) In addition to other services authorized under this section, fire protection districts that share a common border with Canada and are surrounded on three sides by water, may also establish or participate in the provision of health clinic services. [2003 c 309 § 1; 1991 c 360 § 10; 1984 c 230 § 1; 1979 ex.s. c 179 § 5; 1959 c 237 § 1; 1947 c 254 § 1; 1945 c 162 § 1; 1943 c 121 § 1; 1941 c 70 § 1; 1939 c 34 § 1; Rem. Supp. 5654-101. Formerly RCW 52.04.020.]

Construction—Severability—1939 c 34: "The provisions of this act and proceedings thereunder shall be liberally construed with a view to effect their objects. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid or unconstitutional." [1939 c 34 § 51.]

Validating—Saving—1939 c 34: "Any petition heretofore drawn, signed and filed with the county auditor in compliance with the provisions of section 1 to section 6, inclusive, of the Laws of 1933, Extraordinary Session, shall be valid and the various steps required by this act for the creation of a fire-protection district may be continued, if the further steps to be taken are begun within ninety (90) days after the taking effect of this act [March 1, 1939], and it shall not be necessary to prepare, sign and file with the county auditor a new petition, and any district so created shall not be invalid by reason of the failure to draw, sign and file a new petition under the provisions of this act." [1939 c 34 § 49.]

Chapter 52.04 RCW
ANNEXATION

Sections

52.04.161 Newly incorporated city or town deemed annexed by district—Withdrawal.

52.04.161 Newly incorporated city or town deemed annexed by district—Withdrawal. If the area of a newly incorporated city or town is located in one or more fire protection districts, the city or town is deemed to have been annexed by the fire protection district or districts effective immediately on the city's or town's official date of incorporation, unless the city or town council adopts a resolution during the interim transition period precluding the annexation of the newly incorporated city or town by the fire protection district or districts. The newly incorporated city or town shall remain annexed to the fire protection district or districts for the remainder of the year of the city's or town's official date of incorporation, or through the following year if such extension is approved by resolution adopted by the city or town

council and by the board or boards of fire commissioners, and shall be withdrawn from the fire protection district or districts at the end of this period, unless a ballot proposition is adopted by the voters providing for annexation of the city or town to one fire protection district or providing for the fire protection district or districts to annex only that area of the city or town located within the district. Such election shall be held pursuant to RCW 52.04.071 where possible, provided that in annexations to more than one fire protection district, the qualified elector shall reside within the boundaries of the appropriate fire protection district or in that area of the city located within the district.

If the city or town is withdrawn from the fire protection district or districts, the maximum rate of the first property tax levy that is imposed by the city or town after the withdrawal is calculated as if the city or town never had been annexed by the fire protection district or districts. [2003 c 253 § 1; 1993 c 262 § 1.]

Chapter 52.12 RCW
POWERS—BURNING PERMITS

Sections

52.12.135 Interlocal agreements for ambulance services.

52.12.135 Interlocal agreements for ambulance services. (1) A rural fire protection district organized under this title may enter into a contract pursuant to chapter 39.34 RCW with a contiguous city for the furnishing by the city to the fire protection district or districts of emergency medical services in the form of ambulance services, provided that the contract may not provide for the establishment of any ambulance service that would compete with any existing, private ambulance service. The fire protection district or districts may impose a monthly utility service charge on each developed residential property located in the portion of the fire protection district or districts served pursuant to the contract in an amount equal to the amount imposed by the city on similar city developed residential property. Developed residential property includes single-family residences, apartments, manufactured homes, mobile homes, and trailers available for occupancy for a continuous period greater than thirty days. A fire protection district or districts may contract with the contiguous city or with any other governmental entity pursuant to chapter 39.34 RCW for the billing and collection services related to the monthly utility service charge for ambulance service. A city providing ambulance services to a fire protection district or districts under a contract entered into pursuant to this subsection may charge individuals actually using the ambulance services reasonable rates and charges for the ambulance services.

(2) For purposes of this section, "rural" means a population density within the fire protection district or districts as a whole of ten or fewer persons per square mile. [2003 c 209 § 1.]

Title 53

PORT DISTRICTS

Chapters

- 53.08 Powers.**
53.34 Toll facilities.

Chapter 53.08 RCW

POWERS

Sections

- 53.08.220 Regulations authorized—Adoption as part of ordinance or resolution of city or county, procedure—Enforcement—Penalty for violation. (*Effective July 1, 2004.*)
 53.08.420 Cooperative watershed management.

53.08.220 Regulations authorized—Adoption as part of ordinance or resolution of city or county, procedure—Enforcement—Penalty for violation. (*Effective July 1, 2004.*) (1) A port district may formulate all needful regulations for the use by tenants, agents, servants, licensees, invitees, suppliers, passengers, customers, shippers, business visitors, and members of the general public of any properties or facilities owned or operated by it, and request the adoption, amendment, or repeal of such regulations as part of the ordinances of the city or town in which such properties or facilities are situated, or as part of the resolutions of the county, if such properties or facilities be situated outside any city or town. The port commission shall make such request by resolution after holding a public hearing on the proposed regulations, of which at least ten days' notice shall be published in a legal newspaper of general circulation in the port district. Such regulations must conform to and be consistent with federal and state law. As to properties or facilities situated within a city or town, such regulations must conform to and be consistent with the ordinances of the city or town. As to properties or facilities situated outside any city or town, such regulations must conform to and be consistent with county resolutions. Upon receiving such request, the governing body of the city, town, or county, as the case may be, may adopt such regulations as part of its ordinances or resolutions, or amend or repeal such regulations in accordance with the terms of the request.

(2)(a) Except as otherwise provided in this subsection, any violation of the regulations described in subsection (1) of this section is a misdemeanor which shall be redressed in the same manner as other police regulations of the city, town, or county, and it shall be the duty of all law enforcement officers to enforce such regulations accordingly.

(b) Except as provided in (c) of this subsection, violation of such a regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(c) Violation of such a regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [2003 c 53 § 286; 1979 ex.s. c 136 § 103; 1961 c 38 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

[2003 RCW Supp—page 748]

53.08.420 Cooperative watershed management. In addition to the authority provided in this chapter, a port district may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 16.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

Chapter 53.34 RCW

TOLL FACILITIES

Sections

- 53.34.190 Bylaws, rules for management, uses, charges—Penalty for violation. (*Effective July 1, 2004.*)

53.34.190 Bylaws, rules for management, uses, charges—Penalty for violation. (*Effective July 1, 2004.*) (1) Any port district establishing a project under the authority of this chapter may make such bylaws, rules, and regulations for the management and use of such project and for the collection of rentals, tolls, fees, and other charges for services or commodities sold, furnished or supplied through such project.

(2) The violation of any bylaw, rule, or regulation described in subsection (1) of this section is a misdemeanor punishable by fine not to exceed one hundred dollars or by imprisonment for not longer than thirty days, or both. [2003 c 53 § 287; 1959 c 236 § 19.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Title 54

PUBLIC UTILITY DISTRICTS

Chapters

- 54.16 Powers.**

Chapter 54.16 RCW

POWERS

Sections

- 54.16.360 Cooperative watershed management.
 54.16.370 Purchase of electric power and energy from joint operating agency.

54.16.360 Cooperative watershed management. In addition to the authority provided in RCW 54.16.030 relating to water supply, a public utility district may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 14.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

54.16.370 Purchase of electric power and energy from joint operating agency. A district may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For

projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the district must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or district under the contract or other instrument. [2003 c 138 § 2.]

Title 57

WATER-SEWER DISTRICTS

Chapters

57.08 Powers.

Chapter 57.08 RCW

POWERS

Sections

- 57.08.005 Powers.
- 57.08.050 Contracts for materials and work—Notice—Bids—Small works roster—Requirements waived, when.
- 57.08.081 Rates and charges—Delinquencies.
- 57.08.190 Cooperative watershed management.

57.08.005 Powers. A district shall have the following powers:

- (1) To acquire by purchase or condemnation, or both, all lands, property and property rights, and all water and water rights, both within and without the district, necessary for its purposes. The right of eminent domain shall be exercised in the same manner and by the same procedure as provided for cities and towns, insofar as consistent with this title, except that all assessment or reassessment rolls to be prepared and filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the district, and the duties devolving upon the city treasurer are imposed upon the county treasurer;
- (2) To lease real or personal property necessary for its purposes for a term of years for which that leased property may reasonably be needed;
- (3) To construct, condemn and purchase, add to, maintain, and supply waterworks to furnish the district and inhabitants thereof and any other persons, both within and without the district, with an ample supply of water for all uses and purposes public and private with full authority to regulate and control the use, content, distribution, and price thereof in such a manner as is not in conflict with general law and may construct, acquire, or own buildings and other necessary district facilities. Where a customer connected to the district's system uses the water on an intermittent or transient basis, a district may charge for providing water service to such a customer, regardless of the amount of water, if any, used by the customer. District waterworks may include facilities which

result in combined water supply and electric generation, if the electricity generated thereby is a byproduct of the water supply system. That electricity may be used by the district or sold to any entity authorized by law to use or distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of water supply. For such purposes, a district may take, condemn and purchase, acquire, and retain water from any public or navigable lake, river or watercourse, or any underflowing water, and by means of aqueducts or pipeline conduct the same throughout the district and any city or town therein and carry it along and upon public highways, roads, and streets, within and without such district. For the purpose of constructing or laying aqueducts or pipelines, dams, or waterworks or other necessary structures in storing and retaining water or for any other lawful purpose such district may occupy the beds and shores up to the high water mark of any such lake, river, or other watercourse, and may acquire by purchase or condemnation such property or property rights or privileges as may be necessary to protect its water supply from pollution. For the purposes of waterworks which include facilities for the generation of electricity as a byproduct, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owner;

(4) To purchase and take water from any municipal corporation, private person, or entity. A district contiguous to Canada may contract with a Canadian corporation for the purchase of water and for the construction, purchase, maintenance, and supply of waterworks to furnish the district and inhabitants thereof and residents of Canada with an ample supply of water under the terms approved by the board of commissioners;

(5) To construct, condemn and purchase, add to, maintain, and operate systems of sewers for the purpose of furnishing the district, the inhabitants thereof, and persons outside the district with an adequate system of sewers for all uses and purposes, public and private, including but not limited to on-site sewage disposal facilities, approved septic tanks or approved septic tank systems, on-site sanitary sewerage systems, inspection services and maintenance services for private and public on-site systems, point and nonpoint water pollution monitoring programs that are directly related to the sewerage facilities and programs operated by a district, other facilities, programs, and systems for the collection, interception, treatment, and disposal of wastewater, and for the control of pollution from wastewater with full authority to regulate the use and operation thereof and the service rates to be charged. Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer. Sewerage facilities may include facilities which result in combined sewage disposal or treatment and electric generation, except that the electricity generated thereby is a byproduct of the system of sewers. Such electricity may be used by the district or sold to any entity authorized

by law to distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of sewage disposal or treatment. For such purposes a district may conduct sewage throughout the district and throughout other political subdivisions within the district, and construct and lay sewer pipe along and upon public highways, roads, and streets, within and without the district, and condemn and purchase or acquire land and rights of way necessary for such sewer pipe. A district may erect sewage treatment plants within or without the district, and may acquire, by purchase or condemnation, properties or privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution from its sewers or its sewage treatment plant. For the purposes of sewage facilities which include facilities that result in combined sewage disposal or treatment and electric generation where the electric generation is a byproduct, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owners;

(6)(a) To construct, condemn and purchase, add to, maintain, and operate systems of drainage for the benefit and use of the district, the inhabitants thereof, and persons outside the district with an adequate system of drainage, including but not limited to facilities and systems for the collection, interception, treatment, and disposal of storm or surface waters, and for the protection, preservation, and rehabilitation of surface and underground waters, and drainage facilities for public highways, streets, and roads, with full authority to regulate the use and operation thereof and, except as provided in (b) of this subsection, the service rates to be charged.

(b) The rate a district may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(c) Drainage facilities may include natural systems. Drainage facilities may include facilities which result in combined drainage facilities and electric generation, except that the electricity generated thereby is a byproduct of the drainage system. Such electricity may be used by the district or sold to any entity authorized by law to distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of drainage collection, disposal, and treatment. For such purposes, a district may conduct storm or surface water throughout the district and throughout other political subdivisions within the district, construct and lay drainage pipe and culverts along and upon public highways, roads, and streets, within and without the district, and condemn and purchase or acquire land and rights of way necessary for such drainage systems. A district may provide or erect facilities and improvements for the

treatment and disposal of storm or surface water within or without the district, and may acquire, by purchase or condemnation, properties or privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution from storm or surface waters. For the purposes of drainage facilities which include facilities that also generate electricity as a byproduct, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owners;

(7) To construct, condemn, acquire, and own buildings and other necessary district facilities;

(8) To compel all property owners within the district located within an area served by the district's system of sewers to connect their private drain and sewer systems with the district's system under such penalty as the commissioners shall prescribe by resolution. The district may for such purpose enter upon private property and connect the private drains or sewers with the district system and the cost thereof shall be charged against the property owner and shall be a lien upon property served;

(9) Where a district contains within its borders, abuts, or is located adjacent to any lake, stream, ground water as defined by RCW 90.44.035, or other waterway within the state of Washington, to provide for the reduction, minimization, or elimination of pollutants from those waters in accordance with the district's comprehensive plan, and to issue general obligation bonds, revenue bonds, local improvement district bonds, or utility local improvement bonds for the purpose of paying all or any part of the cost of reducing, minimizing, or eliminating the pollutants from these waters;

(10) Subject to subsection (6) of this section, to fix rates and charges for water, sewer, and drain service supplied and to charge property owners seeking to connect to the district's systems, as a condition to granting the right to so connect, in addition to the cost of the connection, such reasonable connection charge as the board of commissioners shall determine to be proper in order that those property owners shall bear their equitable share of the cost of the system. For the purposes of calculating a connection charge, the board of commissioners shall determine the pro rata share of the cost of existing facilities and facilities planned for construction within the next ten years and contained in an adopted comprehensive plan and other costs borne by the district which are directly attributable to the improvements required by property owners seeking to connect to the system. The cost of existing facilities shall not include those portions of the system which have been donated or which have been paid for by grants. The connection charge may include interest charges applied from the date of construction of the system until the connection, or for a period not to exceed ten years, whichever is shorter, at a rate commensurate with the rate of interest applicable to the district at the time of construction or major rehabilitation of the system, or at the time of installation of the lines to which the property owner is seeking to connect. A district may permit payment of the cost of connection and the reasonable connection charge to be paid with interest in installments over a period not exceeding fifteen years. The county treasurer may charge and collect a fee of

three dollars for each year for the treasurer's services. Those fees shall be a charge to be included as part of each annual installment, and shall be credited to the county current expense fund by the county treasurer. Revenues from connection charges excluding permit fees are to be considered payments in aid of construction as defined by department of revenue rule. Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

A water-sewer district shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using water-sewer district employees unless the on-site system is connected by a publicly owned collection system to the water-sewer district's sewerage system, and the on-site system represents the first step in the sewage disposal process.

Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for sewer, water, storm water control, drainage, and street lighting facilities to the same extent private persons and private property are subject to those rates and charges that are imposed by districts. In setting those rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property;

(11) To contract with individuals, associations and corporations, the state of Washington, and the United States;

(12) To employ such persons as are needed to carry out the district's purposes and fix salaries and any bond requirements for those employees;

(13) To contract for the provision of engineering, legal, and other professional services as in the board of commissioner's discretion is necessary in carrying out their duties;

(14) To sue and be sued;

(15) To loan and borrow funds and to issue bonds and instruments evidencing indebtedness under chapter 57.20 RCW and other applicable laws;

(16) To transfer funds, real or personal property, property interests, or services subject to RCW 57.08.015;

(17) To levy taxes in accordance with this chapter and chapters 57.04 and 57.20 RCW;

(18) To provide for making local improvements and to levy and collect special assessments on property benefitted thereby, and for paying for the same or any portion thereof in accordance with chapter 57.16 RCW;

(19) To establish street lighting systems under RCW 57.08.060;

(20) To exercise such other powers as are granted to water-sewer districts by this title or other applicable laws; and

(21) To exercise any of the powers granted to cities and counties with respect to the acquisition, construction, maintenance, operation of, and fixing rates and charges for waterworks and systems of sewerage and drainage. [2003 c 394 § 5; 1999 c 153 § 2; 1997 c 447 § 16; 1996 c 230 § 301.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.050 Contracts for materials and work—Notice—Bids—Small works roster—Requirements waived, when. (1) All work ordered, the estimated cost of which is in excess of ten thousand dollars, shall be let by contract and competitive bidding. Before awarding any such contract the board of commissioners shall publish a notice in a newspaper of general circulation where the district is located at least once thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of commissioners subject to the public inspection. The notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of commissioners on or before the day and hour named therein.

Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless the bidder enters into a contract in accordance with the bidder's bid, and no bid shall be considered unless accompanied by such check, cash or bid bond. At the time and place named such bids shall be publicly opened and read and the board of commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting the bidder's own plans and specifications. The board of commissioners may reject all bids for good cause and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If the contract is let, then all checks, cash, or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for doing the work, and a bond to perform such work furnished with sureties satisfactory to the board of commissioners in the full amount of the contract price between the bidder and the commission in accordance with the bid. If the bidder fails to enter into the contract in accordance with the bid and furnish the bond within ten days from the date at which the bidder is notified that the bidder is the successful bidder, the check, cash, or bid bonds and the amount thereof shall be forfeited to the district. If the bidder fails to enter into a contract in accordance with the bidder's bid, and the board of commissioners deems it necessary to take legal action to collect on any bid bond required by this section, then the district shall be entitled to collect from the bidder any legal expenses, includ-

ing reasonable attorneys' fees occasioned thereby. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) As an alternative to requirements under subsection (1) of this section, a water-sewer district may let contracts using the small works roster process under RCW 39.04.155.

(3) Any purchase of materials, supplies, or equipment, with an estimated cost in excess of ten thousand dollars, shall be by contract. Any purchase of materials, supplies, or equipment, with an estimated cost of less than fifty thousand dollars shall be made using the process provided in RCW 39.04.190. Any purchase of materials, supplies, or equipment with an estimated cost of fifty thousand dollars or more shall be made by competitive bidding following the procedure for letting contracts for projects under subsection (1) of this section.

(4) As an alternative to requirements under subsection (3) of this section, a water-sewer district may let contracts for purchase of materials, supplies, or equipment with the suppliers designated on current state agency, county, city, or town purchasing rosters for the materials, supplies, or equipment, when the roster has been established in accordance with the competitive bidding law for purchases applicable to the state agency, county, city, or town. The price and terms for purchases shall be as described on the applicable roster.

(5) The board may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work. [2003 c 145 § 1; 2003 c 60 § 1; 2000 c 138 § 212; 1999 c 153 § 9; 1998 c 278 § 8; 1997 c 245 § 4. Prior: 1996 c 230 § 311; 1996 c 18 § 14; 1994 c 31 § 2; prior: 1993 c 198 § 21; 1993 c 45 § 8; 1989 c 105 § 2; 1987 c 309 § 2; 1985 c 154 § 2; 1983 c 38 § 2; 1979 ex.s. c 137 § 2; 1975 1st ex.s. c 64 § 2; 1965 c 72 § 1; 1947 c 216 § 2; 1929 c 114 § 21; Rem. Supp. 1947 § 11598. Cf. 1913 c 161 § 20.]

Reviser's note: This section was amended by 2003 c 60 § 1 and by 2003 c 145 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.081 Rates and charges—Delinquencies. (1) Subject to RCW 57.08.005(6), the commissioners of any district shall provide for revenues by fixing rates and charges for furnishing sewer and drainage service and facilities to those to whom service is available or for providing water, such rates and charges to be fixed as deemed necessary by the commissioners, so that uniform charges will be made for the same class of customer or service and facility. Rates and charges may be combined for the furnishing of more than one type of sewer or drainage service and facilities.

(2) In classifying customers of such water, sewer, or drainage system, the board of commissioners may in its discretion consider any or all of the following factors: The difference in cost to various customers; the location of the various customers within and without the district; the difference

in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the service and facility furnished; the time of its use; the achievement of water conservation goals and the discouragement of wasteful practices; capital contributions made to the system including but not limited to assessments; and any other matters which present a reasonable difference as a ground for distinction. Rates shall be established as deemed proper by the commissioners and as fixed by resolution and shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for efficient and proper operation of the system. Prior to furnishing services, a district may require a deposit to guarantee payment for services. However, failure to require a deposit does not affect the validity of any lien authorized by this section.

(3) The commissioners shall enforce collection of connection charges, and rates and charges for water supplied against property owners connecting with the system or receiving such water, and for sewer and drainage services charged against property to which and its owners to whom the service is available, such charges being deemed charges against the property served, by addition of penalties of not more than ten percent thereof in case of failure to pay the charges at times fixed by resolution. The commissioners may provide by resolution that where either connection charges or rates and charges for services supplied are delinquent for any specified period of time, the district shall certify the delinquencies to the auditor of the county in which the real property is located, and the charges and any penalties added thereto and interest thereon at the rate of not more than the prime lending rate of the district's bank plus four percentage points per year shall be a lien against the property upon which the service was received, subject only to the lien for general taxes.

(4) The district may, at any time after the connection charges or rates and charges for services supplied or available and penalties are delinquent for a period of sixty days, bring suit in foreclosure by civil action in the superior court of the county in which the real property is located. The court may allow, in addition to the costs and disbursements provided by statute, attorneys' fees, title search and report costs, and expenses as it adjudges reasonable. The action shall be in rem, and may be brought in the name of the district against an individual or against all of those who are delinquent in one action. The laws and rules of the court shall control as in other civil actions.

(5) In addition to the right to foreclose provided in this section, the district may also cut off all or part of the service after charges for water or sewer service supplied or available are delinquent for a period of thirty days.

(6) A district may determine how to apply partial payments on past due accounts.

(7) A district may provide a real property owner or the owner's designee with duplicate bills for service to tenants, or may notify an owner or the owner's designee that a tenant's service account is delinquent. However, if an owner or the owner's designee notifies the district in writing that a property served by the district is a rental property, asks to be noti-

fied of a tenant's delinquency, and has provided, in writing, a complete and accurate mailing address, the district shall notify the owner or the owner's designee of a tenant's delinquency at the same time and in the same manner the district notifies the tenant of the tenant's delinquency or by mail. When a district provides a real property owner or the owner's designee with duplicates of tenant utility service bills or notice that a tenant's utility account is delinquent, the district shall notify the tenant that it is providing the duplicate bills or delinquency notice to the owner or the owner's designee. After January 1, 1999, if a district fails to notify the owner of a tenant's delinquency after receiving a written request to do so and after receiving the other information required by this subsection (7), the district shall have no lien against the premises for the tenant's delinquent and unpaid charges. [2003 c 394 § 6; 1999 c 153 § 11. Prior: 1998 c 285 § 2; 1998 c 106 § 9; 1997 c 447 § 19; 1996 c 230 § 314.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Assessments and charges against state lands: Chapter 79.44 RCW.

57.08.190 Cooperative watershed management. In addition to the authority provided in RCW 57.08.005, a water district, sewer district, or water-sewer district may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 13.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

Title 59

LANDLORD AND TENANT

Chapters

59.18 Residential landlord-tenant act.

59.20 Manufactured/mobile home landlord-tenant act.

Chapter 59.18 RCW

RESIDENTIAL LANDLORD-TENANT ACT

Sections

59.18.200	Tenant from month to month or for rental period—Termination—Armed Forces exception—Exclusion of children or conversion to condominium—Notice.
59.18.220	Termination of tenancy for a specified time—Armed forces exception.
59.18.550	Drug and alcohol free housing—Program of recovery—Terms—Application of chapter.

59.18.200 Tenancy from month to month or for rental period—Termination—Armed Forces exception—Exclusion of children or conversion to condominium—Notice. (1)(a) When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall

be terminated by written notice of twenty days or more, preceding the end of any of the months or periods of tenancy, given by either party to the other.

(b) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependant, may terminate a rental agreement with less than twenty days' notice if the tenant receives reassignment or deployment orders that do not allow a twenty-day notice.

(2) Whenever a landlord plans to change any apartment or apartments to a condominium form of ownership or plans to change to a policy of excluding children, the landlord shall give a written notice to a tenant at least ninety days before termination of the tenancy to effectuate such change in policy. Such ninety-day notice shall be in lieu of the notice required by subsection (1) of this section. However, if after giving the ninety-day notice the change in policy is delayed, the notice requirements of subsection (1) of this section shall apply unless waived by the tenant. [2003 c 7 § 1; 1979 ex.s. c 70 § 1; 1973 1st ex.s. c 207 § 20.]

Effective date—2003 c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 24, 2003]." [2003 c 7 § 4.]

Unlawful detainer, notice requirement: RCW 59.12.030(2).

59.18.220 Termination of tenancy for a specified time—Armed forces exception. (1) In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time.

(2) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a tenancy for a specified time if the tenant receives reassignment or deployment orders. The tenant shall provide notice of the reassignment or deployment order to the landlord no later than seven days after receipt. [2003 c 7 § 2; 1973 1st ex.s. c 207 § 22.]

Effective date—2003 c 7: See note following RCW 59.18.200.

59.18.550 Drug and alcohol free housing—Program of recovery—Terms—Application of chapter. (1) For the purpose of this section, "drug and alcohol free housing" requires a rental agreement and means a dwelling in which:

(a) Each of the dwelling units on the premises is occupied or held for occupancy by at least one tenant who is a recovering alcoholic or drug addict and is participating in a program of recovery;

(b) The landlord is a nonprofit corporation incorporated under Title 24 RCW, a corporation for profit incorporated under Title 23B RCW, or a housing authority created under chapter 35.82 RCW, and is providing federally assisted housing as defined in chapter 59.28 RCW;

(c) The landlord provides:

- (i) A drug and alcohol free environment, covering all tenants, employees, staff, agents of the landlord, and guests;
- (ii) An employee who monitors the tenants for compliance with the requirements of (d) of this subsection;
- (iii) Individual and group support for recovery; and
- (iv) Access to a specified program of recovery; and

(d) The rental agreement is in writing and includes the following provisions:

(i) The tenant may not use, possess, or share alcohol, illegal drugs, controlled substances, or prescription drugs without a medical prescription, either on or off the premises;

(ii) The tenant may not allow the tenant's guests to use, possess, or share alcohol, illegal drugs, controlled substances, or prescription drugs without a medical prescription, on the premises;

(iii) The tenant must participate in a program of recovery, which specific program is described in the rental agreement;

(iv) On at least a quarterly basis the tenant must provide written verification from the tenant's program of recovery that the tenant is participating in the program of recovery and the tenant has not used alcohol or illegal drugs;

(v) The landlord has the right to require the tenant to take a urine analysis test regarding drug or alcohol usage, at the landlord's discretion and expense; and

(vi) The landlord has the right to terminate the tenant's tenancy by delivering a three-day notice to terminate with one day to comply, if a tenant living in drug and alcohol free housing uses, possesses, or shares alcohol, illegal drugs, controlled substances, or prescription drugs without a medical prescription.

(2) For the purpose of this section, "program of recovery" means a verifiable program of counseling and rehabilitation treatment services, including a written plan, to assist recovering alcoholics or drug addicts to recover from their addiction to alcohol or illegal drugs while living in drug and alcohol free housing. A "program of recovery" includes Alcoholics Anonymous, Narcotics Anonymous, and similar programs.

(3) If a tenant living for less than two years in drug and alcohol free housing uses, possesses, or shares alcohol, illegal drugs, controlled substances, or prescription drugs without a medical prescription, the landlord may deliver a written notice to the tenant terminating the tenancy for cause as provided in this subsection. The notice must specify the acts constituting the drug or alcohol violation and must state that the rental agreement terminates in not less than three days after delivery of the notice, at a specified date and time. The notice must also state that the tenant can cure the drug or alcohol violation by a change in conduct or otherwise within one day after delivery of the notice. If the tenant cures the violation within the one-day period, the rental agreement does not terminate. If the tenant does not cure the violation within the one-day period, the rental agreement terminates as provided in the notice. If substantially the same act that constituted a prior drug or alcohol violation of which notice was given reoccurs within six months, the landlord may terminate the rental agreement upon at least three days' written notice specifying the violation and the date and time of termination of the rental agreement. The tenant does not have a right to cure this subsequent violation.

(4) Notwithstanding subsections (1), (2), and (3) of this section, federally assisted housing that is occupied on other than a transient basis by persons who are required to abstain from possession or use of alcohol or drugs as a condition of occupancy and who pay for the use of the housing on a periodic basis, without regard to whether the payment is charac-

terized as rent, program fees, or other fees, costs, or charges, are covered by this chapter unless the living arrangement is exempt under RCW 59.18.040. [2003 c 382 § 1.]

Chapter 59.20 RCW MANUFACTURED/MOBILE HOME LANDLORD-TENANT ACT

Sections

59.20.030	Definitions.
59.20.070	Prohibited acts by landlord.
59.20.073	Transfer of rental agreements.
59.20.080	Grounds for termination of tenancy or occupancy or failure to renew a tenancy or occupancy—Notice—Mediation.
59.20.090	Term of rental agreements—Renewal—Nonrenewal—Termination—Armed forces exception—Notices.

59.20.030 Definitions. For purposes of this chapter:

(1) "Abandoned" as it relates to a mobile home, manufactured home, or park model owned by a tenant in a mobile home park, mobile home park cooperative, or mobile home park subdivision or tenancy in a mobile home lot means the tenant has defaulted in rent and by absence and by words or actions reasonably indicates the intention not to continue tenancy;

(2) "Landlord" means the owner of a mobile home park and includes the agents of a landlord;

(3) "Manufactured home" means a single-family dwelling built according to the United States department of housing and urban development manufactured home construction and safety standards act, which is a national preemptive building code. A manufactured home also: (a) Includes plumbing, heating, air conditioning, and electrical systems; (b) is built on a permanent chassis; and (c) can be transported in one or more sections with each section at least eight feet wide and forty feet long when transported, or when installed on the site is three hundred twenty square feet or greater;

(4) "Mobile home" means a factory-built dwelling built prior to June 15, 1976, to standards other than the United States department of housing and urban development code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobile homes have not been built since the introduction of the United States department of housing and urban development manufactured home construction and safety act;

(5) "Mobile home lot" means a portion of a mobile home park or manufactured housing community designated as the location of one mobile home, manufactured home, or park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home, manufactured home, or park model;

(6) "Mobile home park" or "manufactured housing community" means any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy;

(7) "Mobile home park cooperative" or "manufactured housing cooperative" means real property consisting of common areas and two or more lots held out for placement of mobile homes, manufactured homes, or park models in which

both the individual lots and the common areas are owned by an association of shareholders which leases or otherwise extends the right to occupy individual lots to its own members;

(8) "Mobile home park subdivision" or "manufactured housing subdivision" means real property, whether it is called a subdivision, condominium, or planned unit development, consisting of common areas and two or more lots held for placement of mobile homes, manufactured homes, or park models in which there is private ownership of the individual lots and common, undivided ownership of the common areas by owners of the individual lots;

(9) "Park model" means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence;

(10) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot;

(11) "Tenant" means any person, except a transient, who rents a mobile home lot;

(12) "Transient" means a person who rents a mobile home lot for a period of less than one month for purposes other than as a primary residence;

(13) "Occupant" means any person, including a live-in care provider, other than a tenant, who occupies a mobile home, manufactured home, or park model and mobile home lot. [2003 c 127 § 1; 1999 c 359 § 2; 1998 c 118 § 1; 1993 c 66 § 15; 1981 c 304 § 4; 1980 c 152 § 3; 1979 ex.s. c 186 § 1; 1977 ex.s. c 279 § 3.]

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 186 § 30.]

59.20.070 Prohibited acts by landlord. A landlord shall not:

(1) Deny any tenant the right to sell such tenant's mobile home, manufactured home, or park model within a park or require the removal of the mobile home, manufactured home, or park model from the park because of the sale thereof. Requirements for the transfer of the rental agreement are in RCW 59.20.073;

(2) Restrict the tenant's freedom of choice in purchasing goods or services but may reserve the right to approve or disapprove any exterior structural improvements on a mobile home space: PROVIDED, That door-to-door solicitation in the mobile home park may be restricted in the rental agreement. Door-to-door solicitation does not include public officials or candidates for public office meeting or distributing information to tenants in accordance with subsection (4) of this section;

(3) Prohibit meetings by tenants of the mobile home park to discuss mobile home living and affairs, including political caucuses or forums for or speeches of public officials or candidates for public office, or meetings of organizations that represent the interest of tenants in the park, held in any of the park community or recreation halls if these halls are open for

the use of the tenants, conducted at reasonable times and in an orderly manner on the premises, nor penalize any tenant for participation in such activities;

(4) Prohibit a public official or candidate for public office from meeting with or distributing information to tenants in their individual mobile homes, manufactured homes, or park models, nor penalize any tenant for participating in these meetings or receiving this information;

(5) Evict a tenant, terminate a rental agreement, decline to renew a rental agreement, increase rental or other tenant obligations, decrease services, or modify park rules in retaliation for any of the following actions on the part of a tenant taken in good faith:

(a) Filing a complaint with any state, county, or municipal governmental authority relating to any alleged violation by the landlord of an applicable statute, regulation, or ordinance;

(b) Requesting the landlord to comply with the provision of this chapter or other applicable statute, regulation, or ordinance of the state, county, or municipality;

(c) Filing suit against the landlord for any reason;

(d) Participation or membership in any homeowners association or group;

(6) Charge to any tenant a utility fee in excess of actual utility costs or intentionally cause termination or interruption of any tenant's utility services, including water, heat, electricity, or gas, except when an interruption of a reasonable duration is required to make necessary repairs;

(7) Remove or exclude a tenant from the premises unless this chapter is complied with or the exclusion or removal is under an appropriate court order; or

(8) Prevent the entry or require the removal of a mobile home, manufactured home, or park model for the sole reason that the mobile home has reached a certain age. Nothing in this subsection shall limit a landlords' right to exclude or expel a mobile home, manufactured home, or park model for any other reason, including but not limited to, failure to comply with fire, safety, and other provisions of local ordinances and state laws relating to mobile homes, manufactured homes, and park models, as long as the action conforms to this chapter or any other relevant statutory provision. [2003 c 127 § 2; 1999 c 359 § 6; 1993 c 66 § 16; 1987 c 253 § 1; 1984 c 58 § 2; 1981 c 304 § 19; 1980 c 152 § 5; 1979 ex.s. c 186 § 5; 1977 ex.s. c 279 § 7.]

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.073 Transfer of rental agreements. (1) Any rental agreement shall be assignable by the tenant to any person to whom he or she sells or transfers title to the mobile home, manufactured home, or park model.

(2) A tenant who sells a mobile home, manufactured home, or park model within a park shall notify the landlord in writing of the date of the intended sale and transfer of the rental agreement at least fifteen days in advance of such intended transfer and shall notify the buyer in writing of the provisions of this section. The tenant shall verify in writing to the landlord payment of all taxes, rent, and reasonable

expenses due on the mobile home, manufactured home, or park model and mobile home lot.

(3) The landlord shall notify the selling tenant, in writing, of a refusal to permit transfer of the rental agreement at least seven days in advance of such intended transfer.

(4) The landlord may require the mobile home, manufactured home, or park model to meet applicable fire and safety standards if a state or local agency responsible for the enforcement of fire and safety standards has issued a notice of violation of those standards to the tenant and those violations remain uncorrected. Upon correction of the violation to the satisfaction of the state or local agency responsible for the enforcement of that notice of violation, the landlord's refusal to permit the transfer is deemed withdrawn.

(5) The landlord shall approve or disapprove of the assignment of a rental agreement on the same basis that the landlord approves or disapproves of any new tenant, and any disapproval shall be in writing. Consent to an assignment shall not be unreasonably withheld.

(6) Failure to notify the landlord in writing, as required under subsection (2) of this section; or failure of the new tenant to make a good faith attempt to arrange an interview with the landlord to discuss assignment of the rental agreement; or failure of the current or new tenant to obtain written approval of the landlord for assignment of the rental agreement, shall be grounds for disapproval of such transfer. [2003 c 127 § 3; 1999 c 359 § 7; 1993 c 66 § 17; 1981 c 304 § 20.]

Severability—1981 c 304: See note following RCW 26.16.030.

59.20.080 Grounds for termination of tenancy or occupancy or failure to renew a tenancy or occupancy—Notice—Mediation. (1) A landlord shall not terminate or fail to renew a tenancy of a tenant or the occupancy of an occupant, of whatever duration except for one or more of the following reasons:

(a) Substantial violation, or repeated or periodic violations of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant or for violation of the tenant's duties as provided in RCW 59.20.140. The tenant shall be given written notice to cease the rule violation immediately. The notice shall state that failure to cease the violation of the rule or any subsequent violation of that or any other rule shall result in termination of the tenancy, and that the tenant shall vacate the premises within fifteen days: PROVIDED, That for a periodic violation the notice shall also specify that repetition of the same violation shall result in termination: PROVIDED FURTHER, That in the case of a violation of a "material change" in park rules with respect to pets, tenants with minor children living with them, or recreational facilities, the tenant shall be given written notice under this chapter of a six month period in which to comply or vacate;

(b) Nonpayment of rent or other charges specified in the rental agreement, upon five days written notice to pay rent and/or other charges or to vacate;

(c) Conviction of the tenant of a crime, commission of which threatens the health, safety, or welfare of the other mobile home park tenants. The tenant shall be given written notice of a fifteen day period in which to vacate;

(d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes, manufactured homes, or park models or mobile home, manufactured homes, or park model living within a reasonable time after the tenant's receipt of notice of such noncompliance from the appropriate governmental agency;

(e) Change of land use of the mobile home park including, but not limited to, conversion to a use other than for mobile homes, manufactured homes, or park models or conversion of the mobile home park to a mobile home park cooperative or mobile home park subdivision: PROVIDED, That the landlord shall give the tenants twelve months' notice in advance of the effective date of such change, except that for the period of six months following April 28, 1989, the landlord shall give the tenants eighteen months' notice in advance of the proposed effective date of such change;

(f) Engaging in "criminal activity." "Criminal activity" means a criminal act defined by statute or ordinance that threatens the health, safety, or welfare of the tenants. A park owner seeking to evict a tenant or occupant under this subsection need not produce evidence of a criminal conviction, even if the alleged misconduct constitutes a criminal offense. Notice from a law enforcement agency of criminal activity constitutes sufficient grounds, but not the only grounds, for an eviction under this subsection. Notification of the seizure of illegal drugs under RCW 59.20.155 is evidence of criminal activity and is grounds for an eviction under this subsection. The requirement that any tenant or occupant register as a sex offender under RCW 9A.44.130 is grounds for eviction under this subsection. If criminal activity is alleged to be a basis of termination, the park owner may proceed directly to an unlawful detainer action;

(g) The tenant's application for tenancy contained a material misstatement that induced the park owner to approve the tenant as a resident of the park, and the park owner discovers and acts upon the misstatement within one year of the time the resident began paying rent;

(h) If the landlord serves a tenant three fifteen-day notices within a twelve-month period to comply or vacate for failure to comply with the material terms of the rental agreement or park rules. The applicable twelve-month period shall commence on the date of the first violation;

(i) Failure of the tenant to comply with obligations imposed upon tenants by applicable provisions of municipal, county, and state codes, statutes, ordinances, and regulations, including this chapter. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(j) The tenant engages in disorderly or substantially annoying conduct upon the park premises that results in the destruction of the rights of others to the peaceful enjoyment and use of the premises. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(k) The tenant creates a nuisance that materially affects the health, safety, and welfare of other park residents. The landlord shall give the tenant written notice to cease the con-

duct that constitutes a nuisance immediately. The notice must state that failure to cease the conduct will result in termination of the tenancy and that the tenant shall vacate the premises in five days;

(l) Any other substantial just cause that materially affects the health, safety, and welfare of other park residents. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days; or

(m) Failure to pay rent by the due date provided for in the rental agreement three or more times in a twelve-month period, commencing with the date of the first violation, after service of a five-day notice to comply or vacate.

(2) Within five days of a notice of eviction as required by subsection (1)(a) of this section, the landlord and tenant shall submit any dispute to mediation. The parties may agree in writing to mediation by an independent third party or through industry mediation procedures. If the parties cannot agree, then mediation shall be through industry mediation procedures. A duty is imposed upon both parties to participate in the mediation process in good faith for a period of ten days for an eviction under subsection (1)(a) of this section. It is a defense to an eviction under subsection (1)(a) of this section that a landlord did not participate in the mediation process in good faith.

(3) Chapters 59.12 and 59.18 RCW govern the eviction of recreational vehicles, as defined in RCW 59.20.030, from mobile home parks. This chapter governs the eviction of mobile homes, manufactured homes, park models, and recreational vehicles used as a primary residence from a mobile home park. [2003 c 127 § 4; 1999 c 359 § 10; 1998 c 118 § 2; 1993 c 66 § 19; 1989 c 201 § 12; 1988 c 150 § 5; 1984 c 58 § 4; 1981 c 304 § 21; 1979 ex.s. c 186 § 6; 1977 ex.s. c 279 § 8.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.090 Term of rental agreements—Renewal—Nonrenewal—Termination—Armed forces exception—Notices. (1) Unless otherwise agreed rental agreements shall be for a term of one year. Any rental agreement of whatever duration shall be automatically renewed for the term of the original rental agreement, unless a different specified term is agreed upon.

(2) A landlord seeking to increase the rent upon expiration of the term of a rental agreement of any duration shall notify the tenant in writing three months prior to the effective date of any increase in rent.

(3) A tenant shall notify the landlord in writing one month prior to the expiration of a rental agreement of an intention not to renew.

(4)(a) The tenant may terminate the rental agreement upon thirty days written notice whenever a change in the location of the tenant's employment requires a change in his residence, and shall not be liable for rental following such termination unless after due diligence and reasonable effort the landlord is not able to rent the mobile home lot at a fair

rental. If the landlord is not able to rent the lot, the tenant shall remain liable for the rental specified in the rental agreement until the lot is rented or the original term ends.

(b) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a rental agreement with less than thirty days notice if the tenant receives reassignment or deployment orders which do not allow greater notice. The tenant shall provide notice of the reassignment or deployment order to the landlord no later than seven days after receipt. [2003 c 7 § 3; 1998 c 118 § 3; 1980 c 152 § 2; 1979 ex.s. c 186 § 7; 1977 ex.s. c 279 § 9.]

Effective date—2003 c 7: See note following RCW 59.18.200.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

Title 60

LIENS

Chapters

60.28 Lien for labor, materials, taxes on public works.

Chapter 60.28 RCW

LIEN FOR LABOR, MATERIALS, TAXES ON PUBLIC WORKS

Sections

60.28.011 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—General contractor/construction manager procedure—Definitions.

60.28.011 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—General contractor/construction manager procedure—Definitions. (1) Public improvement contracts shall provide, and public bodies shall reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (a) The claims of any person arising under the contract; and (b) the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract shall have a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant shall be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys

earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, shall be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check shall be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities shall be held in escrow. Interest on the bonds and securities shall be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The public body shall accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it. This bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and

accumulated under this section shall be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and shall supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.020 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue and the materialmen and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) This subsection applies only to a public body that has contracted for the construction of a facility using the general contractor/construction manager procedure, as defined under RCW 39.10.061. If the work performed by a subcontractor on the project has been completed within the first half of the time provided in the general contractor/construction manager contract for completing the work, the public body may accept the completion of the subcontract. The public body must give public notice of this acceptance. After a forty-five day period for giving notice of liens, and compliance with the retainage release procedures in RCW 60.28.021, the public body may release that portion of the retained funds associated with the subcontract. Claims against the retained funds after the forty-five day period are not valid.

(12) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or materialperson who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional services, or a work order as defined in RCW 39.10.020. [2003 c 301 § 7; 2000 c 185 § 1; 1994 c 101 § 1; 1992 c 223 § 2.]

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

Title 61

MORTGAGES, DEEDS OF TRUST, AND REAL ESTATE CONTRACTS

Chapters

61.12 Foreclosure of real estate mortgages and personal property liens.

Chapter 61.12 RCW

FORECLOSURE OF REAL ESTATE MORTGAGES AND PERSONAL PROPERTY LIENS

Sections

- 61.12.030 Removal of property from mortgaged premises—Penalty. (*Effective July 1, 2004.*)
61.12.031 Repealed. (*Effective July 1, 2004.*)

61.12.030 Removal of property from mortgaged premises—Penalty. (*Effective July 1, 2004.*) (1) When any real estate in this state is subject to, or is security for, any mortgage, mortgages, lien or liens, other than general liens arising under personal judgments, it shall be unlawful for any person who is the owner, mortgagor, lessee, or occupant of such real estate to destroy or remove or to cause to be destroyed or removed from the real estate any fixtures, buildings, or permanent improvements including a manufactured home whose title has been eliminated under chapter 65.20 RCW, not including crops growing thereon, without having first obtained from the owners or holders of each and all of such mortgages or other liens his, her, or their written consent for such removal or destruction.

(2) Any person willfully violating this section is guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment. [2003 c 53 § 288; 1989 c 343 § 21; 1899 c 75 § 1; RRS § 2709, part. FORMER PART OF SECTION: 1899 c 75 § 2 now codified as RCW 61.12.031.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—Effective date—1989 c 343: See RCW 65.20.940 and 65.20.950.

61.12.031 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 62A

UNIFORM COMMERCIAL CODE

Articles

9A Secured transactions; sales of accounts, contract rights and chattel paper.

ARTICLE 9A

SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

Sections

- 62A.9A-406 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.
62A.9A-408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

62A.9A-406 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective. (a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (j) of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

- (1) If it does not reasonably identify the rights assigned;
- (2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or
- (3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

- (A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;
- (B) A portion has been assigned to another assignee; or
- (C) The account debtor knows that the assignment to that assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e) of this section and RCW 62A.2A-303 and 62A.9A-407, and subject to sub-

sections (h) and (j) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **Inapplicability of subsection (d) to certain sales.** Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note.

(f) [Reserved]

(g) **Subsection (b)(3) not waivable.** Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subsection (b)(3) of this section.

(h) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

(j)(1) **Inapplicability of subsection (d) of this section to certain transactions.** After July 1, 2003, subsection (d) of this section does not apply to the assignment or transfer of or creation of a security interest in:

(A) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2); or

(B) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4).

(2) This subsection will not affect a transfer of structured settlement payment rights under chapter 19.205 RCW. [2003 c 87 § 1; 2001 c 32 § 34; 2000 c 250 § 9A-406.]

Effective date—2003 c 87: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 87 § 3.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective. (a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) **Applicability of subsection (a) of this section to sales of certain rights to payment.** Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) **Legal restrictions on assignment generally ineffective.** A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) **Limitation on ineffectiveness under subsections (a) and (c) of this section.** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) of this section would be effective under law other than this Article but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e)(1) **Inapplicability of subsections (a) and (c) of this section to certain payment intangibles.** After July 1, 2003, subsections (a) and (c) of this section do not apply to the assignment or transfer of or creation of a security interest in:

(A) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2); or

(B) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4).

(2) This subsection will not affect a transfer of structured settlement payment rights under chapter 19.205 RCW. [2003 c 87 § 2; 2000 c 250 § 9A-408.]

Effective date—2003 c 87: See note following RCW 62A.9A-406.

Title 63

PERSONAL PROPERTY

Chapters

63.14 Retail installment sales of goods and services.

63.29 Uniform unclaimed property act.

Chapter 63.14 RCW

RETAIL INSTALLMENT SALES OF GOODS AND SERVICES

Sections

- 63.14.010 Definitions.
- 63.14.130 Retail installment contracts, retail charge agreements, and lender credit card agreements—Service charge agreed to by contract—Other fees and charges prohibited.

63.14.010 Definitions. In this chapter, unless the context otherwise requires:

(1) "Goods" means all chattels personal when purchased primarily for personal, family, or household use and not for commercial or business use, but not including money or, except as provided in the next sentence, things in action. The term includes but is not limited to merchandise certificates or coupons, issued by a retail seller, to be used in their face amount in lieu of cash in exchange for goods or services sold by such a seller and goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part thereof, whether or not severable therefrom;

(2) "Lender credit card" means a card or device under a lender credit card agreement pursuant to which the issuer gives to a cardholder residing in this state the privilege of obtaining credit from the issuer or other persons in purchasing or leasing property or services, obtaining loans, or otherwise, and the issuer of which is not: (a) Principally engaged in the business of selling goods; or (b) a financial institution;

(3) "Lender credit card agreement" means an agreement entered into or performed in this state prescribing the terms of retail installment transactions pursuant to which the issuer may, with the buyer's consent, purchase or acquire one or more retail sellers' indebtedness of the buyer under a sales slip or memorandum evidencing the purchase, lease, loan, or otherwise to be paid in accordance with the agreement. The issuer of a lender credit card agreement shall not be princi-

pally engaged in the business of selling goods or be a financial institution;

(4) "Financial institution" means any bank or trust company, mutual savings bank, credit union, or savings and loan association organized pursuant to the laws of any one of the United States of America or the United States of America, or the laws of a foreign country if also qualified to conduct business in any one of the United States of America or pursuant to the laws of the United States of America;

(5) "Services" means work, labor, or services of any kind when purchased primarily for personal, family, or household use and not for commercial or business use whether or not furnished in connection with the delivery, installation, servicing, repair, or improvement of goods and includes repairs, alterations, or improvements upon or in connection with real property, but does not include services for which the price charged is required by law to be determined or approved by or to be filed, subject to approval or disapproval, with the United States or any state, or any department, division, agency, officer, or official of either as in the case of transportation services;

(6) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller;

(7) "Retail seller" or "seller" means a person engaged in the business of selling goods or services to retail buyers;

(8) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract, a retail charge agreement, or a lender credit card agreement, as defined in this section, which provides for a service charge, as defined in this section, and under which the buyer agrees to pay the unpaid principal balance in one or more installments or which provides for no service charge and under which the buyer agrees to pay the unpaid balance in more than four installments;

(9) "Retail installment contract" or "contract" means a contract, other than a retail charge agreement, a lender credit card agreement, or an instrument reflecting a sale made pursuant thereto, entered into or performed in this state for a retail installment transaction. The term "retail installment contract" may include a chattel mortgage, a conditional sale contract, and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease. The term "retail installment contract" does not include: (a) A "consumer lease," heretofore or hereafter entered into, as defined in RCW 63.10.020; (b) a lease which would constitute such "consumer lease" but for the fact that: (i) It was entered into before April 29, 1983; (ii) the lessee was not a natural person; (iii) the lease was not primarily for personal, family, or household purposes; or (iv) the total contractual obligations exceeded twenty-five thousand dollars; or (c) a lease-purchase agreement under chapter 63.19 RCW;

(10) "Retail charge agreement," "revolving charge agreement," or "charge agreement" means an agreement between a retail buyer and a retail seller that is entered into or

performed in this state and that prescribes the terms of retail installment transactions with one or more sellers which may be made thereunder from time to time and under the terms of which a service charge, as defined in this section, is to be computed in relation to the buyer's unpaid balance from time to time;

(11) "Service charge" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs, any vehicle dealer administrative fee under RCW 46.12.042, any vehicle dealer documentary service fee under RCW 46.70.180(2), or official fees;

(12) "Sale price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction. The sale price may include any taxes, registration and license fees, any vehicle dealer administrative fee, any vehicle dealer documentary service fee, and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations, or improvements;

(13) "Official fees" means the amount of the fees prescribed by law and payable to the state, county, or other governmental agency for filing, recording, or otherwise perfecting, and releasing or satisfying, a retained title, lien, or other security interest created by a retail installment transaction;

(14) "Time balance" means the principal balance plus the service charge;

(15) "Principal balance" means the sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, any vehicle dealer administrative fee, any vehicle dealer documentary service fee, and official fees; and the amount actually paid or to be paid by the retail seller pursuant to an agreement with the buyer to discharge a security interest or lien on like-kind goods traded in or lease interest in the circumstance of a lease for like goods being terminated in conjunction with the sale pursuant to a retail installment contract;

(16) "Person" means an individual, partnership, joint venture, corporation, association, or any other group, however organized;

(17) "Rate" means the percentage which, when multiplied times the outstanding balance for each month or other installment period, yields the amount of the service charge for such month or period. [2003 c 368 § 2; 1999 c 113 § 1; 1997 c 331 § 6; 1993 sp.s. c 5 § 1; 1992 c 134 § 16; 1984 c 280 § 1; 1983 c 158 § 7; 1981 c 77 § 1; 1972 ex.s. c 47 § 1; 1963 c 236 § 1.]

Effective date—1997 c 331: See note following RCW 70.168.135.

Short title—Severability—1992 c 134: See RCW 63.19.900 and 63.19.901.

Severability—1983 c 158: See RCW 63.10.900.

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

[2003 RCW Supp—page 762]

Effective date—1972 ex.s. c 47: "This 1972 amendatory act shall take effect on January 1, 1973." [1972 ex.s. c 47 § 5.]

63.14.130 Retail installment contracts, retail charge agreements, and lender credit card agreements—Service charge agreed to by contract—Other fees and charges prohibited. The service charge shall be inclusive of all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved or contracted therefor from the buyer, except for any vehicle dealer administrative fee under RCW 46.12.042 or for any vehicle dealer documentary service fee under RCW 46.70.180(2).

(1) The service charge, in a retail installment contract, shall not exceed the dollar amount or rate agreed to by contract and disclosed under RCW 63.14.040(1)(h).

(2) The service charge in a retail charge agreement, revolving charge agreement, lender credit card agreement, or charge agreement, shall not exceed the schedule or rate agreed to by contract and disclosed under RCW 63.14.120(1). If the service charge so computed is less than one dollar for any month, then one dollar may be charged. [2003 c 368 § 3; 1999 c 113 § 4; 1997 c 331 § 7; 1992 c 193 § 1. Prior: 1989 c 112 § 1; 1989 c 14 § 5; 1987 c 318 § 1; 1984 c 280 § 5; 1981 c 77 § 5; 1969 c 2 § 3 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 8; 1963 c 236 § 13.]

Effective date—1997 c 331: See note following RCW 70.168.135.

Effective date—1987 c 318: "This act shall take effect January 1, 1988." [1987 c 318 § 2.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

Chapter 63.29 RCW

UNIFORM UNCLAIMED PROPERTY ACT

Sections

63.29.020	Property presumed abandoned—General rule. (<i>Effective January 1, 2004.</i>)
63.29.050	Checks, drafts, and similar instruments issued or certified by banking and financial organizations. (<i>Effective January 1, 2004.</i>)
63.29.060	Bank deposits and funds in financial organizations. (<i>Effective January 1, 2004.</i>)
63.29.070	Funds owing under life insurance policies. (<i>Effective January 1, 2004.</i>)
63.29.100	Stock and other intangible interests in business associations. (<i>Effective January 1, 2004.</i>)
63.29.120	Property held by agents and fiduciaries. (<i>Effective January 1, 2004.</i>)
63.29.140	Gift certificates and credit memos. (<i>Effective January 1, 2004.</i>)
63.29.170	Report of abandoned property.
63.29.180	Notice and publication of lists of abandoned property.

63.29.020 Property presumed abandoned—General rule. (*Effective January 1, 2004.*) (1) Except as otherwise provided by this chapter, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned.

(2) Property, with the exception of unredeemed Washington state lottery tickets and unrepresented winning parimutuel tickets, is payable and distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

(3) This chapter does not apply to claims drafts issued by insurance companies representing offers to settle claims unliquidated in amount or settled by subsequent drafts or other means.

(4) This chapter does not apply to property covered by chapter 63.26 RCW.

(5) This chapter does not apply to used clothing, umbrellas, bags, luggage, or other used personal effects if such property is disposed of by the holder as follows:

(a) In the case of personal effects of negligible value, the property is destroyed; or

(b) The property is donated to a bona fide charity. [2003 1st sp.s. c 13 § 1; 1992 c 122 § 1; 1988 c 226 § 2; 1983 c 179 § 2.]

Effective dates—2003 1st sp.s. c 13: "(1) Sections 8 through 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect August 1, 2003.

(2) Sections 11 through 16 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2003.

(3) Sections 1 through 7 of this act take effect January 1, 2004." [2003 1st sp.s. c 13 § 17.]

63.29.050 Checks, drafts, and similar instruments issued or certified by banking and financial organizations. (Effective January 1, 2004.) (1) Any sum payable on a check, draft, or similar instrument, except those subject to RCW 63.29.040, on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which has been outstanding for more than three years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless the owner, within three years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee thereof.

(2) A holder may not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge, and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them. [2003 1st sp.s. c 13 § 2; 1983 c 179 § 5.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.060 Bank deposits and funds in financial organizations. (Effective January 1, 2004.) (1) Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless the owner, within three years, has:

(a) In the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) Communicated in writing with the banking or financial organization concerning the property;

(c) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;

(d) Owned other property to which subsection (1)(a), (b), or (c) of this section applies and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection at the address to which communications regarding the other property regularly are sent; or

(e) Had another relationship with the banking or financial organization concerning which the owner has:

(i) In the case of a deposit, increased or decreased the amount of the deposit or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(ii) Communicated in writing with the banking or financial organization; or

(iii) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.

(2) For purposes of subsection (1) of this section property includes interest and dividends.

(3) This chapter shall not apply to deposits made by a guardian or decedent's personal representative with a banking organization when the deposit is subject to withdrawal only upon the order of the court in the guardianship or estate proceeding.

(4) A holder may not impose with respect to property described in subsection (1) of this section any charge due to dormancy or inactivity or cease payment of interest unless:

(a) There is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose a charge or cease payment of interest;

(b) For property in excess of ten dollars, the holder, no more than three months before the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before June 30, 1983; and

(c) The holder regularly imposes such charges or ceases payment of interest and does not regularly reverse or otherwise cancel them or retroactively credit interest with respect to the property.

(5) Any property described in subsection (1) of this section that is automatically renewable is matured for purposes of subsection (1) of this section upon the expiration of its initial time period, or after one year if the initial period is less than one year, but in the case of any renewal to which the owner consents at or about the time of renewal by communi-

cating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in RCW 63.29.190, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result. [2003 1st sp.s. c 13 § 3; 1983 c 179 § 6.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.070 Funds owing under life insurance policies. (*Effective January 1, 2004.*) (1) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than three years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in subsection (3)(b) of this section is presumed abandoned if unclaimed for more than two years.

(2) If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

(3) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

(a) The company knows that the insured or annuitant has died; or

(b)(i) The insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based;

(ii) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in subparagraph (i) of this subsection; and

(iii) Neither the insured nor any other person appearing to have an interest in the policy within the preceding two years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(4) For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection (1) of this section if the insured has died or the insured or the beneficiaries of the policy otherwise have become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other

nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

(6) Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(7) Commencing two years after June 30, 1983, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the following information:

(a) The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class;

(b) The address of each beneficiary; and

(c) The relationship of each beneficiary to the insured.

[2003 1st sp.s. c 13 § 4; 1983 c 179 § 7.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.100 Stock and other intangible interests in business associations. (*Effective January 1, 2004.*) (1)

Except as provided in subsections (2) and (5) of this section, stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for three years and the owner within three years has not:

(a) Communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(b) Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

(2) At the expiration of a three-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least five dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If five dividends, distributions, or other sums are paid during the three-year period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If five dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been five dividends, distributions, or other sums that have not been claimed by the owner.

(3) The running of the three-year period of abandonment ceases immediately upon the occurrence of a communication referred to in subsection (1) of this section. If any future div-

dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.

(4) At the time any interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(5) This chapter shall not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless:

(a) The records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within three years communicated in any manner described in subsection (1) of this section; or

(b) Three years have elapsed since the location of the owner became unknown to the association, as evidenced by the return of official shareholder notifications or communications by the postal service as undeliverable, and the owner has not within those three years communicated in any manner described in subsection (1) of this section. The three-year period from the return of official shareholder notifications or communications shall commence from the earlier of the return of the second such mailing or the date the holder discontinues mailings to the shareholder. [2003 1st sp.s. c 13 § 5; 1996 c 45 § 1; 1983 c 179 § 10.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.120 Property held by agents and fiduciaries. (*Effective January 1, 2004.*) (1) Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within three years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary.

(2) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the internal revenue laws of the United States are not payable or distributable within the meaning of subsection (1) of this section unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(3) For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between him and the business association provides otherwise.

(4) For the purposes of this chapter, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned. [2003 1st sp.s. c 13 § 6; 1983 c 179 § 12.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.140 Gift certificates and credit memos. (*Effective January 1, 2004.*) (1) A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than three years after becoming payable or distributable is presumed abandoned.

(2) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo. [2003 1st sp.s. c 13 § 7; 1983 c 179 § 14.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.170 Report of abandoned property. (1) A person holding property presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the department concerning the property as provided in this section.

(2) The report must be verified and must include:

(a) Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property with a value of more than fifty dollars presumed abandoned under this chapter;

(b) In the case of unclaimed funds of more than fifty dollars held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(c) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and where it may be inspected by the department, and any amounts owing to the holder;

(d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items with a value of fifty dollars or less each may be reported in the aggregate;

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(f) Other information the department prescribes by rule as necessary for the administration of this chapter.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his or her name while holding the property, the holder shall file with the report all known names and addresses of each previous holder of the property.

(4) The report must be filed before November 1st of each year and shall include all property presumed abandoned and subject to custody as unclaimed property under this chapter that is in the holder's possession as of the preceding June 30th. On written request by any person required to file a report, the department may postpone the reporting date.

(5) After May 1st, but before August 1st, of each year in which a report is required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at the last known address informing him or her that the holder is in possession of property subject to this chapter if:

(a) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(b) The claim of the apparent owner is not barred by the statute of limitations; and

(c) The property has a value of more than seventy-five dollars. [2003 c 237 § 1; 1996 c 45 § 2; 1993 c 498 § 7; 1983 c 179 § 17.]

63.29.180 Notice and publication of lists of abandoned property. (1) The department shall cause a notice to be published not later than November 1st, immediately following the report required by RCW 63.29.170 in a newspaper of general circulation in the county of this state in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice must be published in the county in which the holder of the property has its principal place of business within this state.

(2) The published notice must be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and contain:

(a) The names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice within the county as specified in subsection (1) of this section; and

(b) A statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the department.

(3) The department is not required to publish in the notice any items of seventy-five dollars or less unless the department considers their publication to be in the public interest.

(4) Not later than September 1st, immediately following the report required by RCW 63.29.170, the department shall mail a notice to each person whose last known address is listed in the report and who appears to be entitled to property with a value of more than seventy-five dollars presumed abandoned under this chapter and any beneficiary of a life or endowment insurance policy or annuity contract for whom the department has a last known address.

(5) The mailed notice must contain:

(a) A statement that, according to a report filed with the department, property is being held to which the addressee appears entitled; and

(b) The name and last known address of the person holding the property and any necessary information regarding the changes of name and last known address of the holder.

(6) This section is not applicable to sums payable on travelers checks, money orders, and other written instruments presumed abandoned under RCW 63.29.040. [2003 c 237 § 2; 1993 c 498 § 9; 1986 c 84 § 1; 1983 c 179 § 18.]

Title 64

REAL PROPERTY AND CONVEYANCES

Chapters

64.06 Residential real property transfers—Seller's disclosures.

64.36 Timeshare regulation.

Chapter 64.06 RCW

RESIDENTIAL REAL PROPERTY TRANSFERS—SELLER'S DISCLOSURES

Sections

64.06.020 Seller's duty—Format of disclosure statement—Minimum information.

64.06.020 Seller's duty—Format of disclosure statement—Minimum information. (1) In a transaction for the sale of residential property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement, or unless the transfer is exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA". If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT..... ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller . . . is/ . . . is not occupying the property.

I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

- 1. TITLE
A. Do you have legal authority to sell the property?
*B. Is title to the property subject to any of the following?
1) First right of refusal
2) Option
3) Lease or rental agreement
4) Life estate?
*C. Are there any encroachments, boundary agreements, or boundary disputes?
*D. Are there any rights of way, easements, or access limitations that may affect the Buyer's use of the property?
*E. Are there any written agreements for joint maintenance of an easement or right of way?
*F. Is there any study, survey project, or notice that would adversely affect the property?
*G. Are there any pending or existing assessments against the property?
*H. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?
*I. Is there a boundary survey for the property?
*J. Are there any covenants, conditions, or restrictions which affect the property?
2. WATER
A. Household Water
(1) The source of water for the property is:
Private or publicly owned water system
Private well serving only the subject property
Other water system
If shared, are there any written agreements?
(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?
(3) Are there any known problems or repairs needed?

- (4) During your ownership, has the source provided an adequate year round supply of potable water?
*5) Are there any water treatment systems for the property?
B. Irrigation
1) Are there any water rights for the property, such as a water right, permit, certificate, or claim?
(a) If yes, have the water rights been used during the last five years?
(b) If so, is the certificate available?
C. Outdoor Sprinkler System
1) Is there an outdoor sprinkler system for the property?
2) If yes, are there any defects in the system?
(3) If yes, is the sprinkler system connected to irrigation water?
3. SEWER/ON-SITE SEWAGE SYSTEM
A. The property is served by: Public sewer system, On-site sewage system, or Other disposal system.
B. If public sewer system service is available to the property, is the house connected to the sewer main?
C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?
D. If the property is connected to an on-site sewage system:
(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction?
(2) When was it last pumped?
(3) Are there any defects in the operation of the on-site sewage system?
(4) When was it last inspected?
By Whom:
(5) For how many bedrooms was the on-site sewage system approved?
E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system?
*F. Have there been any changes or repairs to the on-site sewage system?
G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property?
H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year?
NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES
4. STRUCTURAL
*A. Has the roof leaked?
*B. Has the basement flooded or leaked?
*C. Have there been any conversions, additions, or remodeling?
(1) If yes, were all building permits obtained?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*D. If yes, were all final inspections obtained?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*E. Are there any substances, materials, or products on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	D. Do you know the age of the house? If yes, year of original construction:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*G. Has the property ever been used as an illegal drug manufacturing site?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*E. Has there been any settling, slippage, or sliding of the property or its improvements?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*H. Are there any radio towers in the area that may cause interference with telephone reception?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*F. Are there any defects with the following: (If yes, please check applicable items and explain.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
	<input type="checkbox"/> Foundations	<input type="checkbox"/> Decks	<input type="checkbox"/> Exterior Walls				8. MANUFACTURED AND MOBILE HOMES
	<input type="checkbox"/> Chimneys	<input type="checkbox"/> Interior Walls	<input type="checkbox"/> Fire Alarm				If the property includes a manufactured or mobile home,
	<input type="checkbox"/> Doors	<input type="checkbox"/> Windows	<input type="checkbox"/> Patio	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*A. Did you make any alterations to the home? If yes, please describe the alterations:
	<input type="checkbox"/> Ceilings	<input type="checkbox"/> Slab Floors	<input type="checkbox"/> Driveways	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*B. Did any previous owner make any alterations to the home? If yes, please describe the alterations:
	<input type="checkbox"/> Pools	<input type="checkbox"/> Hot Tub	<input type="checkbox"/> Sauna	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*C. If alterations were made, were permits or variances for these alterations obtained?
	<input type="checkbox"/> Sidewalks	<input type="checkbox"/> Outbuildings	<input type="checkbox"/> Fireplaces				9. FULL DISCLOSURE BY SELLERS
	<input type="checkbox"/> Garage Floors	<input type="checkbox"/> Walkways	<input type="checkbox"/> Siding				A. Other conditions or defects:
	<input type="checkbox"/> Other	<input type="checkbox"/> Wood Stoves					*Are there any other existing material defects affecting the property that a prospective buyer should know about?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	B. Verification: The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	H. During your ownership, has the property had any wood destroying organism or pest infestation?				II. BUYER'S ACKNOWLEDGMENT
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	I. Is the attic insulated?				A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	J. Is the basement insulated?				B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
			5. SYSTEMS AND FIXTURES				C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
			*A. If any of the following systems or fixtures are included with the transfer, are there any defects? If yes, please explain.				D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Electrical system, including wiring, switches, outlets, and service				E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Plumbing system, including pipes, faucets, fixtures, and toilets				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Hot water tank				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Garbage disposal				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Appliances				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Sump pump				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Heating and cooling systems				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Security system				
			<input type="checkbox"/> Owned <input type="checkbox"/> Leased				
			Other				
			*B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.)				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Security system				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Tanks (type):				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	Satellite dish				
			Other:				
			6. COMMON INTERESTS				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	A. Is there a Home Owners' Association? Name of Association				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	B. Are there regular periodic assessments: \$. . . per <input type="checkbox"/> Month <input type="checkbox"/> Year <input type="checkbox"/> Other				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*C. Are there any pending special assessments?				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?				
			7. GENERAL				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*A. Have there been any drainage problems on the property?				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*B. Does the property contain fill material?				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	D. Is the property in a designated flood plain?				

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND

ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2003 c 200 § 1; 1996 c 301 § 2; 1994 c 200 § 3.]

Effective date—1996 c 301 § 2: "Section 2 of this act shall take effect July 1, 1996." [1996 c 301 § 7.]

Chapter 64.36 RCW
TIMESHARE REGULATION

Sections

- 64.36.020 Registration required before advertisement, solicitation, or offer—Requirements for registration—Exemption authorized—Penalties. (Effective July 1, 2004.)
64.36.028 Timeshare interest—Incomplete projects or facilities—Promoter's obligations—Funds—Purchaser's rights.
64.36.210 Unlawful acts—Penalties. (Effective July 1, 2004.)

64.36.020 Registration required before advertisement, solicitation, or offer—Requirements for registration—Exemption authorized—Penalties. (Effective July 1, 2004.) (1) A timeshare offering registration must be effective before any advertisement, solicitation of an offer, or any offer or sale of a timeshare may be made in this state.

(2) An applicant shall apply for registration by filing with the director:

- (a) A copy of the disclosure document prepared in accordance with RCW 64.36.140 and signed by the applicant;
(b) An application for registration prepared in accordance with RCW 64.36.030;
(c) An irrevocable consent to service of process signed by the applicant;
(d) The prescribed registration fee; and
(e) Any other information the director may by rule require in the protection of the public interest.

(3) The registration requirements do not apply to:

- (a) An offer, sale, or transfer of not more than one timeshare in any twelve-month period;
(b) A gratuitous transfer of a timeshare;
(c) A sale under court order;
(d) A sale by a government or governmental agency;
(e) A sale by forfeiture, foreclosure, or deed in lieu of foreclosure; or
(f) A sale of a timeshare property or all timeshare units therein to any one purchaser.

(4) The director may by rule or order exempt any potential registrant from the requirements of this chapter if the

director finds registration is unnecessary for the protection of the public interest.

(5)(a) Except as provided in (b) of this subsection, any person who violates this section is guilty of a gross misdemeanor.

(b) Any person who knowingly violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(c) No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation. [2003 c 53 § 289; 1983 1st ex.s. c 22 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

64.36.028 Timeshare interest—Incomplete projects or facilities—Promoter's obligations—Funds—Purchaser's rights. (1) An effective registration pursuant to this chapter is required for any party to offer to sell a timeshare interest. A promoter who offers to sell or sells revocable timeshare interests in incomplete projects or facilities is limited by and must comply with all of the requirements of RCW 64.36.025. If a promoter seeks to enter into irrevocable purchase agreements with purchasers for timeshare interests in incomplete projects or facilities, the promoter must meet the requirements in this section in addition to RCW 64.36.020 and the following limitations and conditions apply:

(a) The promoter is limited to offering or selling only fee simple deeded timeshare interests;

(b) Construction on the project must have begun by the time the irrevocable purchase agreement is signed and the purchaser must have the right to occupy the unit and use all contracted for amenities no later than within two years of the date that the irrevocable purchase agreement is signed;

(c) The promoter must establish an independent third-party escrow account for the purpose of protecting the funds or other property paid, pledged, or deposited by purchasers;

(d) The promoter's solicitations, advertisements, and promotional materials must clearly and conspicuously disclose that "THE PROJECT IS NOT YET COMPLETED; IT IS STILL UNDER CONSTRUCTION"; and

(e) The promoter's solicitations, advertisements, and promotional materials and the timeshare interest purchase agreement must clearly and conspicuously provide for and disclose the last possible estimated date for completion of construction of any building the promoter is contractually obligated to the purchaser to complete.

(2) The timeshare interest purchase agreement must contain the following language in fourteen-point bold face type: "If the building in which the timeshare interest is located and all contracted for amenities are not completed by [estimated date of completion], the purchaser has the right to void the purchase agreement and is entitled to a full, unqualified refund of all moneys paid."

(3) One hundred percent of all funds or other property that is received from or on behalf of purchasers of timeshare interests prior to the occurrence of events required in this section must be deposited pursuant to a third-party escrow agreement approved by the director. For purposes of this section, "purchasers" includes all persons solicited, offered, or who purchased a timeshare interest by a promoter within the state of Washington. An escrow agent shall maintain the

account only in such a manner as to be under the direct supervision and control of the escrow agent. The escrow agent has a fiduciary duty to each purchaser to maintain the escrow accounts in accordance with good accounting practices and to release the purchaser's funds or other property from escrow only in accordance with this chapter. If the escrow agent receives conflicting demands for funds or property held in escrow, the escrow agent shall immediately notify the department of licensing of the dispute and the department shall determine if and how the funds should be distributed. If the purchaser, promoter, or escrow agent disagrees with the department's determination, the parties have the right to request an administrative hearing under chapter 34.05 RCW. Funds may be released from the escrow account to the purchaser if the purchaser cancels within the cancellation period, or to the promoter only when all three of the following conditions occur:

- (a) The purchaser's cancellation period has expired;
 - (b) Closing has occurred; and
 - (c) Construction is complete and the building is ready to occupy.
- (4) In lieu of depositing purchaser funds into an escrow account, the promoter may post with the department a bond in an amount equal to or greater than the amount that would otherwise be required to be placed into the escrow account.

(5) Any purchaser has the right to void the timeshare purchase agreement and request a full, unqualified refund if construction of the building in which the timeshare interest is located or all contracted for amenities are not completed within two years from the date that the irrevocable purchase agreement is signed or by the last estimated date of construction contained in the irrevocable purchase agreement, whichever is earlier.

(6) If the completed timeshare building or contracted for amenities are materially and adversely different from the building or amenities that were promised to purchasers at the time that the purchase agreements were signed, the director may declare any or all of the purchaser contracts void. Before declaring the contracts void, the director shall give the promoter the opportunity for a hearing in accordance with chapters 34.05 and 18.235 RCW.

(7) If the promoter intends to or does pledge or borrow against funds or properties, that are held in escrow or protected by a bond, to help finance in whole or in part the construction of the timeshare project or to help pay for operating costs, this must be fully, plainly, and conspicuously disclosed in all written advertising, in all written solicitations for the sale of the timeshare interests, in the registration with the director, and in the purchase agreement or contract.

(8) A promoter who obtains an effective registration for a revocable timeshare interest reservation must meet the requirements of this section in order to complete an irrevocable purchase agreement. [2003 c 348 § 1.]

64.36.210 Unlawful acts—Penalties. (Effective July 1, 2004.) (1) It is unlawful for any person in connection with the offer, sale, or lease of any timeshare in the state:

- (a) To make any untrue or misleading statement of a material fact, or to omit a material fact;
- (b) To employ any device, scheme, or artifice to defraud;

[2003 RCW Supp—page 770]

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(d) To file, or cause to be filed, with the director any document which contains any untrue or misleading information; or

(e) To violate any rule or order of the director.

(2)(a) Any person who knowingly violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(b) No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation. [2003 c 53 § 290; 1983 1st ex.s. c 22 § 20.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

64.36.230 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 65

RECORDING, REGISTRATION, AND LEGAL PUBLICATION

Chapters

65.04 Duties of county auditor.

65.12 Registration of land titles (Torrens Act).

Chapter 65.04 RCW

DUTIES OF COUNTY AUDITOR

Sections

65.04.090 Further endorsements—Delivery.

65.04.090 Further endorsements—Delivery. The recording officer must also endorse upon such an instrument, paper, or notice, the time when and the book and page in which it is recorded, and must thereafter either electronically transmit or deliver it to the party leaving the same for record or to the address on the face of the document. [2003 c 239 § 1; 1996 c 229 § 5; Code 1881 § 2732; RRS § 10607.]

Chapter 65.12 RCW

REGISTRATION OF LAND TITLES (TORRENS ACT)

Sections

65.12.730 Certificate subject of theft—Penalty. *(Effective July 1, 2004.)*
 65.12.740 Perjury. *(Effective July 1, 2004.)*
 65.12.750 Fraud—False entries—Penalty. *(Effective July 1, 2004.)*
 65.12.760 Forgery—Penalty. *(Effective July 1, 2004.)*

65.12.730 Certificate subject of theft—Penalty. (Effective July 1, 2004.) Certificates of title or duplicate certificates entered under this chapter, shall be subjects of theft, and anyone unlawfully stealing or carrying away any such certificate, shall, upon conviction thereof, be deemed guilty of theft under chapter 9A.56 RCW. [2003 c 53 § 291; 1907 c 250 § 89; RRS § 10718.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

65.12.740 Perjury. (*Effective July 1, 2004.*) Whoever knowingly swears falsely to any statement required by this chapter to be made under oath is guilty of perjury under chapter 9A.72 RCW. [2003 c 53 § 292; 1907 c 250 § 90; RRS § 10719.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

65.12.750 Fraud—False entries—Penalty. (*Effective July 1, 2004.*) Whoever fraudulently procures, or assists fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title, or other instrument, or of any entry in the register of titles, or other book kept in the registrar's office, or of any erasure or alteration in any entry in any such book, or in any instrument authorized by this chapter, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement, or affidavit affecting registered land, shall be guilty of a class C felony, and upon conviction, shall be fined in any sum not exceeding five thousand dollars, or imprisoned in a state correctional facility for not more than five years, or both such fine and imprisonment, in the discretion of the court. [2003 c 53 § 293; 1907 c 250 § 91; RRS § 10720.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

65.12.760 Forgery—Penalty. (*Effective July 1, 2004.*) Whoever forges or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature, or handwriting of any officer of the registry office, in case where such officer is expressly or impliedly authorized to affix his or her signature; or forges or procures to be forged, or assists in forging, the name, signature, or handwriting of any person whomsoever, to any instrument which is expressly or impliedly authorized to be signed by such person; or uses any document upon which any impression or part of the impression of any seal of the registrar has been forged, knowing the same to have been forged, or any document, the signature to which has been forged, shall be guilty of a class B felony, and upon conviction shall be imprisoned in a state correctional facility for not more than ten years, or fined not more than one thousand dollars, or both fined and imprisoned, in the discretion of the court. [2003 c 53 § 294; 1907 c 250 § 92; RRS § 10721.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Title 66

ALCOHOLIC BEVERAGE CONTROL

Chapters

- 66.08** Liquor control board—General provisions.
- 66.16** State liquor stores.
- 66.20** Liquor permits.
- 66.24** Licenses—Stamp taxes.
- 66.28** Miscellaneous regulatory provisions.
- 66.44** Enforcement—Penalties.

Chapter 66.08 RCW LIQUOR CONTROL BOARD— GENERAL PROVISIONS

Sections

- 66.08.150 Board's action as to permits and licenses—Administrative procedure act, applicability—Adjudicative proceeding—Opportunity for hearing—Summary suspension.
- 66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties, and cities—Withholding of funds for non-compliance.

66.08.150 Board's action as to permits and licenses—Administrative procedure act, applicability—Adjudicative proceeding—Opportunity for hearing—Summary suspension. The action, order, or decision of the board as to any denial of an application for the reissuance of a permit or license or as to any revocation, suspension, or modification of any permit or license shall be an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW.

(1) An opportunity for a hearing may be provided an applicant for the reissuance of a permit or license prior to the disposition of the application, and if no such opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

(2) An opportunity for a hearing must be provided a permittee or licensee prior to a revocation or modification of any permit or license and, except as provided in subsection (4) of this section, prior to the suspension of any permit or license.

(3) No hearing shall be required until demanded by the applicant, permittee, or licensee.

(4) The board may summarily suspend a license or permit for a period of up to one hundred eighty days without a prior hearing if it finds that public health, safety, or welfare imperatively require emergency action, and incorporates a finding to that effect in its order; and proceedings for revocation or other action must be promptly instituted and determined. The board's enforcement division shall complete a preliminary staff investigation of the violation before requesting an emergency suspension by the board. [2003 c 320 § 1; 1989 c 175 § 122; 1967 c 237 § 23; 1933 ex.s. c 62 § 62; RRS § 7306-62.]

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

66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties, and cities—Withholding of funds for noncompliance. (1) Except for revenues generated by the 2003 surcharge of \$0.42/liter on retail sales of spirits that shall be distributed to the state general fund during the 2003-2005 biennium, when excess funds are distributed, all moneys subject to distribution shall be disbursed as follows:

(a) Three-tenths of one percent to border areas under RCW 66.08.195; and

(b) From the amount remaining after distribution under (a) of this subsection, (i) fifty percent to the general fund of the state, (ii) ten percent to the counties of the state, and (iii) forty percent to the incorporated cities and towns of the state.

(2) During the months of June, September, December, and March of each year, prior to disbursing the distribution to incorporated cities and towns under subsection (1)(b) of this

section, the treasurer shall deduct from that distribution an amount that will fund that quarter's allotments under RCW 43.88.110 from any legislative appropriation from the city and town research services account. The treasurer shall deposit the amount deducted into the city and town research services account.

(3) The governor may notify and direct the state treasurer to withhold the revenues to which the counties and cities are entitled under this section if the counties or cities are found to be in noncompliance pursuant to RCW 36.70A.340. [2003 1st sp.s. c 25 § 927; 2002 c 38 § 2; 2000 c 227 § 2; 1995 c 159 § 1; 1991 sp.s. c 32 § 34; 1988 c 229 § 4; 1957 c 175 § 6. Prior: 1955 c 109 § 2; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.090.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Effective date—2000 c 227: See note following RCW 43.110.060.

Effective date—1995 c 159: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 159 § 6.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Finding—1988 c 229: "The legislature finds and declares that certain counties and municipalities near international borders are subjected to a constant volume and flow of travelers and visitors for whom local government services must be provided. The legislature further finds that it is in the public interest and for the protection of the health, property, and welfare of the residents and visitors to provide supplemental resources to augment and maintain existing levels of police protection in such areas and to alleviate the impact of such added burdens." [1988 c 229 § 2.]

Effective date—1988 c 229 §§ 2-4: "Sections 2 through 4 of this act shall take effect July 1, 1989." [1988 c 229 § 5.]

Chapter 66.16 RCW STATE LIQUOR STORES

Sections

66.16.010 Board may establish—Price standards—Prices in special instances.

66.16.010 Board may establish—Price standards—Prices in special instances. (1) There shall be established at such places throughout the state as the liquor control board, constituted under this title, shall deem advisable, stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this title and the regulations: PROVIDED, That the prices of all liquor shall be fixed by the board from time to time so that the net annual revenue received by the board therefrom shall not exceed thirty-five percent. Effective no later than September 1, 2003, the liquor control board shall add an equivalent surcharge of \$0.42 per liter on all retail sales of spirits, excluding licensee, military, and tribal sales. The intent of this surcharge is to raise \$14,000,000 in additional general fund-state revenue for the 2003-2005 biennium. To the extent that a lesser surcharge is sufficient to raise \$14,000,000, the board may reduce the amount of the surcharge. The board shall remove the surcharge once it generates \$14,000,000, but no later than June 30, 2005.

(2) The liquor control board may, from time to time, fix the special price at which pure ethyl alcohol may be sold to

physicians and dentists and institutions regularly conducted as hospitals, for use or consumption only in such hospitals; and may also fix the special price at which pure ethyl alcohol may be sold to schools, colleges and universities within the state for use for scientific purposes. Regularly conducted hospitals may have right to purchase pure ethyl alcohol on a federal permit.

(3) The liquor control board may also fix the special price at which pure ethyl alcohol may be sold to any department, branch or institution of the state of Washington, federal government, or to any person engaged in a manufacturing or industrial business or in scientific pursuits requiring alcohol for use therein.

(4) The liquor control board may also fix a special price at which pure ethyl alcohol may be sold to any private individual, and shall make regulations governing such sale of alcohol to private individuals as shall promote, as nearly as may be, the minimum purchase of such alcohol by such persons. [2003 1st sp.s. c 25 § 928; 1939 c 172 § 10; 1937 c 62 § 1; 1933 ex.s. c 62 § 4; RRS § 7306-4. Formerly RCW 66.16.010 and 66.16.020.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Chapter 66.20 RCW LIQUOR PERMITS

Sections

66.20.200 Unlawful acts relating to identification or certification card—Penalties. (*Effective July 1, 2004.*)

66.20.200 Unlawful acts relating to identification or certification card—Penalties. (*Effective July 1, 2004.*) (1) It shall be unlawful for the owner of a card of identification to transfer the card to any other person for the purpose of aiding such person to procure alcoholic beverages from any licensee or store employee. Any person who shall permit his or her card of identification to be used by another or transfer such card to another for the purpose of aiding such transferee to obtain alcoholic beverages from a licensee or store employee or gain admission to a premises or portion of a premises classified by the board as off-limits to persons under twenty-one years of age, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution.

(2) Any person not entitled thereto who unlawfully procures or has issued or transferred to him or her a card of identification, and any person who possesses a card of identification not issued to him or her, and any person who makes any false statement on any certification card required by RCW 66.20.190, to be signed by him or her, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution. [2003 c 53 § 295; 2002 c 175 § 41; 1994 c 201 § 1; 1987 c 101 § 4; 1973 1st ex.s. c 209 § 8; 1971 ex.s. c 15 § 6; 1969 ex.s. c 178 § 2; 1959 c 111 § 8; 1949 c 67 § 5; Rem. Supp. 1949 § 7306-19E.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2002 c 175: See note following RCW 7.80.130.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

Unlawful transfer to minor of age identification: RCW 66.44.325.

Chapter 66.24 RCW LICENSES—STAMP TAXES

Sections

- 66.24.170 Domestic winery license—Winery as distributor and/or retailer of own wine—Off-premise samples—Domestic wine made into sparkling wine—Sales at qualifying farmers markets.
- 66.24.240 Domestic brewery's license—Fee—Distribution and/or retail—Contract-production—Sales at qualifying farmers markets.
- 66.24.244 Microbrewery's license—Endorsement for on-premises consumption—Fees—Determination of status as tavern or beer and/or wine restaurant—Sales at qualifying farmers markets.
- 66.24.250 Beer distributor's license—Fee.
- 66.24.261 Beer importer's license—Principal office—Report—Labels—Fee.
- 66.24.270 Manufacturer's monthly report to board of quantity of malt liquor sales or strong beer made to beer distributors—Certificate of approval and report for out-of-state or imported beer—Fee.
- 66.24.290 Authorized, prohibited sales—Monthly reports—Added tax—Distribution—Late payment penalty—Additional taxes, purposes.
- 66.24.320 Beer and/or wine restaurant license—Containers—Fee—Caterer's endorsement.
- 66.24.330 Tavern license—Fees.
- 66.24.360 Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—International export endorsement.
- 66.24.371 Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory.
- 66.24.420 Liquor by the drink, spirits, beer, and wine restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement.
- 66.24.452 Private club beer and wine license—Fee.
- 66.24.570 Sports/entertainment facility license—Fee—Caterer's endorsement.

66.24.170 Domestic winery license—Winery as distributor and/or retailer of own wine—Off-premise samples—Domestic wine made into sparkling wine—Sales at qualifying farmers markets. (1) There shall be a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year, one hundred dollars per year; and two hundred fifty thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a distributor and/or retailer of wine of its own production. Any winery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers.

(4) A domestic winery licensed under this section, at locations separate from any of its production or manufacturing sites, may serve samples of its own products, with or without charge, and sell wine of its own production at retail for off-premise consumption, provided that: (a) Each additional location has been approved by the board under RCW 66.24.010; (b) the total number of additional locations does

not exceed two; and (c) a winery may not act as a distributor at any such additional location. Each additional location is deemed to be part of the winery license for the purpose of this title. Nothing in this subsection shall be construed to prevent a domestic winery from holding multiple domestic winery licenses.

(5)(a) A domestic winery licensed under this section may apply to the board for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars. An endorsement issued pursuant to this subsection does not count toward the two additional retail locations limit specified in this section.

(b) For each month during which a domestic winery will sell wine at a qualifying farmers market, the winery must provide the board or its designee a list of the dates, times, and locations at which bottled wine may be offered for sale. This list must be received by the board before the winery may offer wine for sale at a qualifying farmers market.

(c) The wine sold at qualifying farmers markets must be made entirely from grapes grown in a recognized Washington appellation or from other agricultural products grown in this state.

(d) Each approved location in a qualifying farmers market is deemed to be part of the winery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a winery. The winery may not store wine at a farmers market beyond the hours that the winery offers bottled wine for sale. The winery may not act as a distributor from a farmers market location.

(e) Before a winery may sell bottled wine at a qualifying farmers market, the farmers market must apply to the board for authorization for any winery with an endorsement approved under this subsection to sell bottled wine at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved winery may sell bottled wine; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled wine may be sold. Before authorizing a qualifying farmers market to allow an approved winery to sell bottled wine at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license. [2003 c 44 § 1; 2000 c 141 § 1; 1997 c 321 § 3; 1991 c 192 § 2; 1982 c 85 § 4; 1981 1st ex.s. c 5 § 31; 1939 c 172 § 1 (23C); 1937 c 217 § 1 (23C) (adding new section 23-C to 1933 ex.s. c 62); RRS § 7306-23C. Formerly RCW 66.24.170, 66.24.180, and 66.24.190.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.240 Domestic brewery's license—Fee—Distribution and/or retail—Contract-production—Sales at qualifying farmers markets. (1) There shall be a license for domestic breweries; fee to be two thousand dollars for production of sixty thousand barrels or more of malt liquor per year.

(2) Any domestic brewery, except for a brand owner of malt beverages under RCW 66.04.010(5), licensed under this section may also act as a distributor and/or retailer for beer of its own production. Any domestic brewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers.

(3) Any domestic brewery licensed under this section may contract-produce beer for a brand owner of malt beverages defined under RCW 66.04.010(5), and this contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

(4)(a) A domestic brewery licensed under this section and qualified for a reduced rate of taxation pursuant to RCW 66.24.290(3)(b) may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a domestic brewery will sell beer at a qualifying farmers market, the domestic brewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the domestic brewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the domestic brewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a domestic brewery. The domestic brewery may not store beer at a farmers market beyond the hours that the domestic brewery offers bottled beer for sale. The domestic brewery may not act as a distributor from a farmers market location.

(e) Before a domestic brewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any domestic brewery with an endorsement approved under this subsection to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved domestic brewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved domestic brewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (4)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises

on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer. [2003 c 154 § 1; 2000 c 142 § 2; 1997 c 321 § 11; 1985 c 226 § 1; 1982 c 85 § 5; 1981 1st ex.s. c 5 § 13; 1937 c 217 § 1 (23B) (adding new section 23-B to 1933 ex.s. c 62); RRS § 7306-23B.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.244 Microbrewery's license—Endorsement for on-premises consumption—Fees—Determination of status as tavern or beer and/or wine restaurant—Sales at qualifying farmers markets. (1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery license under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers.

(3) The board may issue an endorsement to this license allowing for on-premises consumption of beer, including strong beer, wine, or both of other manufacture if purchased from a Washington state-licensed distributor. Each endorsement shall cost two hundred dollars per year, or four hundred dollars per year allowing the sale and service of both beer and wine.

(4) The microbrewer obtaining such endorsement must determine, at the time the endorsement is issued, whether the licensed premises will be operated either as a tavern with persons under twenty-one years of age not allowed as provided for in RCW 66.24.330, or as a beer and/or wine restaurant as described in RCW 66.24.320.

(5)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved locations under an

endorsement granted under this subsection (5) do not constitute the tasting or sampling privilege of a microbrewery. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(e) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection (5) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(g) For the purposes of this subsection (5):

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer. [2003 c 167 § 1; 2003 c 154 § 2; 1998 c 126 § 3; 1997 c 321 § 12.]

Reviser's note: This section was amended by 2003 c 154 § 2 and by 2003 c 167 § 1, each without reference to the other. Both amendments are

incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 167: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 167 § 14.]

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.250 Beer distributor's license—Fee. There shall be a license for beer distributors to sell beer and strong beer, purchased from licensed Washington breweries, beer certificate of approval holders (B5), licensed beer importers, or suppliers of foreign beer located outside the state of Washington, to licensed beer retailers and other beer distributors and to export same from the state of Washington; fee six hundred sixty dollars per year for each distributing unit. [2003 c 167 § 2; 1997 c 321 § 13; 1981 1st ex.s. c 5 § 14; 1937 c 217 § 1 (23E) (adding new section 23-E to 1933 ex.s. c 62); RRS § 7306-23E.]

Report to legislature—2003 c 167: "The liquor control board shall report to the legislature by December 1, 2004, on the impacts of strong beer sales." [2003 c 167 § 13.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.261 Beer importer's license—Principal office—Report—Labels—Fee. There shall be a license for beer importers that authorizes the licensee to import beer and strong beer manufactured within the United States by certificate of approval holders (B5) into the state of Washington. The licensee may also import beer and strong beer manufactured outside the United States.

(1) Beer and strong beer so imported may be sold to licensed beer distributors or exported from the state.

(2) Every person, firm, or corporation licensed as a beer importer shall establish and maintain a principal office within the state at which shall be kept proper records of all beer and strong beer imported into the state under this license.

(3) No beer importer's license shall be granted to a non-resident of the state nor to a corporation whose principal place of business is outside the state until such applicant has established a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a beer importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a report under oath, detailing the quantity of beer and strong beer sold or delivered to each licensed beer distributor. Failure to file such reports may result in the suspension or cancellation of this license.

(5) Beer and strong beer imported under this license must conform to the provisions of RCW 66.28.120 and have received label approval from the board. The board shall not certify beer or strong beer labeled with names which may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic brewery or imported

nor shall it certify beer or strong beer which fails to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year. [2003 c 167 § 3; 1997 c 321 § 14.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.270 Manufacturer's monthly report to board of quantity of malt liquor sales or strong beer made to beer distributors—Certificate of approval and report for out-of-state or imported beer—Fee. (1) Every person, firm or corporation, holding a license to manufacture malt liquors or strong beer within the state of Washington, shall, on or before the twentieth day of each month, furnish to the Washington state liquor control board, on a form to be prescribed by the board, a statement showing the quantity of malt liquors and strong beer sold for resale during the preceding calendar month to each beer distributor within the state of Washington.

(2) A United States brewery or manufacturer of beer or strong beer, located outside the state of Washington, must hold a certificate of approval (B5) to allow sales and shipment of the certificate of approval holder's beer or strong beer to licensed Washington beer distributors or importers. The certificate of approval shall not be granted unless and until such brewer or manufacturer of beer or strong beer shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of beer and strong beer sold or delivered to each licensed beer distributor or importer during the preceding month, and shall further have agreed with the board, that such brewer or manufacturer of beer or strong beer and all general sales corporations or agencies maintained by them, and all of their trade representatives, corporations, and agencies, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

(3) The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be one hundred dollars per year, which sum shall accompany the application for such certificate. [2003 c 167 § 4; 1997 c 321 § 15; 1981 1st ex.s. c 5 § 35; 1973 1st ex.s. c 209 § 14; 1969 ex.s. c 178 § 4; 1937 c 217 § 1 (23F) (adding new section 23-F to 1933 ex.s. c 62); RRS § 7306-23F. Formerly RCW 66.24.270 and 66.24.280.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.24.290 Authorized, prohibited sales—Monthly reports—Added tax—Distribution—Late payment penalty—Additional taxes, purposes. (1) Any microbrewer or

domestic brewery or beer distributor licensed under this title may sell and deliver beer and strong beer to holders of authorized licenses direct, but to no other person, other than the board; and every such brewery or beer distributor shall report all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer and strong beer within the state a tax of one dollar and thirty cents per barrel of thirty-one gallons on sales to licensees within the state and on sales to licensees within the state of bottled and canned beer, including strong beer, shall pay a tax computed in gallons at the rate of one dollar and thirty cents per barrel of thirty-one gallons. Any brewery or beer distributor whose applicable tax payment is not postmarked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. Beer and strong beer shall be sold by breweries and distributors in sealed barrels or packages. The moneys collected under this subsection shall be distributed as follows: (a) Three-tenths of a percent shall be distributed to border areas under RCW 66.08.195; and (b) of the remaining moneys: (i) Twenty percent shall be distributed to counties in the same manner as under RCW 66.08.200; and (ii) eighty percent shall be distributed to incorporated cities and towns in the same manner as under RCW 66.08.210.

(2) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(3)(a) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to ninety-six cents per barrel of thirty-one gallons through June 30, 1995, two dollars and thirty-nine cents per barrel of thirty-one gallons for the period July 1, 1995, through June 30, 1997, and four dollars and seventy-eight cents per barrel of thirty-one gallons thereafter.

(b) The additional tax imposed under this subsection does not apply to the sale of the first sixty thousand barrels of beer each year by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of this exemption.

(c) All revenues collected from the additional tax imposed under this subsection (3) shall be deposited in the health services account under RCW 43.72.900.

(4) An additional tax is imposed on all beer and strong beer that is subject to tax under subsection (1) of this section that is in the first sixty thousand barrels of beer and strong beer by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of the exemption under subsection (3)(b) of this section. The additional tax is equal to one dollar and forty-eight and two-tenths cents per barrel of thirty-one gallons. By the twenty-fifth day of the following month, three percent of the revenues collected from this additional tax shall be distributed to border areas under RCW

66.08.195 and the remaining moneys shall be transferred to the state general fund.

(5) The board may make refunds for all taxes paid on beer and strong beer exported from the state for use outside the state.

(6) The board may require filing with the board of a bond to be approved by it, in such amount as the board may fix, securing the payment of the tax. If any licensee fails to pay the tax when due, the board may forthwith suspend or cancel his or her license until all taxes are paid. [2003 c 167 § 5; 1999 c 281 § 14. Prior: 1997 c 451 § 1; 1997 c 321 § 16; 1995 c 232 § 4; 1994 sp.s. c 7 § 902 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 311; 1989 c 271 § 502; 1983 2nd ex.s. c 3 § 11; 1982 1st ex.s. c 35 § 24; 1981 1st ex.s. c 5 § 16; 1965 ex.s. c 173 § 30; 1933 ex.s. c 62 § 24; RRS § 7306-24.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 451: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 451 § 5.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1965 ex.s. c 173: See note following RCW 82.98.030.

Giving away of liquor prohibited—Exceptions: RCW 66.28.040.

66.24.320 Beer and/or wine restaurant license—Containers—Fee—Caterer's endorsement. There shall be a beer and/or wine restaurant license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. A patron of the licensee may remove from the premises, recorded or recapped in its original container, any portion of wine that was purchased for consumption with a meal.

(1) The annual fee shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license.

(2)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at event locations at a specified date and place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring

individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized. [2003 c 345 § 1; 2003 c 167 § 6; 1998 c 126 § 4; 1997 c 321 § 18; 1995 c 232 § 6; 1991 c 42 § 1; 1987 c 458 § 11; 1981 1st ex.s. c 5 § 37; 1977 ex.s. c 9 § 1; 1969 c 117 § 1; 1967 ex.s. c 75 § 2; 1941 c 220 § 1; 1937 c 217 § 1 (23M) (adding new section 23-M to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23M.]

Reviser's note: This section was amended by 2003 c 167 § 6 and by 2003 c 345 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.330 Tavern license—Fees. There shall be a beer and wine retailer's license to be designated as a tavern license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. Such licenses may be issued only to a person operating a tavern that may be frequented only by persons twenty-one years of age and older.

The annual fee for such license shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license. Licensees who have a fee increase of more than one hundred dollars as a result of this change shall have their fees increased fifty percent of the amount the first renewal year and the remaining amount beginning with the second renewal period. New licensees obtaining a license after July 1, 1998, shall pay the full amount of four hundred dollars. [2003 c 167 § 7; 1997 c 321 § 19; 1995 c 232 § 7; 1991 c 42 § 2; 1987 c 458 § 12; 1981 1st ex.s. c 5 § 38; 1977 ex.s. c 9 § 2; 1973 1st ex.s. c 209 § 15; 1967 ex.s. c 75 § 3; 1941 c 220 § 2; 1937 c 217 § 1 (23N) (adding new section 23-N to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23N.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

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66.24.360 Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—International export endorsement. There shall be a beer and/or wine retailer's license to be designated as a grocery store license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores.

(1) Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid.

(2) The annual fee for the grocery store license is one hundred fifty dollars for each store.

(3) The board shall issue a restricted grocery store license authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a grocery store license must maintain a minimum three thousand dollar inventory of food products for human consumption, not including pop, beer, strong beer, or wine.

(5) Upon approval by the board, the grocery store licensee may also receive an endorsement to permit the international export of beer, strong beer, and wine.

(a) Any beer, strong beer, or wine sold under this endorsement must have been purchased from a licensed beer or wine distributor licensed to do business within the state of Washington.

(b) Any beer, strong beer, and wine sold under this endorsement must be intended for consumption outside the state of Washington and the United States and appropriate records must be maintained by the licensee.

(c) A holder of this special endorsement to the grocery store license shall be considered not in violation of RCW 66.28.010.

(d) Any beer, strong beer, or wine sold under this license must be sold at a price no less than the acquisition price paid by the holder of the license.

(e) The annual cost of this endorsement is five hundred dollars and is in addition to the license fees paid by the licensee for a grocery store license. [2003 c 167 § 8; 1997 c 321 § 22; 1993 c 21 § 1; 1991 c 42 § 4; 1987 c 46 § 1; 1981 1st

ex.s. c 5 § 41; 1967 ex.s. c 75 § 6; 1937 c 217 § 1 (23Q) (adding new section 23-Q to 1933 ex.s. c 62); RRS § 7306-23Q.]

Application to certain retailers—2003 c 167 §§ 8 and 9: "Sections 8 and 9 of this act apply to retailers who hold a restricted grocery store license or restricted beer and/or wine specialty shop license on or after July 1, 2003." [2003 c 167 § 12.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

Employees under eighteen allowed to handle beer or wine: RCW 66.44.340.

66.24.371 Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory. (1) There shall be a beer and/or wine retailer's license to be designated as a beer and/or wine specialty shop license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid. The annual fee for the beer and/or wine specialty shop license is one hundred dollars for each store.

(2) Licensees under this section may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section are subject to RCW 66.28.010 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or distributor of liquor.

(3) The board shall issue a restricted beer and/or wine specialty shop license, authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a beer and/or wine specialty shop license must maintain a minimum three thousand dollar wholesale inventory of beer, strong beer, and/or wine. [2003 c 167 § 9; 1997 c 321 § 23.]

Application to certain retailers—2003 c 167 §§ 8 and 9: See note following RCW 66.24.360.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.420 Liquor by the drink, spirits, beer, and wine restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement. (1) The spirits, beer, and wine restaurant license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for a spirits, beer, and wine restaurant license shall be graduated according to the dedicated dining area and type of service provided as follows:

Less than 50% dedicated dining area	\$2,000
50% or more dedicated dining area	\$1,600
Service bar only	\$1,000

(b) The annual fee for the license when issued to any other spirits, beer, and wine restaurant licensee outside of incorporated cities and towns shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(c) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a restaurant in an airport terminal facility shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and such food service shall be available on request in other licensed places on the premises: PROVIDED, FURTHER, That an additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(d) Where the license shall be issued to any corporation, association, or person operating dining places at a publicly or privately owned civic or convention center with facilities for sports, entertainment, or conventions, or a combination thereof, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a dining place at such a publicly or privately owned civic or convention center shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and food service shall be available on request in other licensed places on the premises: PROVIDED FUR-

THER, That an additional license fee of ten dollars shall be required for such duplicate licenses.

(e) Where the license shall be issued to any corporation, association or person operating more than one building containing dining places at privately owned facilities which are open to the public and where there is a continuity of ownership of all adjacent property, such license shall be issued upon the payment of an annual fee which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to the additional dining places on the property or, in the case of a spirits, beer, and wine restaurant licensed hotel, property owned or controlled by leasehold interest by that hotel for use as a conference or convention center or banquet facility open to the general public for special events in the same metropolitan area, at the discretion of the board and a duplicate license may be issued for each additional place: PROVIDED, That the holder of the master license for the dining place shall not offer alcoholic beverages for sale, service, and consumption at the additional place unless food service is available at both the location of the master license and the duplicate license: PROVIDED FURTHER, That an additional license fee of twenty dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine spirits, beer, and wine restaurant licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue spirits, beer, and wine restaurant licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of spirits, beer, and wine restaurant licenses issued in the state of Washington by the board, not including spirits, beer, and wine private club licenses, shall not in the aggregate at any time exceed one license for each fifteen hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a spirits, beer, and wine restaurant license to any applicant if in the opinion of the board the spirits, beer, and wine restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be

a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized. [2003 c 345 § 2; 1998 c 126 § 6; 1997 c 321 § 27; 1996 c 218 § 4; 1995 c 55 § 1; 1981 1st ex.s. c 5 § 45; 1979 c 87 § 1; 1977 ex.s. c 219 § 4; 1975 1st ex.s. c 245 § 1; 1971 ex.s. c 208 § 2; 1970 ex.s. c 13 § 2. Prior: 1969 ex.s. c 178 § 6; 1969 ex.s. c 136 § 1; 1965 ex.s. c 143 § 3; 1949 c 5 § 3 (adding new section 23-S-3 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-3.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.452 Private club beer and wine license—Fee.

(1) There shall be a beer and wine license to be issued to a private club for sale of beer, strong beer, and wine for on-premises consumption.

(2) Beer, strong beer, and wine sold by the licensee may be on tap or by open bottles or cans.

(3) The fee for the private club beer and wine license is one hundred eighty dollars per year.

(4) The board may issue an endorsement to the private club beer and wine license that allows the holder of a private club beer and wine license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits, strong beer, and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars. [2003 c 167 § 10; 2001 c 199 § 2; 1997 c 321 § 31.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.570 Sports/entertainment facility license—Fee—Caterer's endorsement.

(1) There is a license for sports entertainment facilities to be designated as a sports/entertainment facility license to sell beer, wine, and spirits at retail, for consumption upon the premises only, the license to be issued to the entity providing food and beverage service at a sports entertainment facility as defined in this section. The cost of the license is two thousand five hundred dollars per annum.

(2) For purposes of this section, a sports entertainment facility includes a publicly or privately owned arena, coliseum, stadium, or facility where sporting events are presented for a price of admission. The facility does not have to be exclusively used for sporting events.

(3) The board may impose reasonable requirements upon a licensee under this section, such as requirements for the

availability of food and victuals including but not limited to hamburgers, sandwiches, salads, or other snack food. The board may also restrict the type of events at a sports entertainment facility at which beer, wine, and spirits may be served. When imposing conditions for a licensee, the board must consider the seating accommodations, eating facilities, and circulation patterns in such a facility, and other amenities available at a sports entertainment facility.

(4)(a) The board may issue a caterer's endorsement to the license under this section to allow the licensee to remove from the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(5) The board may issue an endorsement to the beer, wine, and spirits sports/entertainment facility license that allows the holder of a beer, wine, and spirits sports/entertainment facility license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars. [2003 c 345 § 3; 2001 c 199 § 5; 1997 c 321 § 36; 1996 c 218 § 1.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Chapter 66.28 RCW

MISCELLANEOUS REGULATORY PROVISIONS

Sections

66.28.190	Sales of nonliquor food and food ingredients. (<i>Effective January 1, 2004.</i>)
66.28.200	Keg registration—Special endorsement for grocery store licensee—Requirements of seller. (<i>Effective July 1, 2004.</i>)
66.28.210	Keg registration—Requirements of purchaser. (<i>Effective July 1, 2004.</i>)
66.28.220	Keg registration—Identification of containers—Rules—Fees—Sale in violation of rules unlawful. (<i>Effective July 1, 2004.</i>)
66.28.250	Repealed. (<i>Effective July 1, 2004.</i>)
66.28.260	Beer distributors—Restricted transactions.

66.28.190 Sales of nonliquor food and food ingredients. (*Effective January 1, 2004.*) RCW 66.28.010 notwithstanding, persons licensed under RCW 66.24.200 as wine distributors and persons licensed under RCW 66.24.250 as beer distributors may sell at wholesale nonliquor food and food ingredients on thirty-day credit terms to persons licensed as retailers under this title, but complete and separate accounting records shall be maintained on all sales of nonli-

quor food and food ingredients to ensure that such persons are in compliance with RCW 66.28.010.

For the purpose of this section, "nonliquor food and food ingredients" includes all food and food ingredients for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 2004. [2003 c 168 § 305; 1997 c 321 § 52; 1988 c 50 § 1.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.28.200 Keg registration—Special endorsement for grocery store licensee—Requirements of seller. (*Effective July 1, 2004.*)

(1) Licensees holding a beer and/or wine restaurant or a tavern license in combination with an off-premises beer and wine retailer's license may sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. Under a special endorsement from the board, a grocery store licensee may sell malt liquor in containers no larger than five and one-half gallons. The sale of any container holding four gallons or more must comply with the provisions of this section and RCW 66.28.210 through 66.28.240.

(2) Any person who sells or offers for sale the contents of kegs or other containers containing four gallons or more of malt liquor, or leases kegs or other containers that will hold four gallons of malt liquor, to consumers who are not licensed under chapter 66.24 RCW shall do the following for any transaction involving the container:

(a) Require the purchaser of the malt liquor to sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(b) Require the purchaser to provide one piece of identification pursuant to RCW 66.16.040;

(c) Require the purchaser to sign a sworn statement, under penalty of perjury, that:

(i) The purchaser is of legal age to purchase, possess, or use malt liquor;

(ii) The purchaser will not allow any person under the age of twenty-one years to consume the beverage except as provided by RCW 66.44.270;

(iii) The purchaser will not remove, obliterate, or allow to be removed or obliterated, the identification required under RCW 66.28.220 to be affixed to the container;

(d) Require the purchaser to state the particular address where the malt liquor will be consumed, or the particular address where the keg or other container will be physically located; and

(e) Require the purchaser to maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

(3) A violation of this section is a gross misdemeanor. [2003 c 53 § 296; 1998 c 126 § 13; 1997 c 321 § 38; 1993 c 21 § 2; 1989 c 271 § 229.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective dates—1989 c 271: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately, except:

(1) Sections 502 and 504 of this act shall take effect June 1, 1989; and
 (2) Sections 229 through 233, 501, 503, and 505 through 509 of this act shall take effect July 1, 1989." [1989 c 271 § 607.]

Severability—1989 c 271: See note following RCW 9.94A.510.

66.28.210 Keg registration—Requirements of purchaser. (*Effective July 1, 2004.*) (1) Any person who purchases the contents of kegs or other containers containing four gallons or more of malt liquor, or purchases or leases the container shall:

(a) Sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(b) Provide one piece of identification pursuant to RCW 66.16.040;

(c) Be of legal age to purchase, possess, or use malt liquor;

(d) Not allow any person under the age of twenty-one to consume the beverage except as provided by RCW 66.44.270;

(e) Not remove, obliterate, or allow to be removed or obliterated, the identification required under rules adopted by the board;

(f) Not move, keep, or store the keg or its contents, except for transporting to and from the distributor, at any place other than that particular address declared on the receipt and declaration; and

(g) Maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

(2) A violation of this section is a gross misdemeanor. [2003 c 53 § 297; 1989 c 271 § 230.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

66.28.220 Keg registration—Identification of containers—Rules—Fees—Sale in violation of rules unlawful. (*Effective July 1, 2004.*) (1) The board shall adopt rules requiring retail licensees to affix appropriate identification on all containers of four gallons or more of malt liquor for the purpose of tracing the purchasers of such containers. The rules may provide for identification to be done on a statewide basis or on the basis of smaller geographical areas.

(2) The board shall develop and make available forms for the declaration and receipt required by RCW 66.28.200. The board may charge grocery store licensees for the costs of providing the forms and that money collected for the forms shall be deposited into the liquor revolving fund for use by the board, without further appropriation, to continue to administer the cost of the keg registration program.

(3) It is unlawful for any person to sell or offer for sale kegs or other containers containing four gallons or more of malt liquor to consumers who are not licensed under chapter

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66.24 RCW if the kegs or containers are not identified in compliance with rules adopted by the board.

(4) A violation of this section is a gross misdemeanor. [2003 c 53 § 298; 1999 c 281 § 7; 1993 c 21 § 3; 1989 c 271 § 231.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

66.28.250 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

66.28.260 Beer distributors—Restricted transactions. Licensed beer distributors may not buy or sell beer, for purposes of distribution, at farmers market locations authorized by the board pursuant to chapter 154, Laws of 2003. [2003 c 154 § 3.]

Chapter 66.44 RCW

ENFORCEMENT—PENALTIES

Sections

66.44.120	Unlawful use of seal. (<i>Effective July 1, 2004.</i>)
66.44.180	General penalties—Jurisdiction for violations. (<i>Effective July 1, 2004.</i>)
66.44.190	Repealed.
66.44.193	Sales on university or college campus.
66.44.290	Minor purchasing or attempting to purchase liquor—Penalty. (<i>Effective July 1, 2004.</i>)
66.44.291	Repealed. (<i>Effective July 1, 2004.</i>)

66.44.120 Unlawful use of seal. (*Effective July 1, 2004.*) (1) No person other than an employee of the board shall keep or have in his or her possession any official seal prescribed under this title, unless the same is attached to a package which has been purchased from a vendor or store employee; nor shall any person keep or have in his or her possession any design in imitation of any official seal prescribed under this title, or calculated to deceive by its resemblance thereto, or any paper upon which any design in imitation thereof, or calculated to deceive as aforesaid, is stamped, engraved, lithographed, printed, or otherwise marked.

(2)(a) Except as provided in (b) of this subsection, every person who willfully violates this section is guilty of a gross misdemeanor and shall be liable on conviction thereof for a first offense to imprisonment in the county jail for a period of not less than three months nor more than six months, without the option of the payment of a fine, and for a second offense, to imprisonment in the county jail for not less than six months nor more than one year, without the option of the payment of a fine.

(b) A third or subsequent offense is a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than two years. [2003 c 53 § 299; 1992 c 7 § 42; 1933 ex.s. c 62 § 47; RRS § 7306-47.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

66.44.180 General penalties—Jurisdiction for violations. (*Effective July 1, 2004.*) (1) Every person guilty of a

violation of this title for which no penalty has been specifically provided:

(a) For a first offense, is guilty of a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than two months, or both;

(b) For a second offense, is guilty of a gross misdemeanor punishable by imprisonment for not more than six months; and

(c) For a third or subsequent offense, is guilty of a gross misdemeanor punishable by imprisonment for not more than one year.

(2) If the offender convicted of an offense referred to in this section is a corporation, it shall for a first offense be liable to a penalty of not more than five thousand dollars, and for a second or subsequent offense to a penalty of not more than ten thousand dollars, or to forfeiture of its corporate license, or both.

(3) Every district judge and municipal judge shall have concurrent jurisdiction with superior court judges of the state of Washington of all violations of the provisions of this title and may impose any punishment provided therefor. [2003 c 53 § 300; 1987 c 202 § 225; 1981 1st ex.s. c 5 § 22; 1935 c 174 § 16; 1933 ex.s. c 62 § 93; RRS § 7306-93.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

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

66.44.193 Sales on university or college campus. If an institution of higher education chooses to allow the sale of alcoholic beverages on campus, the legislature encourages the institution to feature products produced in the state of Washington. [2003 c 51 § 2.]

66.44.290 Minor purchasing or attempting to purchase liquor—Penalty. (Effective July 1, 2004.) (1) Every person under the age of twenty-one years who purchases or attempts to purchase liquor shall be guilty of a violation of this title. This section does not apply to persons between the ages of eighteen and twenty-one years who are participating in a controlled purchase program authorized by the liquor control board under rules adopted by the board. Violations occurring under a private, controlled purchase program authorized by the liquor control board may not be used for criminal or administrative prosecution.

(2) An employer who conducts an in-house controlled purchase program authorized under this section shall provide his or her employees a written description of the employer's in-house controlled purchase program. The written description must include notice of actions an employer may take as a consequence of an employee's failure to comply with company policies regarding the sale of alcohol during an in-house controlled purchase.

(3) An in-house controlled purchase program authorized under this section shall be for the purposes of employee training and employer self-compliance checks. An employer may not terminate an employee solely for a first-time failure to

comply with company policies regarding the sale of alcohol during an in-house controlled purchase program authorized under this section.

(4) Every person between the ages of eighteen and twenty, inclusive, who is convicted of a violation of this section is guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution. [2003 c 53 § 301; 2001 c 295 § 1; 1965 c 49 § 1; 1955 c 70 § 4. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306-37(1).]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

66.44.291 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 67

SPORTS AND RECREATION— CONVENTION FACILITIES

Chapters

- 67.16** Horse racing.
- 67.24** Fraud in sporting contest.
- 67.40** Convention and trade facilities.
- 67.70** State lottery.

Chapter 67.16 RCW HORSE RACING

Sections

- 67.16.105 Gross receipts—Commission's percentage—Distributions. *(Effective January 1, 2004.)*

67.16.105 Gross receipts—Commission's percentage—Distributions. (Effective January 1, 2004.) (1) Licensees of race meets that are nonprofit in nature and are of ten days or less shall be exempt from payment of a parimutuel tax.

(2) Licensees that do not fall under subsection (1) of this section shall withhold and pay to the commission daily for each authorized day of parimutuel wagering the following applicable percentage of all daily gross receipts from its in-state parimutuel machines:

(a) If the gross receipts of all its in-state parimutuel machines are more than fifty million dollars in the previous calendar year, the licensee shall withhold and pay to the commission daily 1.30 percent of the daily gross receipts; and

(b) If the gross receipts of all its in-state parimutuel machines are fifty million dollars or less in the previous calendar year, the licensee shall withhold and pay to the commission daily 1.803 percent of the daily gross receipts.

(3) In addition to those amounts in subsection (2) of this section, a licensee shall forward one-tenth of one percent of the daily gross receipts of all its in-state parimutuel machines to the commission for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but said percentage shall not be charged against the lic-

ensee. Payments to nonprofit race meets under this subsection shall be distributed on a pro rata per-race-day basis and used only for purses at race tracks that have been operating under RCW 67.16.130 and subsection (1) of this section for the five consecutive years immediately preceding the year of payment. The commission shall transfer funds generated under subsection (2) of this section equal to the difference between funds collected under this subsection (3) in a calendar year and three hundred thousand dollars, and distribute that amount under this subsection (3).

(4) Beginning July 1, 1999, at the conclusion of each authorized race meet, the commission shall calculate the mathematical average daily gross receipts of parimutuel wagering that is conducted only at the physical location of the live race meet at those race meets of licensees with gross receipts of all their in-state parimutuel machines of more than fifty million dollars. Such calculation shall include only the gross parimutuel receipts from wagering occurring on live racing dates, including live racing receipts and receipts derived from one simulcast race card that is conducted only at the physical location of the live racing meet, which, for the purposes of this subsection, is "the handle." If the calculation exceeds eight hundred eighty-six thousand dollars, the licensee shall within ten days of receipt of written notification by the commission forward to the commission a sum equal to the product obtained by multiplying 0.6 percent by the handle. Sums collected by the commission under this subsection shall be forwarded on the next business day following receipt thereof to the state treasurer to be deposited in the fair fund created in RCW 15.76.115. [2003 1st sp.s. c 27 § 1; 1998 c 345 § 6; 1997 c 87 § 3; 1995 c 173 § 2; 1994 c 159 § 2; 1993 c 170 § 2; 1991 c 270 § 6; 1987 c 347 § 4; 1985 c 146 § 7; 1982 c 32 § 3; 1979 c 31 § 6.]

Effective date—2003 1st sp.s. c 27: "This act takes effect January 1, 2004." [2003 1st sp.s. c 27 § 2.]

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

Findings—Purpose—Report by joint legislative audit and review committee—Severability—Effective date—1997 c 87: See notes following RCW 67.16.200.

Intent—1995 c 173: "It is the intent of the legislature that one-half of the money being paid into the Washington thoroughbred racing fund continue to be directed to enhanced purses, and that one-half of the money being paid into the fund continue to be deposited into an escrow or trust account and used for the construction of a new thoroughbred racing facility in western Washington." [1995 c 173 § 1.]

Effective date—1995 c 173: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 1, 1995]." [1995 c 173 § 3.]

Intent—1994 c 159: "It is the intent of the legislature to terminate payments into the Washington thoroughbred racing fund from licensees of nonprofit race meets from March 30, 1994, until June 1, 1995, and to provide that one-half of moneys that otherwise would have been paid into the fund be directed to enhanced purses and one-half of moneys be deposited in an escrow or trust account and used solely for construction of a new thoroughbred race track facility in western Washington." [1994 c 159 § 1.]

Effective date—1994 c 159: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1994]." [1994 c 159 § 4.]

Intent—1993 c 170: "It is the intent of the legislature that one-half of those moneys that would otherwise have been paid into the Washington thoroughbred racing fund be retained for the purpose of enhancing purses, excluding stakes purses, until that time as a permanent thoroughbred racing

facility is built and operating in western Washington. It is recognized by the Washington legislature that the enhancement in purses provided in this legislation will not directly benefit all race tracks in Washington. It is the legislature's intent that the horse racing commission work with the horse racing community to ensure that this opportunity for increased purses will not inadvertently injure horse racing at tracks not directly benefiting from this legislation." [1993 c 170 § 1.]

Effective date—1993 c 170: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]." [1993 c 170 § 3.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

Chapter 67.24 RCW

FRAUD IN SPORTING CONTEST

Sections

67.24.010 Commission of—Felony. (*Effective July 1, 2004.*)

67.24.010 Commission of—Felony. (*Effective July 1, 2004.*) Every person who shall give, offer, receive, or promise, directly or indirectly, any compensation, gratuity, or reward, or make any promise thereof, or who shall fraudulently commit any act by trick, device, or bunco, or any means whatsoever with intent to influence or change the outcome of any sporting contest between people or between animals, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not less than five years. [2003 c 53 § 302; 1992 c 7 § 43; 1945 c 107 § 1; 1941 c 181 § 1; Rem. Supp. 1945 § 2499-1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 67.40 RCW

CONVENTION AND TRADE FACILITIES

Sections

67.40.040 Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use.

67.40.040 Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use. (1) The proceeds from the sale of the bonds authorized in RCW 67.40.030, proceeds of the taxes imposed under RCW 67.40.090 and 67.40.130, and all other moneys received by the state convention and trade center from any public or private source which are intended to fund the acquisition, design, construction, expansion, exterior cleanup and repair of the Eagles building, conversion of various retail and other space to meeting rooms, purchase of the land and building known as the McKay Parcel, development of low-income housing, or renovation of the center, and those expenditures authorized under RCW 67.40.170 shall be deposited in the state convention and trade center account hereby created in the state treasury and in such subaccounts as are deemed appropriate by the directors of the corporation.

(2) Moneys in the account, including unanticipated revenues under RCW 43.79.270, shall be used exclusively for the following purposes in the following priority:

(a) For reimbursement of the state general fund under RCW 67.40.060;

(b) After appropriation by statute:

(i) For payment of expenses incurred in the issuance and sale of the bonds issued under RCW 67.40.030;

(ii) For expenditures authorized in RCW 67.40.170;

(iii) For acquisition, design, and construction of the state convention and trade center; and

(iv) For reimbursement of any expenditures from the state general fund in support of the state convention and trade center; and

(c) For transfer to the state convention and trade center operations account.

(3) The corporation shall identify with specificity those facilities of the state convention and trade center that are to be financed with proceeds of general obligation bonds, the interest on which is intended to be excluded from gross income for federal income tax purposes. The corporation shall not permit the extent or manner of private business use of those bond-financed facilities to be inconsistent with treatment of such bonds as governmental bonds under applicable provisions of the Internal Revenue Code of 1986, as amended.

(4) In order to ensure consistent treatment of bonds authorized under RCW 67.40.030 with applicable provisions of the Internal Revenue Code of 1986, as amended, and notwithstanding RCW 43.84.092, investment earnings on bond proceeds deposited in the state convention and trade center account in the state treasury shall be retained in the account, and shall be expended by the corporation for the purposes authorized under chapter 386, Laws of 1995 and in a manner consistent with applicable provisions of the Internal Revenue Code of 1986, as amended.

(5) During the 2003-2005 fiscal biennium, the legislature may transfer from the state convention and trade center account to the state general fund such amounts as reflect the excess fund balance of the account. [2003 1st sp.s. c 25 § 929; 1995 c 386 § 13; 1991 sp.s. c 13 § 11; 1990 c 181 § 2; 1988 ex.s. c 1 § 4; 1987 1st ex.s. c 8 § 4; 1985 c 57 § 66; 1983 2nd ex.s. c 1 § 4; 1982 c 34 § 4.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

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

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

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

Chapter 67.70 RCW STATE LOTTERY

Sections

- 67.70.120 Sale to minor prohibited—Exception—Penalties. (*Effective July 1, 2004.*)
 67.70.130 Prohibited acts—Penalty. (*Effective July 1, 2004.*)
 67.70.140 Penalty for unlicensed activity. (*Effective July 1, 2004.*)
 67.70.350 Recodified as RCW 43.20A.890.

Pathological gambling treatment: RCW 43.20A.890.

67.70.120 Sale to minor prohibited—Exception—Penalties. (*Effective July 1, 2004.*) (1) A ticket or share shall not be sold to any person under the age of eighteen, but

this shall not be deemed to prohibit the purchase of a ticket or share for the purpose of making a gift by a person eighteen years of age or older to a person less than that age.

(2) Any licensee who knowingly sells or offers to sell a lottery ticket or share to any person under the age of eighteen is guilty of a misdemeanor.

(3) In the event that a person under the age of eighteen years directly purchases a ticket in violation of this section, that person is guilty of a misdemeanor. No prize will be paid to such person and the prize money otherwise payable on the ticket will be treated as unclaimed pursuant to RCW 67.70.190. [2003 c 53 § 303; 1987 c 511 § 6; 1982 2nd ex.s. c 7 § 12.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

67.70.130 Prohibited acts—Penalty. (*Effective July 1, 2004.*) (1) A person shall not alter or forge a lottery ticket. A person shall not claim a lottery prize or share of a lottery prize by means of fraud, deceit, or misrepresentation. A person shall not conspire, aid, abet, or agree to aid another person or persons to claim a lottery prize or share of a lottery prize by means of fraud, deceit, or misrepresentation.

(2) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 304; 1982 2nd ex.s. c 7 § 13.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

67.70.140 Penalty for unlicensed activity. (*Effective July 1, 2004.*) (1) Any person who conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) If any corporation conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license, it may be punished by forfeiture of its corporate charter, in addition to the other penalties set forth in this section. [2003 c 53 § 305; 1982 2nd ex.s. c 7 § 14.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

67.70.350 Recodified as RCW 43.20A.890. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 68

CEMETERIES, MORGUES, AND HUMAN REMAINS

Chapters

- 68.28** Mausoleums and columbariums.
68.50 Human remains.
68.56 Penal and miscellaneous provisions.

Chapter 68.28 RCW

MAUSOLEUMS AND COLUMBARIUMS

Sections

68.28.060 Improper construction a nuisance—Penalty. (*Effective July 1, 2004.*)

68.28.060 Improper construction a nuisance—Penalty. (*Effective July 1, 2004.*) Every owner or operator of a mausoleum or columbarium erected in violation of *this act is guilty of maintaining a public nuisance, a gross misdemeanor, and upon conviction is punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in a county jail for not less than one month nor more than six months, or by both; and, in addition is liable for all costs, expenses, and disbursements paid or incurred in prosecuting the case. [2003 c 53 § 306; 1943 c 247 § 140; Rem. Supp. 1943 § 3778-140.]

*Reviser's note: For "this act," see note following RCW 68.04.020.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 68.50 RCW HUMAN REMAINS

Sections

- 68.50.100 Dissection, when permitted—Autopsy of person under the age of three years. (*Effective July 1, 2004.*)
- 68.50.140 Opening graves—Stealing body—Receiving same. (*Effective July 1, 2004.*)
- 68.50.145 Removing remains—Penalty. (*Effective July 1, 2004.*)
- 68.50.150 Mutilating, disinterring human remains—Penalty. (*Effective July 1, 2004.*)
- 68.50.250 Crematory record of caskets—Penalty. (*Effective July 1, 2004.*)
- 68.50.260 Repealed. (*Effective July 1, 2004.*)
- 68.50.530 Anatomical gifts—Definitions.
- 68.50.540 Anatomical gifts—Authorized—Procedures—Changes—Refusal.
- 68.50.610 Anatomical gifts—Illegal purchase or sale—Penalty. (*Effective July 1, 2004.*)
- 68.50.635 Organ and tissue donor registry.
- 68.50.640 Organ and tissue donation awareness account.

68.50.100 Dissection, when permitted—Autopsy of person under the age of three years. (*Effective July 1, 2004.*) (1) The right to dissect a dead body shall be limited to cases specially provided by statute or by the direction or will of the deceased; cases where a coroner is authorized to hold an inquest upon the body, and then only as he or she may authorize dissection; and cases where the spouse or next of kin charged by law with the duty of burial shall authorize dissection for the purpose of ascertaining the cause of death, and then only to the extent so authorized: PROVIDED, That the coroner, in his or her discretion, may make or cause to be made by a competent pathologist, toxicologist, or physician, an autopsy or postmortem in any case in which the coroner has jurisdiction of a body: PROVIDED, FURTHER, That the coroner may with the approval of the University of Washington and with the consent of a parent or guardian deliver any body of a deceased person under the age of three years over which he or she has jurisdiction to the University of Washington medical school for the purpose of having an autopsy made to determine the cause of death.

(2) Every person who shall make, cause, or procure to be made any dissection of a body, except as provided in this section, is guilty of a gross misdemeanor. [2003 c 53 § 307; 1963 c 178 § 2; 1953 c 188 § 2; 1909 c 249 § 237; RRS § 2489. Formerly RCW 68.08.100.]

[2003 RCW Supp—page 786]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

68.50.140 Opening graves—Stealing body—Receiving same. (*Effective July 1, 2004.*) (1) Every person who shall remove the dead body of a human being, or any part thereof, from a grave, vault, or other place where the same has been buried or deposited awaiting burial or cremation, without authority of law, with intent to sell the same, or for the purpose of securing a reward for its return, or for dissection, or from malice or wantonness, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both.

(2) Every person who shall purchase or receive, except for burial or cremation, any such dead body, or any part thereof, knowing that the same has been removed contrary to the foregoing provisions, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than three years, or by a fine of not more than one thousand dollars, or by both.

(3) Every person who shall open a grave or other place of interment, temporary or otherwise, or a building where such dead body is deposited while awaiting burial or cremation, with intent to remove the body or any part thereof, for the purpose of selling or demanding money for the same, for dissection, from malice or wantonness, or with intent to sell or remove the coffin or of any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the body, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than three years, or by a fine of not more than one thousand dollars, or by both. [2003 c 53 § 308; 1992 c 7 § 44; 1909 c 249 § 239; RRS § 2491. FORMER PART OF SECTION: 1943 c 247 § 25 now codified as RCW 68.50.145. Formerly RCW 68.08.140.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

68.50.145 Removing remains—Penalty. (*Effective July 1, 2004.*) Every person who removes any part of any human remains from any place where it has been interred, or from any place where it is deposited while awaiting interment, with intent to sell it, or to dissect it, without authority of law, or from malice or wantonness, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both. [2003 c 53 § 309; 1992 c 7 § 45; 1943 c 247 § 25; Rem. Supp. 1943 c 3778-25. Formerly RCW 68.08.140, part, and 68.08.145.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

68.50.150 Mutilating, disinterring human remains—Penalty. (*Effective July 1, 2004.*) Every person who mutilates, disinters, or removes from the place of interment any human remains without authority of law, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than three years, or by a fine of not more than one thousand dollars, or by both. [2003 c 53 §

310; 1992 c 7 § 46; 1943 c 247 § 26; Rem. Supp. 1943 § 3778-26. Formerly RCW 68.08.150.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

68.50.250 Crematory record of caskets—Penalty. (*Effective July 1, 2004.*) (1) No crematory shall hereafter cremate the remains of any human body without making a permanent signed record of the color, shape, and outside covering of the casket consumed with such body, the record to be open to inspection of any person lawfully entitled thereto.

(2) A person violating this section is guilty of a misdemeanor, and each violation shall constitute a separate offense. [2003 c 53 § 311; 1943 c 247 § 57; Rem. Supp. 1943 § 3778-57. FORMER PART OF SECTION: 1943 c 247 § 58 now codified as RCW 68.50.260. Formerly RCW 68.20.100.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

68.50.260 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

68.50.530 Anatomical gifts—Definitions. Unless the context requires otherwise, the definitions in this section apply throughout RCW 68.50.520 through 68.50.620, 68.50.635, 68.50.640, and 68.50.901 through 68.50.904.

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual.

(3) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(4) "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.

(5) "Enucleator" means an individual who is qualified to remove or process eyes or parts of eyes.

(6) "Hospital" means a facility licensed under chapter 70.41 RCW, or as a hospital under the law of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(7) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, government, governmental subdivision or agency, or any other legal or commercial entity.

(9) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathic medicine and surgery under chapters 18.71 and 18.57 RCW.

(10) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

(11) "Reasonable costs" include: (a) Programming and software installation and upgrades; (b) employee training that is specific to the organ and tissue donor registry or the donation program created in RCW 46.12.510; (c) literature that is specific to the organ and tissue donor registry or the donation

program created in RCW 46.12.510; and (d) hardware upgrades or other issues important to the organ and tissue donor registry or the donation program created in RCW 46.12.510 that have been mutually agreed upon in advance by the department of licensing and the Washington state organ procurement organizations.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(13) "Technician" means an individual who is qualified to remove or process a part.

(14) "Washington state organ procurement organization" means an organ procurement organization that has been designated by the United States department of health and human services to coordinate organ procurement activities for any portion of Washington state. [2003 c 94 § 2; 1996 c 178 § 15; 1993 c 228 § 2.]

Findings—2003 c 94: "The legislature finds that the use of anatomical gifts, including the donation of organ[s] or tissue, for the purpose of transplantation is of great interest to the citizens of Washington state and may save or prolong the life or improve the health of extremely ill and dying persons.

The legislature further finds that more than eighty thousand people are currently waiting for life-saving organ transplants on the national transplant waiting list. More than one thousand two hundred of these people are listed at Washington state transplant centers. Nationally, seventeen people die each day as a result of the shortage of donated organs.

The creation of a statewide organ and tissue donor registry is crucial to facilitate timely and successful organ and tissue procurement. The legislature further finds that continuing education as to the existence and maintenance of a statewide organ and tissue donor registry is in the best interest of the people of the state of Washington." [2003 c 94 § 1.]

Effective date—1996 c 178: See note following RCW 18.35.110.

68.50.540 Anatomical gifts—Authorized—Procedures—Changes—Refusal. (1) An individual who is at least eighteen years of age, or an individual who is at least sixteen years of age as provided in subsection (12) of this section, may (a) make an anatomical gift for any of the purposes stated in RCW 68.50.570(1), (b) limit an anatomical gift to one or more of those purposes, or (c) refuse to make an anatomical gift.

(2) An anatomical gift may be made by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other and state that it has been so signed.

(3) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2) of this section. Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) The donee or other person authorized to accept the anatomical gift may employ or authorize a physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(6)(a) A donor may amend or revoke an anatomical gift, not made by will, by:

(i) A signed statement;
 (ii) An oral statement made in the presence of two individuals;
 (iii) Any form of communication during a terminal illness or injury; or

(iv) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(b) A donor shall notify a Washington state organ procurement organization of the destruction, cancellation, or mutilation of the document of gift for the purpose of removing the person's name from the organ and tissue donor registry created in RCW 68.50.635. If the Washington state organ procurement organization that is notified does not maintain a registry for Washington residents, it shall notify all Washington state organ procurement organizations that do maintain such a registry.

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6) of this section.

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of a person after the donor's death.

(9) An individual may refuse to make an anatomical gift of the individual's body or part by (a) a writing signed in the same manner as a document of gift, (b) a statement attached to or imprinted on a donor's motor vehicle operator's license, or (c) another writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(10) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under RCW 68.50.550.

(11) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (9) of this section.

(12) An individual who is under the age of eighteen, but is at least sixteen years of age, may make an anatomical gift as provided by subsection (2) of this section, if the document of gift is also signed by either parent or a guardian of the donor. A document of gift signed by a donor under the age of eighteen that is not signed by either parent or a guardian shall not be considered valid until the person reaches the age of eighteen, but may be considered as evidence that the donor has not refused permission to make an anatomical gift under the provisions of RCW 68.50.550. [2003 c 94 § 4; 1995 c 132 § 1; 1993 c 228 § 3.]

Findings—2003 c 94: See note following RCW 68.50.530.

68.50.610 Anatomical gifts—Illegal purchase or sale—Penalty. (Effective July 1, 2004.) (1) A person may not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.

(2) Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation,

quality control, storage, transportation, or implantation of a part.

(3) A person who violates this section is guilty of a class C felony and upon conviction is subject to a fine not exceeding fifty thousand dollars or imprisonment not exceeding five years, or both. [2003 c 53 § 312; 1993 c 228 § 10.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

68.50.635 Organ and tissue donor registry. (1) The department of licensing shall electronically transfer all information that appears on the front of a driver's license or identicard including the name, gender, date of birth, and most recent address of any person who obtains a driver's license or identicard and volunteers to donate organs or tissue upon death to any Washington state organ procurement organization that intends to establish a statewide organ and tissue donor registry as provided under subsection (2) of this section. All subsequent electronic transfers of donor information shall be at no charge to this Washington state organ procurement organization.

(2) Information obtained by a Washington state organ procurement organization under subsection (1) of this section shall be used for the purpose of establishing a statewide organ and tissue donor registry accessible to in-state recognized cadaveric organ and cadaveric tissue agencies for the recovery or placement of organs and tissue and to procurement agencies in another state when a Washington state resident is a donor of an anatomical gift and is not located in this state at the time of death or immediately before the death of the donor. Any registry created using information acquired under subsection (1) of this section must include all residents of Washington state regardless of their residence within the service area designated by the federal government.

(3) No organ or tissue donation organization may obtain information from the organ and tissue donor registry for the purposes of fund raising. Organ and tissue donor registry information may not be further disseminated unless authorized in this section or by federal law. Dissemination of organ and tissue donor registry information may be made by a Washington state organ procurement organization to another Washington state organ procurement organization, a recognized in-state procurement agency for other tissue recovery, or an out-of-state federally designated organ procurement organization that has been designated by the United States department of health and human services to serve an area outside Washington.

(4) A Washington state organ procurement organization may acquire donor information from sources other than the department of licensing.

(5) All reasonable costs associated with the creation of an organ and tissue donor registry shall be paid by the Washington state organ procurement organization that has requested the information. The reasonable costs associated with the initial installation and setup for electronic transfer of the donor information at the department of licensing shall be paid by the Washington state organ procurement organization that requested the information.

(6) An individual does not need to participate in the organ and tissue donor registry to be a donor of organs or tissue. The registry is to facilitate organ and tissue donations

and not inhibit persons from being donors upon death. [2003 c 94 § 3.]

Findings—2003 c 94: See note following RCW 68.50.530.

68.50.640 Organ and tissue donation awareness account. (1) The organ and tissue donation awareness account is created in the custody of the state treasurer. All receipts from donations made under RCW 46.12.510, and other contributions and appropriations specifically made for the purposes of organ and tissue donor awareness, shall be deposited into the account. Except as provided in subsection (2) of this section, expenditures from the account may be authorized by the director of the department of licensing or the director's designee and do not require an appropriation.

(2) The department of licensing shall submit a funding request to the legislature covering the reasonable costs associated with the ongoing maintenance associated with the electronic transfer of the donor information to the organ and tissue donor registry and the donation program established in RCW 46.12.510. The legislature shall appropriate to the department of licensing an amount it deems reasonable from the organ and tissue donation awareness account to the department of licensing for these purposes.

(3) At least quarterly, the department of licensing shall transmit any remaining moneys in the organ and tissue donation awareness account to the foundation established in RCW 46.12.510 for the costs associated with educating the public about the organ and tissue donor registry and related organ and tissue donation education programs.

(4) Funding for donation awareness programs must be proportional across the state regardless of which Washington state organ procurement organization may be designated by the United States department of health and human services to serve a particular geographic area. No funds from the account may be used to fund activities outside Washington state. [2003 c 94 § 7.]

Findings—2003 c 94: See note following RCW 68.50.530.

Chapter 68.56 RCW

PENAL AND MISCELLANEOUS PROVISIONS

Sections

68.56.040 Nonconforming cemetery a nuisance—Penalty—Costs of prosecution. *(Effective July 1, 2004.)*

68.56.040 Nonconforming cemetery a nuisance—Penalty—Costs of prosecution. *(Effective July 1, 2004.)* Every person, firm, or corporation who is the owner or operator of a cemetery established in violation of *this act is guilty of maintaining a public nuisance, a gross misdemeanor, and upon conviction is punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in a county jail for not less than one month nor more than six months, or by both; and, in addition is liable for all costs, expenses, and disbursements paid or incurred in prosecuting the case. [2003 c 53 § 313; 1943 c 247 § 145; Rem. Supp. 1943 § 3778-145. Formerly RCW 68.48.040.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

Title 69

FOOD, DRUGS, COSMETICS, AND POISONS

Chapters

- 69.04** Intrastate commerce in food, drugs, and cosmetics.
- 69.07** Washington food processing act.
- 69.25** Washington wholesome eggs and egg products act.
- 69.40** Poisons and dangerous drugs.
- 69.41** Legend drugs—Prescription drugs.
- 69.50** Uniform controlled substances act.
- 69.90** Kosher food products.

Chapter 69.04 RCW

INTRASTATE COMMERCE IN FOOD, DRUGS, AND COSMETICS

(Formerly: Food, drug, and cosmetic act)

Sections

- 69.04.060 Criminal penalty for violations. *(Effective July 1, 2004.)*
- 69.04.070 Additional penalty. *(Effective July 1, 2004.)*
- 69.04.930 Frozen fish and meat—Labeling requirements—Exceptions.
- 69.04.934 Salmon labeling—Identification as farm-raised or commercially caught—Exceptions—Penalty.

69.04.060 Criminal penalty for violations. *(Effective July 1, 2004.)* Any person who violates any provision of RCW 69.04.040 is guilty of a misdemeanor and shall on conviction thereof be subject to the following penalties:

(1) A fine of not more than two hundred dollars; or

(2) If the violation is committed after a conviction of such person under this section has become final, imprisonment for not more than thirty days, or a fine of not more than five hundred dollars, or both such imprisonment and fine. [2003 c 53 § 314; 1945 c 257 § 24; Rem. Supp. 1945 § 6163-73. Prior: 1907 c 211 § 12; 1901 c 94 § 11.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.04.070 Additional penalty. *(Effective July 1, 2004.)* Notwithstanding the provisions of RCW 69.04.060, a person who violates RCW 69.04.040 with intent to defraud or mislead is guilty of a misdemeanor and the penalty shall be imprisonment for not more than ninety days, or a fine of not more than one thousand dollars, or both such imprisonment and fine. [2003 c 53 § 315; 1945 c 257 § 25; Rem. Supp. 1945 § 6163-74.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.04.930 Frozen fish and meat—Labeling requirements—Exceptions. It shall be unlawful for any person to sell at retail or display for sale at retail any food fish as defined in RCW 77.08.022 or shellfish as defined in RCW 77.08.010, any meat, or any meat food product which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discern-

ible to a customer that such product has been frozen and whether or not the same has since been thawed. No such food fish or shellfish, meat or meat food product shall be sold unless in such a package or container bearing said label: PROVIDED, That this section shall not include any of the aforementioned food or food products that have been frozen prior to being smoked, cured, cooked or subjected to the heat of commercial sterilization. [2003 c 39 § 28; 1999 c 291 § 32; 1988 c 254 § 8; 1983 1st ex.s. c 46 § 179; 1975 c 39 § 1.]

69.04.934 Salmon labeling—Identification as farm-raised or commercially caught—Exceptions—Penalty. With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell at wholesale or retail any fresh or frozen:

(1) Private sector cultured aquatic salmon without identifying the product as farm-raised salmon; or

(2) Commercially caught salmon designated as food fish under Title 77 RCW without identifying the product as commercially caught salmon.

Identification of the products under subsections (1) and (2) of this section shall be made to the buyer at the point of sale such that the buyer can make an informed decision in purchasing.

A person knowingly violating this section is guilty of misbranding under this chapter. A person who receives misleading or erroneous information about whether the salmon is farm-raised or commercially caught, and subsequently inaccurately identifies salmon shall not be guilty of misbranding. This section shall not apply to salmon that is minced, pulverized, coated with batter, or breaded. [2003 c 39 § 29; 1993 c 282 § 4.]

Finding—1993 c 282: See note following RCW 69.04.932.

Chapter 69.07 RCW

WASHINGTON FOOD PROCESSING ACT

Sections

- 69.07.103 Chickens—Slaughter, preparation, sale—One thousand or fewer—Special, temporary permit—Rules—Fee.
69.07.150 Violations—Penalties. (*Effective July 1, 2004.*)

69.07.103 Chickens—Slaughter, preparation, sale—One thousand or fewer—Special, temporary permit—Rules—Fee. (1) A special, temporary permit issued by the department under this section is required for the slaughter and preparation of one thousand or fewer pastured chickens in a calendar year by the agricultural producer of the chickens for the sale of whole raw chickens by the producer directly to the ultimate consumer at the producer's farm, and for such sale. Such activities shall not be conducted without the permit. However, if the activities are conducted under such a permit, the activities are exempted from any other licensing requirements of this chapter.

(2)(a) The department must adopt by rule requirements for a special, temporary permit for the activities described in subsection (1) of this section. The requirements must be generally patterned after those established by WAC 246-215-190 as it exists on July 27, 2003, for temporary food service establishments, but must be tailored specifically to these slaughter, preparation, and sale activities. The requirements

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must include, but are not limited to, those for: Cooling procedures, when applicable; sanitary facilities, equipment, and utensils; clean water; washing and other hygienic practices; and waste and wastewater disposal.

(b) The rules must also identify the length of time such a permit is valid. In determining the length of time, the department must take care to ensure that it is adequate to accommodate the seasonal nature of the permitted activities. In adopting any rule under this section, the department must also carefully consider the economic constraints on the regulated activity.

(3) The department shall conduct such inspections of the activities permitted under this section as are reasonably necessary to ensure compliance with permit requirements.

(4) The fee for a special permit issued under this section is seventy-five dollars.

(5) For the purposes of this section, "chicken" means the species *Gallus domesticus*. [2003 c 397 § 2.]

69.07.150 Violations—Penalties. (*Effective July 1, 2004.*) (1)(a) Except as provided in (b) of this subsection, any person violating any provision of this chapter or any rule or regulation adopted hereunder is guilty of a misdemeanor.

(b) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense. [2003 c 53 § 316; 1991 c 137 § 9; 1967 ex.s. c 121 § 15.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 69.25 RCW

WASHINGTON WHOLESOME EGGS AND EGG PRODUCTS ACT

Sections

- 69.25.150 Penalties—Liability of employer—Defense. (*Effective July 1, 2004.*)
69.25.155 Interference with person performing official duties. (*Effective July 1, 2004.*)
69.25.160 Notice of violation—May take place of prosecution. (*Effective July 1, 2004.*)

69.25.150 Penalties—Liability of employer—Defense. (*Effective July 1, 2004.*) (1)(a) Except as provided in (b) of this subsection, any person violating any provision of this chapter or any rule adopted under this chapter is guilty of a misdemeanor.

(b) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand

dollars per violation per day. Each violation shall be a separate and distinct offense.

(3) When construing or enforcing the provisions of RCW 69.25.110, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of the person's employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(4) No carrier or warehouseman shall be subject to the penalties of this chapter, other than the penalties for violation of RCW 69.25.140, or 69.25.155, by reason of his or her receipt, carriage, holding, or delivery, in the usual course of business, as a carrier or warehouseman of eggs or egg products owned by another person unless the carrier or warehouseman has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this chapter, or unless the carrier or warehouseman refuses to furnish on request of a representative of the director the name and address of the person from whom he or she received such eggs or egg products and copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouseman. [2003 c 53 § 317; 1995 c 374 § 27; 1992 c 7 § 47; 1975 1st ex.s. c 201 § 16.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.155 Interference with person performing official duties. (Effective July 1, 2004.) (1) Notwithstanding any other provision of law, any person who forcibly assaults, resists, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his or her official duties under this chapter is guilty of a class C felony and shall be punished by a fine of not more than five thousand dollars or imprisonment in a state correctional facility for not more than three years, or both.

(2) Whoever, in the commission of any act described in subsection (1) of this section, uses a deadly or dangerous weapon is guilty of a class B felony and shall be punished by a fine of not more than ten thousand dollars or by imprisonment in a state correctional facility for not more than ten years, or both. [2003 c 53 § 318.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.25.160 Notice of violation—May take place of prosecution. (Effective July 1, 2004.) Before any violation of this chapter, other than RCW 69.25.155, is reported by the director to any prosecuting attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his or her views orally or in writing with regard to such contemplated proceeding. Nothing in this chapter shall be construed as requiring the director to report for criminal prosecution violation of this chapter whenever he or she believes that the public interest will be adequately served and compliance with this chapter

obtained by a suitable written notice of warning. [2003 c 53 § 319; 1975 1st ex.s. c 201 § 17.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 69.40 RCW

POISONS AND DANGEROUS DRUGS

Sections

- 69.40.020 Poison in milk or food products—Penalty. (*Effective July 1, 2004.*)
- 69.40.030 Placing poison or other harmful object or substance in food, drinks, medicine, or water—Penalty. (*Effective July 1, 2004.*)

69.40.020 Poison in milk or food products—Penalty. (Effective July 1, 2004.) Any person who shall sell, offer to sell, or have in his or her possession for the purpose of sale, either as owner, proprietor, or assistant, or in any manner whatsoever, whether for hire or otherwise, any milk or any food products, containing the chemical ingredient commonly known as formaldehyde, or in which any formaldehyde or other poisonous substance has been mixed, for the purpose of preservation or otherwise, is guilty of a class C felony, and upon conviction thereof shall be imprisoned in the penitentiary for the period of not less than one year nor more than three years. [2003 c 53 § 320; 1905 c 50 § 1; RRS § 6142. FORMER PART OF SECTION: 1905 c 50 § 2, now codified as RCW 69.40.025.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.40.030 Placing poison or other harmful object or substance in food, drinks, medicine, or water—Penalty. (Effective July 1, 2004.) (1) Every person who willfully mingles poison or places any harmful object or substance, including but not limited to pins, tacks, needles, nails, razor blades, wire, or glass in any food, drink, medicine, or other edible substance intended or prepared for the use of a human being or who shall knowingly furnish, with intent to harm another person, any food, drink, medicine, or other edible substance containing such poison or harmful object or substance to another human being, and every person who willfully poisons any spring, well, or reservoir of water, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not less than five years or by a fine of not less than one thousand dollars.

(2) *This act shall not apply to the employer or employees of a person who violates this section without such employer's knowledge. [2003 c 53 § 321; 1992 c 7 § 48; 1973 c 119 § 1; 1909 c 249 § 264; RRS § 2516. Prior: Code 1881 § 802; 1873 p 185 § 27; 1869 p 202 § 25; 1854 p 79 § 25.]

***Reviser's note:** "this act" refers to the 1973 c 119 § 1 amendment to this section.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 69.41 RCW

LEGEND DRUGS—PRESCRIPTION DRUGS

Sections

- 69.41.010 Definitions.

69.41.020	Prohibited acts—Information not privileged communication. <i>(Effective July 1, 2004.)</i>
69.41.030	Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions. <i>(Effective until July 1, 2004.)</i>
69.41.030	Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions—Penalty. <i>(Effective July 1, 2004.)</i>
69.41.040	Prescription requirements—Penalty. <i>(Effective July 1, 2004.)</i>
69.41.050	Labeling requirements—Penalty. <i>(Effective July 1, 2004.)</i>
69.41.070	Recodified as RCW 69.41.350. <i>(Effective July 1, 2004.)</i>
69.41.072	Violations of chapter 69.50 RCW not to be charged under chapter 69.41 RCW—Exception. <i>(Effective July 1, 2004.)</i>
69.41.085	Medication assistance—Community-based care setting.
69.41.150	Liability of practitioner, pharmacist.
69.41.190	Preferred drug substitution—Exceptions—Notice.
69.41.270	Repealed.
69.41.300	Definitions. <i>(Effective July 1, 2004.)</i>
69.41.320	Practitioners—Restricted use—Medical records. <i>(Effective July 1, 2004.)</i>
69.41.330	Public warnings—School districts. <i>(Effective July 1, 2004.)</i>
69.41.350	Penalties. <i>(Effective July 1, 2004.)</i>

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

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner; or

(b) The patient or research subject at the direction of the practitioner.

(2) "Community-based care settings" include: Community residential programs for the developmentally disabled, certified by the department of social and health services under chapter 71A.12 RCW; adult family homes licensed under chapter 70.128 RCW; and boarding homes licensed under chapter 18.20 RCW. Community-based care settings do not include acute care or skilled nursing facilities.

(3) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

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

(5) "Dispense" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(6) "Dispenser" means a practitioner who dispenses.

(7) "Distribute" means to deliver other than by administering or dispensing a legend drug.

(8) "Distributor" means a person who distributes.

(9) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(10) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a legend drug between an authorized practitioner and a pharmacy or the transfer of prescription information for a legend drug from one pharmacy to another pharmacy.

(11) "In-home care settings" include an individual's place of temporary and permanent residence, but does not include acute care or skilled nursing facilities, and does not include community-based care settings.

(12) "Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

(13) "Legible prescription" means a prescription or medication order issued by a practitioner that is capable of being read and understood by the pharmacist filling the prescription or the nurse or other practitioner implementing the medication order.

(14) "Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or in-home care setting to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department. A nonpractitioner may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that such medication preparation assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications, except pre-filled insulin syringes.

(15) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(16) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, an osteopathic physician assistant under chapter 18.57A RCW, a physician assistant under chapter 18.71A RCW, a naturopath licensed under chapter 18.36A RCW, a pharmacist under chapter 18.64 RCW, or, when acting under the required supervision of a dentist licensed under chapter 18.32 RCW, a dental hygienist licensed under chapter 18.29 RCW;

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend

drug in the course of professional practice or research in this state; and

(c) A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

(17) "Secretary" means the secretary of health or the secretary's designee. [2003 c 257 § 2; 2003 c 140 § 11; 2000 c 8 § 2. Prior: 1998 c 222 § 1; 1998 c 70 § 2; 1996 c 178 § 16; 1994 sp.s. c 9 § 736; prior: 1989 1st ex.s. c 9 § 426; 1989 c 36 § 3; 1984 c 153 § 17; 1980 c 71 § 1; 1979 ex.s. c 139 § 1; 1973 1st ex.s. c 186 § 1.]

Reviser's note: This section was amended by 2003 c 140 § 11 and by 2003 c 257 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 140: See note following RCW 18.79.040.

Findings—Intent—2000 c 8: "The legislature finds that we have one of the finest health care systems in the world and excellent professionals to deliver that care. However, there are incidents of medication errors that are avoidable and serious mistakes that are preventable. Medical errors throughout the health care system constitute one of the nation's leading causes of death and injury resulting in over seven thousand deaths a year, according to a recent report from the institute of medicine. The majority of medical errors do not result from individual recklessness, but from basic flaws in the way the health system is organized. There is a need for a comprehensive strategy for government, industry, consumers, and health providers to reduce medical errors. The legislature declares a need to bring about greater safety for patients in this state who depend on prescription drugs.

It is the intent of the legislature to promote medical safety as a top priority for all citizens of our state." [2000 c 8 § 1.]

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.020 Prohibited acts—Information not privileged communication. (Effective July 1, 2004.) Legend drugs shall not be sold, delivered, dispensed or administered except in accordance with this chapter.

(1) No person shall obtain or attempt to obtain a legend drug, or procure or attempt to procure the administration of a legend drug:

- (a) By fraud, deceit, misrepresentation, or subterfuge; or
- (b) By the forgery or alteration of a prescription or of any written order; or
- (c) By the concealment of a material fact; or
- (d) By the use of a false name or the giving of a false address.

(2) Information communicated to a practitioner in an effort unlawfully to procure a legend drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall willfully make a false statement in any prescription, order, report, or record, required by this chapter.

(4) No person shall, for the purpose of obtaining a legend drug, falsely assume the title of, or represent himself or herself to be, a manufacturer, wholesaler, or any practitioner.

(5) No person shall make or utter any false or forged prescription or other written order for legend drugs.

(6) No person shall affix any false or forged label to a package or receptacle containing legend drugs.

(7) No person shall willfully fail to maintain the records required by RCW 69.41.042 and *69.41.270.

(8) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 322. Prior: 1989 1st ex.s. c 9 § 408; 1989 c 352 § 8; 1973 1st ex.s. c 186 § 2.]

***Reviser's note:** RCW 69.41.270 was repealed by 2003 c 275 § 5.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.030 Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions. (Effective until July 1, 2004.) It shall be unlawful for any

person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission, a physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine, in any province of Canada which shares a common border with the state of Washington or in any state of the United States: PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the department of social and health services from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners. [2003 c 142 § 3; 1996 c 178 § 17; 1994 sp.s. c 9 § 737; 1991 c 30 § 1; 1990 c 219 § 2; 1987 c 144 § 1; 1981 c 120 § 1; 1979 ex.s. c 139 § 2; 1977 c 69 § 1; 1973 1st ex.s. c 186 § 3.]

Severability—2003 c 142: See note following RCW 18.53.010.

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Finding—1990 c 219: "The legislature finds that Washington citizens in the border areas of this state are prohibited from having prescriptions from out-of-state dentists and veterinarians filled at their in-state pharmacies, and that it is in the public interest to remove this barrier for the state's citizens." [1990 c 219 § 1.]

69.41.030 Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions—Penalty. (Effective July 1, 2004.) (1) It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission, a physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine, in any province of Canada which shares a common border with the state of Washington or in any state of the United States: PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the department of social and health services from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners.

(2)(a) A violation of this section involving the sale, delivery, or possession with intent to sell or deliver is a class B felony punishable according to chapter 9A.20 RCW.

(b) A violation of this section involving possession is a misdemeanor. [2003 c 142 § 3; 2003 c 53 § 323; 1996 c 178 § 17; 1994 sp.s. c 9 § 737; 1991 c 30 § 1; 1990 c 219 § 2; 1987 c 144 § 1; 1981 c 120 § 1; 1979 ex.s. c 139 § 2; 1977 c 69 § 1; 1973 1st ex.s. c 186 § 3.]

Reviser's note: This section was amended by 2003 c 53 § 323 and by 2003 c 142 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2003 c 142: See note following RCW 18.53.010.

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Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Finding—1990 c 219: "The legislature finds that Washington citizens in the border areas of this state are prohibited from having prescriptions from out-of-state dentists and veterinarians filled at their in-state pharmacies, and that it is in the public interest to remove this barrier for the state's citizens." [1990 c 219 § 1.]

69.41.040 Prescription requirements—Penalty. (Effective July 1, 2004.) (1) A prescription, in order to be effective in legalizing the possession of legend drugs, must be issued for a legitimate medical purpose by one authorized to prescribe the use of such legend drugs. An order purporting to be a prescription issued to a drug abuser or habitual user of legend drugs, not in the course of professional treatment, is not a prescription within the meaning and intent of this section; and the person who knows or should know that he or she is filling such an order, as well as the person issuing it, may be charged with violation of this chapter. A legitimate medical purpose shall include use in the course of a bona fide research program in conjunction with a hospital or university.

(2) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 324; 1973 1st ex.s. c 186 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.41.050 Labeling requirements—Penalty. (Effective July 1, 2004.) (1) To every box, bottle, jar, tube or other container of a legend drug, which is dispensed by a practitioner authorized to prescribe legend drugs, there shall be affixed a label bearing the name of the prescriber, complete directions for use, the name of the drug either by the brand or generic name and strength per unit dose, name of patient and date: PROVIDED, That the practitioner may omit the name and dosage of the drug if he or she determines that his or her patient should not have this information and that, if the drug dispensed is a trial sample in its original package and which is labeled in accordance with federal law or regulation, there need be set forth additionally only the name of the issuing practitioner and the name of the patient.

(2) A violation of this section is a misdemeanor. [2003 c 53 § 325; 1980 c 83 § 8; 1973 1st ex.s. c 186 § 5.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.41.070 Recodified as RCW 69.41.350. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

69.41.072 Violations of chapter 69.50 RCW not to be charged under chapter 69.41 RCW—Exception. (Effective July 1, 2004.) Any offense which is a violation of chapter 69.50 RCW other than RCW 69.50.4012 shall not be charged under this chapter. [2003 c 53 § 327.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.41.085 Medication assistance—Community-based care setting. Individuals residing in community-based care settings, such as adult family homes, boarding homes, and residential care settings for the developmentally disabled, including an individual's home, may receive medication assistance. Nothing in this chapter affects the right of an individual to refuse medication or requirements relating to informed consent. [2003 c 140 § 12; 1998 c 70 § 1.]

Effective date—2003 c 140: See note following RCW 18.79.040.

69.41.150 Liability of practitioner, pharmacist. (1) A practitioner who authorizes a prescribed drug shall not be liable for any side effects or adverse reactions caused by the manner or method by which a substituted drug product is selected or dispensed.

(2) A pharmacist who substitutes an equivalent drug product pursuant to RCW 69.41.100 through 69.41.180 as now or hereafter amended assumes no greater liability for selecting the dispensed drug product than would be incurred in filling a prescription for a drug product prescribed by its established name.

(3) A pharmacist who substitutes a preferred drug for a nonpreferred drug pursuant to RCW 69.41.190 assumes no greater liability for substituting the preferred drug than would be incurred in filling a prescription for the preferred drug when prescribed by name. [2003 1st sp.s. c 29 § 6; 1979 c 110 § 5; 1977 ex.s. c 352 § 6.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

69.41.190 Preferred drug substitution—Exceptions—Notice. (1) Any pharmacist filling a prescription under a state purchased health care program as defined in RCW 41.05.011(2) shall substitute, where identified, a preferred drug for any nonpreferred drug in a given therapeutic class, unless the endorsing practitioner has indicated on the prescription that the nonpreferred drug must be dispensed as written, or the prescription is for a refill of an antipsychotic, antidepressant, chemotherapy, antiretroviral, or immunosuppressive drug, in which case the pharmacist shall dispense the prescribed nonpreferred drug.

(2) When a substitution is made under subsection (1) of this section, the dispensing pharmacist shall notify the prescribing practitioner of the specific drug and dose dispensed. [2003 1st sp.s. c 29 § 5.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

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

69.41.300 Definitions. (*Effective July 1, 2004.*) For the purposes of RCW 69.41.300 through 69.41.350, "steroids" shall include the following:

(1) "Anabolic steroids" means synthetic derivatives of testosterone or any isomer, ester, salt, or derivative that act in the same manner on the human body;

(2) "Androgens" means testosterone in one of its forms or a derivative, isomer, ester, or salt, that act in the same manner on the human body; and

(3) "Human growth hormones" means growth hormones, or a derivative, isomer, ester, or salt that act in the same manner on the human body. [2003 c 53 § 328; 1989 c 369 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.41.320 Practitioners—Restricted use—Medical records. (*Effective July 1, 2004.*) (1)(a) A practitioner shall not prescribe, administer, or dispense steroids, as defined in RCW 69.41.300, or any form of autotransfusion for the purpose of manipulating hormones to increase muscle mass, strength, or weight, or for the purpose of enhancing athletic ability, without a medical necessity to do so.

(b) A person violating this subsection is guilty of a gross misdemeanor and is subject to disciplinary action under RCW 18.130.180.

(2) A practitioner shall complete and maintain patient medical records which accurately reflect the prescribing, administering, or dispensing of any substance or drug described in this section or any form of autotransfusion. Patient medical records shall indicate the diagnosis and purpose for which the substance, drug, or autotransfusion is prescribed, administered, or dispensed and any additional information upon which the diagnosis is based. [2003 c 53 § 329; 1989 c 369 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.41.330 Public warnings—School districts. (*Effective July 1, 2004.*) The superintendent of public instruction shall develop and distribute to all school districts signs of appropriate design and dimensions advising students of the health risks that steroids present when used solely to enhance athletic ability, and of the penalties for their unlawful possession provided by RCW 69.41.300 through 69.41.350.

School districts shall post or cause the signs to be posted in a prominent place for ease of viewing on the premises of school athletic departments. [2003 c 53 § 330; 1989 c 369 § 5.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.41.350 Penalties. (*Effective July 1, 2004.*) (1) A person who violates the provisions of this chapter by possessing under two hundred tablets or eight 2cc bottles of steroid without a valid prescription is guilty of a gross misdemeanor.

(2) A person who violates the provisions of this chapter by possessing over two hundred tablets or eight 2cc bottles of steroid without a valid prescription is guilty of a class C felony and shall be punished according to chapter 9A.20 RCW. [2003 c 53 § 326; 1989 c 369 § 4; 1983 1st ex.s. c 4 § 4; 1973 1st ex.s. c 186 § 7. Formerly RCW 69.41.070.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1983 1st ex.s. c 4: See note following RCW 9A.48.070.

Chapter 69.50 RCW

UNIFORM CONTROLLED SUBSTANCES ACT

Sections

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69.50.520	Violence reduction and drug enforcement account.

69.50.101 Definitions. Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system sub-

stantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(f) "Deliver" or "delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

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

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(n) "Immediate precursor" means a substance:

(1) that the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5), 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(p) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(q) "Marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(r) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(s) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless spe-

cifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(t) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(u) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(v) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(w) "Practitioner" means:

(1) A physician under chapter 18.71 RCW, a physician assistant under chapter 18.71A RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(x) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(y) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

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

(aa) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(bb) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(cc) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of

a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a Schedule III-V controlled substance between an authorized practitioner and a pharmacy or the transfer of prescription information for a controlled substance from one pharmacy to another pharmacy. [2003 c 142 § 4; 1998 c 222 § 3; 1996 c 178 § 18; 1994 sp.s. c 9 § 739; 1993 c 187 § 1. Prior: 1990 c 248 § 1; 1990 c 219 § 3; 1990 c 196 § 8; 1989 1st ex.s. c 9 § 429; 1987 c 144 § 2; 1986 c 124 § 1; 1984 c 153 § 18; 1980 c 71 § 2; 1973 2nd ex.s. c 38 § 1; 1971 ex.s. c 308 § 69.50.101.]

Severability—2003 c 142: See note following RCW 18.53.010.

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Finding—1990 c 219: See note following RCW 69.41.030.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1973 2nd ex.s. c 38: "If any of the provisions of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the amendatory act, or the application of the provision to other persons or circumstances, or the act prior to its amendment is not affected." [1973 2nd ex.s. c 38 § 3.]

69.50.320 Registration of department of fish and wildlife for use in chemical capture programs—Rules.

The department of fish and wildlife may apply to the department of health for registration pursuant to the applicable provisions of this chapter to purchase, possess, and administer controlled substances for use in chemical capture programs. The department of fish and wildlife must not permit a person to administer controlled substances unless the person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering controlled substances.

The department of health may issue a limited registration to carry out the provisions of this section. The board may adopt rules to ensure strict compliance with the provisions of this section. The board, in consultation with the department of fish and wildlife, must by rule add or remove additional controlled substances for use in chemical capture programs. The board shall suspend or revoke registration upon determination that the person administering controlled substances has not demonstrated adequate knowledge as required by this section. This authority is granted in addition to any other power to suspend or revoke registration as provided by law. [2003 c 175 § 2.]

Findings—2003 c 175: "The legislature finds that the department of fish and wildlife is responsible for the proper management of the state's diverse wildlife resources. Wildlife management often requires the department of fish and wildlife to immobilize individual animals in order for the animals to be moved, treated, examined, or for other legitimate purposes. The legislature finds that it is often necessary for the department to use certain controlled substances to accomplish these purposes. Therefore, the legislature finds that the department of fish and wildlife, in coordination with the board of pharmacy, must be enabled to use approved controlled substances in order to accomplish its legitimate wildlife management goals." [2003 c 175 § 1.]

69.50.401 Prohibited acts: A—Penalties. (Effective July 1, 2004.) (1) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

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(2) Any person who violates this section with respect to:

(a) A controlled substance classified in Schedule I or II which is a narcotic drug or flunitrazepam classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(b) Amphetamine or methamphetamine, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

(c) Any other controlled substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(d) A substance classified in Schedule IV, except flunitrazepam, is guilty of a class C felony punishable according to chapter 9A.20 RCW; or

(e) A substance classified in Schedule V, is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 331. Prior: 1998 c 290 § 1; 1998 c 82 § 2; 1997 c 71 § 2; 1996 c 205 § 2; 1989 c 271 § 104; 1987 c 458 § 4; 1979 c 67 § 1; 1973 2nd ex.s. c 2 § 1; 1971 ex.s. c 308 § 69.50.401.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application—1998 c 290: "This act applies to crimes committed on or after July 1, 1998." [1998 c 290 § 9.]

Effective date—1998 c 290: "This act takes effect July 1, 1998." [1998 c 290 § 10.]

Severability—1998 c 290: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 290 § 11.]

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability—1989 c 271: See note following RCW 9.94A.510.

Severability—1987 c 458: See note following RCW 48.21.160.

Serious drug offenders, notice of release or escape: RCW 9.94A.610.

69.50.4011 Counterfeit substances—Penalties. (Effective July 1, 2004.) (1) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(2) Any person who violates this section with respect to:

(a) A counterfeit substance classified in Schedule I or II which is a narcotic drug, or flunitrazepam classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(b) A counterfeit substance which is methamphetamine, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(c) Any other counterfeit substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(d) A counterfeit substance classified in Schedule IV, except flunitrazepam, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(e) A counterfeit substance classified in Schedule V, is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 332.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.50.4012 Delivery of substance in lieu of controlled substance—Penalty. (*Effective July 1, 2004.*) (1) It is unlawful, except as authorized in this chapter and chapter 69.41 RCW, for any person to offer, arrange, or negotiate for the sale, gift, delivery, dispensing, distribution, or administration of a controlled substance to any person and then sell, give, deliver, dispense, distribute, or administer to that person any other liquid, substance, or material in lieu of such controlled substance.

(2) Any person who violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 333.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.50.4013 Possession of controlled substance—Penalty. (*Effective July 1, 2004.*) (1) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

(2) Except as provided in RCW 69.50.4014, any person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW. [2003 c 53 § 334.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.50.4014 Possession of forty grams or less of marijuana—Penalty. (*Effective July 1, 2004.*) Except as provided in RCW 69.50.401(2)(c), any person found guilty of possession of forty grams or less of marijuana is guilty of a misdemeanor. [2003 c 53 § 335.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.50.4015 Involving a person under eighteen in unlawful controlled substance transaction—Penalty. (*Effective July 1, 2004.*) (1) It is unlawful to compensate, threaten, solicit, or in any other manner involve a person

under the age of eighteen years in a transaction unlawfully to manufacture, sell, or deliver a controlled substance.

(2) A violation of this section is a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 336.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.50.4016 Provisions not applicable to offenses under RCW 69.50.410. (*Effective July 1, 2004.*) RCW 69.50.401 through 69.50.4015 shall not apply to offenses defined and punishable under the provisions of RCW 69.50.410. [2003 c 53 § 337.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.50.402 Prohibited acts: B—Penalties. (*Effective July 1, 2004.*) (1) It is unlawful for any person:

(a) Who is subject to Article III to distribute or dispense a controlled substance in violation of RCW 69.50.308;

(b) Who is a registrant, to manufacture a controlled substance not authorized by his or her registration, or to distribute or dispense a controlled substance not authorized by his or her registration to another registrant or other authorized person;

(c) Who is a practitioner, to prescribe, order, dispense, administer, supply, or give to any person:

(i) Any amphetamine, including its salts, optical isomers, and salts of optical isomers classified as a schedule II controlled substance by the board of pharmacy pursuant to chapter 34.05 RCW; or

(ii) Any nonnarcotic stimulant classified as a schedule II controlled substance and designated as a nonnarcotic stimulant by the board of pharmacy pursuant to chapter 34.05 RCW;

except for the treatment of narcolepsy or for the treatment of hyperkinesia, or for the treatment of drug-induced brain dysfunction, or for the treatment of epilepsy, or for the differential diagnostic psychiatric evaluation of depression, or for the treatment of depression shown to be refractory to other therapeutic modalities, or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol therefor shall have been submitted to and reviewed and approved by the state board of pharmacy before the investigation has been begun: PROVIDED, That the board of pharmacy, in consultation with the medical quality assurance commission and the osteopathic disciplinary board, may establish by rule, pursuant to chapter 34.05 RCW, disease states or conditions in addition to those listed in this subsection for the treatment of which Schedule II nonnarcotic stimulants may be prescribed, ordered, dispensed, administered, supplied, or given to patients by practitioners: AND PROVIDED, FURTHER, That investigations by the board of pharmacy of abuse of prescriptive authority by physicians, licensed pursuant to chapter 18.71 RCW, pursuant to subsection (1)(c) of this section shall be done in consultation with the medical quality assurance commission;

(d) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice, or information required under this chapter;

(e) To refuse an entry into any premises for any inspection authorized by this chapter; or

(f) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

(2) Any person who violates this section is guilty of a class C felony and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both. [2003 c 53 § 338; 1994 sp.s. c 9 § 740; 1980 c 138 § 6; 1979 ex.s. c 119 § 1; 1971 ex.s. c 308 § 69.50.402.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

69.50.403 Prohibited acts: C—Penalties. (Effective July 1, 2004.) (1) It is unlawful for any person knowingly or intentionally:

(a) To distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by *RCW 69.50.307;

(b) To use in the course of the manufacture, distribution, or dispensing of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, or issued to another person;

(c) To obtain or attempt to obtain a controlled substance, or procure or attempt to procure the administration of a controlled substance, (i) by fraud, deceit, misrepresentation, or subterfuge; or (ii) by forgery or alteration of a prescription or any written order; or (iii) by the concealment of material fact; or (iv) by the use of a false name or the giving of a false address;

(d) To falsely assume the title of, or represent herself or himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, or other authorized person for the purpose of obtaining a controlled substance;

(e) To make or utter any false or forged prescription or false or forged written order;

(f) To affix any false or forged label to a package or receptacle containing controlled substances;

(g) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter;

(h) To possess a false or fraudulent prescription with intent to obtain a controlled substance; or

(i) To attempt to illegally obtain controlled substances by providing more than one name to a practitioner when obtaining a prescription for a controlled substance. If a person's name is legally changed during the time period that he or she is receiving health care from a practitioner, the person shall inform all providers of care so that the medical and pharmacy records for the person may be filed under a single name identifier.

(2) Information communicated to a practitioner in an effort unlawfully to procure a controlled substance or unlawfully to procure the administration of such substance, shall not be deemed a privileged communication.

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(3) A person who violates this section is guilty of a class C felony and upon conviction may be imprisoned for not more than two years, or fined not more than two thousand dollars, or both. [2003 c 53 § 339; 1996 c 255 § 1; 1993 c 187 § 21; 1971 ex.s. c 308 § 69.50.403.]

*Reviser's note: RCW 69.50.307 was repealed by 2001 c 248 § 2.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.50.406 Distribution to persons under age eighteen. (Effective July 1, 2004.) (1) Any person eighteen years of age or over who violates RCW 69.50.401 by distributing a controlled substance listed in Schedules I or II which is a narcotic drug or methamphetamine, or flunitrazepam listed in Schedule IV, to a person under eighteen years of age is guilty of a class A felony punishable by the fine authorized by RCW 69.50.401(2) (a) or (b), by a term of imprisonment of up to twice that authorized by RCW 69.50.401(2) (a) or (b), or by both.

(2) Any person eighteen years of age or over who violates RCW 69.50.401 by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under eighteen years of age who is at least three years his or her junior is guilty of a class B felony punishable by the fine authorized by RCW 69.50.401(2) (c), (d), or (e), by a term of imprisonment up to twice that authorized by RCW 69.50.401(2) (c), (d), or (e), or both. [2003 c 53 § 340; 1998 c 290 § 2; 1996 c 205 § 7; 1987 c 458 § 5; 1971 ex.s. c 308 § 69.50.406.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application—Effective date—Severability—1998 c 290: See notes following RCW 69.50.401.

Severability—1987 c 458: See note following RCW 48.21.160.

69.50.408 Second or subsequent offenses. (Effective July 1, 2004.) (1) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(2) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his or her conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs.

(3) This section does not apply to offenses under RCW 69.50.4013. [2003 c 53 § 341; 1989 c 8 § 3; 1971 ex.s. c 308 § 69.50.408.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.50.410 Prohibited acts: D—Penalties. (Effective July 1, 2004.) (1) Except as authorized by this chapter it is a class C felony for any person to sell for profit any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana.

For the purposes of this section only, the following words and phrases shall have the following meanings:

(a) "To sell" means the passing of title and possession of a controlled substance from the seller to the buyer for a price whether or not the price is paid immediately or at a future date.

(b) "For profit" means the obtaining of anything of value in exchange for a controlled substance.

(c) "Price" means anything of value.

(2)(a) Any person convicted of a violation of subsection (1) of this section shall receive a sentence of not more than five years in a correctional facility of the department of social and health services for the first offense.

(b) Any person convicted on a second or subsequent cause, the sale having transpired after prosecution and conviction on the first cause, of subsection (1) of this section shall receive a mandatory sentence of five years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for the second or subsequent violation of subsection (1) of this section.

(3)(a) Any person convicted of a violation of subsection (1) of this section by selling heroin shall receive a mandatory sentence of two years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for such violation.

(b) Any person convicted on a second or subsequent sale of heroin, the sale having transpired after prosecution and conviction on the first cause of the sale of heroin shall receive a mandatory sentence of ten years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for this second or subsequent violation: PROVIDED, That the indeterminate sentence review board under RCW 9.95.040 shall not reduce the minimum term imposed for a violation under this subsection.

(4) Whether or not a mandatory minimum term has expired, an offender serving a sentence under this section may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4).

(5) In addition to the sentences provided in subsection (2) of this section, any person convicted of a violation of subsection (1) of this section shall be fined in an amount calculated to at least eliminate any and all proceeds or profits directly or indirectly gained by such person as a result of sales of controlled substances in violation of the laws of this or other states, or the United States, up to the amount of five hundred thousand dollars on each count.

(6) Any person, addicted to the use of controlled substances, who voluntarily applies to the department of social and health services for the purpose of participating in a rehabilitation program approved by the department for addicts of controlled substances shall be immune from prosecution for subsection (1) offenses unless a filing of an information or indictment against such person for a violation of subsection (1) of this section is made prior to his or her voluntary participation in the program of the department of social and health services. All applications for immunity under this section shall be sent to the department of social and health services in Olympia. It shall be the duty of the department to stamp each application received pursuant to this section with the date and time of receipt.

(7) This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.401 through 69.50.4015. [2003 c 53 § 342; 1999 c 324 § 6; 1975-'76 2nd ex.s. c 103 § 1; 1973 2nd ex.s. c 2 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.50.415 Controlled substances homicide—Penalty. (Effective July 1, 2004.) (1) A person who unlawfully delivers a controlled substance in violation of RCW 69.50.401(2) (a), (b), or (c) which controlled substance is subsequently used by the person to whom it was delivered, resulting in the death of the user, is guilty of controlled substances homicide.

(2) Controlled substances homicide is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 343; 1996 c 205 § 8; 1987 c 458 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1987 c 458: See note following RCW 48.21.160.

69.50.416 Counterfeit substances prohibited—Penalties. (Effective July 1, 2004.) (1) It is unlawful for any person knowingly or intentionally to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser, other than the person who in fact manufactured, distributed, or dispensed the substance.

(2) It is unlawful for any person knowingly or intentionally to make, distribute, or possess a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof.

(3) A person who violates this section is guilty of a class C felony and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both. [2003 c 53 § 344; 1993 c 187 § 22.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.50.430 Additional fine for certain felony violations. (Effective July 1, 2004.) (1) Every person convicted of a felony violation of RCW 69.50.401 through 69.50.4013, 69.50.4015, 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410, or 69.50.415 shall be fined one thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court.

(2) On a second or subsequent conviction for violation of any of the laws listed in subsection (1) of this section, the person shall be fined two thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court. [2003 c 53 § 345; 1989 c 271 § 106.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability—1989 c 271: See note following RCW 9.94A.510.

69.50.435 Violations committed in or on certain public places or facilities—Additional penalty—Defenses—Construction—Definitions. (Effective July 1, 2004.)

(1) Any person who violates RCW 69.50.401 by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under RCW 69.50.401 or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana to a person:

- (a) In a school;
- (b) On a school bus;
- (c) Within one thousand feet of a school bus route stop designated by the school district;
- (d) Within one thousand feet of the perimeter of the school grounds;
- (e) In a public park;
- (f) In a public housing project designated by a local governing authority as a drug-free zone;
- (g) On a public transit vehicle;
- (h) In a public transit stop shelter;
- (i) At a civic center designated as a drug-free zone by the local governing authority; or
- (j) Within one thousand feet of the perimeter of a facility designated under (i) of this subsection, if the local governing authority specifically designates the one thousand foot perimeter

may be punished by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment. The provisions of this section shall not operate to more than double the fine or imprisonment otherwise authorized by this chapter for an offense.

(2) It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop, in a public park, in a public housing project designated by a local governing authority as a drug-free zone, on a public transit vehicle, in a public transit stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (1)(i) of this section, if the local governing authority specifically designates the one thousand foot perimeter.

(3) It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of eighteen were not present in the school, the school bus, the public park, the public housing project designated by a local governing authority as a drug-free zone, or the public transit vehicle, or at the school bus route stop, the public transit vehicle stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (1)(i) of this section, if the local governing authority specifically designates the one

thousand foot perimeter at the time of the offense or that school was not in session.

(4) It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW 69.50.401 for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(5) In a prosecution under this section, a map produced or reproduced by any municipality, school district, county, transit authority engineer, or public housing authority for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or a civic center designated as a drug-free zone by a local governing authority, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the municipality, school district, county, or transit authority has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or civic center designated as a drug-free zone by a local governing authority. Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the governing body of a municipality, school district, county, transit authority, or public housing authority if the map or diagram is otherwise admissible under court rule.

(6) As used in this section the following terms have the meanings indicated unless the context clearly requires otherwise:

(a) "School" has the meaning under RCW 28A.150.010 or 28A.150.020. The term "school" also includes a private school approved under RCW 28A.195.010;

(b) "School bus" means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students

such as transportation of students through a municipal transportation system;

(c) "School bus route stop" means a school bus stop as designated by a school district;

(d) "Public park" means land, including any facilities or improvements on the land, that is operated as a park by the state or a local government;

(e) "Public transit vehicle" means any motor vehicle, street car, train, trolley vehicle, or any other device, vessel, or vehicle which is owned or operated by a transit authority and which is used for the purpose of carrying passengers on a regular schedule;

(f) "Transit authority" means a city, county, or state transportation system, transportation authority, public transportation benefit area, public transit authority, or metropolitan municipal corporation within the state that operates public transit vehicles;

(g) "Stop shelter" means a passenger shelter designated by a transit authority;

(h) "Civic center" means a publicly owned or publicly operated place or facility used for recreational, educational, or cultural activities;

(i) "Public housing project" means the same as "housing project" as defined in RCW 35.82.020. [2003 c 53 § 346. Prior: 1997 c 30 § 2; 1997 c 23 § 1; 1996 c 14 § 2; 1991 c 32 § 4; prior: 1990 c 244 § 1; 1990 c 33 § 588; 1989 c 271 § 112.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Findings—Intent—1997 c 30: "The legislature finds that a large number of illegal drug transactions occur in or near public housing projects. The legislature also finds that this activity places the families and children residing in these housing projects at risk for drug-related crimes and increases the general level of fear among the residents of the housing project and the areas surrounding these projects. The intent of the legislature is to allow local governments to designate public housing projects as drug-free zones." [1997 c 30 § 1.]

Findings—Intent—1996 c 14: "The legislature finds that a large number of illegal drug transactions occur in or near publicly owned places used for recreational, educational, and cultural purposes. The legislature also finds that this activity places the people using these facilities at risk for drug-related crimes, discourages the use of recreational, educational, and cultural facilities, blights the economic development around these facilities, and increases the general level of fear among the residents of the areas surrounding these facilities. The intent of the legislature is to allow local governments to designate a perimeter of one thousand feet around publicly owned places used primarily for recreation, education, and cultural activities as drug-free zones." [1996 c 14 § 1.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability—1989 c 271: See note following RCW 9.94A.510.

69.50.440 Possession with intent to manufacture—Penalty. (Effective July 1, 2004.) (1) It is unlawful for any person to possess ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine.

(2) Any person who violates this section is guilty of a class B felony and may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the

fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost. [2003 c 53 § 347; 2002 c 134 § 1; 2000 c 225 § 4; 1997 c 71 § 3; 1996 c 205 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2002 c 134: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2002]." [2002 c 134 § 5.]

Severability—2000 c 225: See note following RCW 69.55.010.

69.50.505 Seizure and forfeiture. (Effective July 1, 2004.) (1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(c) All property which is used, or intended for use, as a container for property described in (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.4014;

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are

used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(f) All drug paraphernalia;

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1)(h), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(d), (g), or (h) of this section within forty-five days of the seizure in the

case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

(6) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(7) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the drug enforcement administration for disposition.

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

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

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

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

(9)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (15) of this section.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(11) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(12) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(13) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he or she is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(14) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(15) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (7)(b) of this section, only if:

(a) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(b) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(i) Only if the funds applied under (b) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(ii) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(c) For any claim filed under (b) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(16) The landlord's claim for damages under subsection (15) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (7)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the

tenant's property and costs related to sale of the tenant's property as provided by subsection (9)(b) of this section.

(17) Subsections (15) and (16) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (15) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency. [2003 c 53 § 348; 2001 c 168 § 1; 1993 c 487 § 1; 1992 c 211 § 1. Prior: (1992 c 210 § 5 repealed by 1992 c 211 § 2); 1990 c 248 § 2; 1990 c 213 § 12; 1989 c 271 § 212; 1988 c 282 § 2; 1986 c 124 § 9; 1984 c 258 § 333; 1983 c 2 § 15; prior: 1982 c 189 § 6; 1982 c 171 § 1; prior: 1981 c 67 § 32; 1981 c 48 § 3; 1977 ex.s. c 77 § 1; 1971 ex.s. c 308 § 69.50.505.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—2001 c 168: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 168 § 5.]

Effective date—1990 c 213 §§ 2 and 12: See note following RCW 64.44.010.

Severability—1990 c 213: See RCW 64.44.901.

Findings—1989 c 271: "The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest." [1989 c 271 § 211.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Severability—1988 c 282: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 282 § 3.]

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

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

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

Effective date—1982 c 189: See note following RCW 34.12.020.

Severability—Effective date—1982 c 171: See RCW 69.52.900 and 69.52.901.

Severability—1981 c 48: See note following RCW 69.50.102.

69.50.520 Violence reduction and drug enforcement account. The violence reduction and drug enforcement account is created in the state treasury. All designated receipts from RCW 9.41.110(8), 66.24.210(4), 66.24.290(2), *69.50.505(i)(1), 82.08.150(5), 82.24.020(2), 82.64.020, and section 420, chapter 271, Laws of 1989 shall be deposited into the account. Expenditures from the account may be used only for funding services and programs under chapter 271, Laws of 1989 and chapter 7, Laws of 1994 sp. sess., includ-

ing state incarceration costs. Funds from the account may also be appropriated to reimburse local governments for costs associated with implementing criminal justice legislation including chapter 338, Laws of 1997. During the 2003-2005 biennium, funds from the account may also be used for costs associated with providing grants to local governments in accordance with chapter 338, Laws of 1997, funding drug offender treatment services in accordance with RCW 70.96A.350, maintenance and operating costs of the Washington association of sheriffs and police chiefs jail reporting system, civil indigent legal representation, multijurisdictional narcotics task forces, and grants to community networks under chapter 70.190 RCW by the family policy council. [2003 1st sp.s. c 25 § 930; 2002 c 371 § 920. Prior: 2001 2nd sp.s. c 7 § 920; 2001 c 168 § 3; 2000 2nd sp.s. c 1 § 917; 1999 c 309 § 922; 1998 c 346 § 909; prior: 1997 c 451 § 2; 1997 c 338 § 69; 1997 c 149 § 912; 1995 2nd sp.s. c 18 § 919; 1994 sp.s. c 7 § 910; 1989 c 271 § 401.]

***Reviser's note:** RCW 69.50.505(i)(1) was amended by 2003 c 53 § 349 changing subsection (i)(1) to subsection (9)(a), effective July 1, 2004.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability—2001 c 168: See note following RCW 69.50.505.

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Construction—Severability—Effective date—1998 c 346: See notes following RCW 50.24.014.

Effective date—1997 c 451: See note following RCW 66.24.290.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Severability—Effective date—1997 c 149: See notes following RCW 43.08.250.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Captions not law—1989 c 271: "Part, subpart, and section headings and the index as used in this act do not constitute any part of the law." [1989 c 271 § 605.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Chapter 69.90 RCW

KOSHER FOOD PRODUCTS

Sections

- 69.90.020 Sale of "kosher" and "kosher style" food products prohibited if not kosher—Representations—Penalty. (*Effective July 1, 2004.*)
- 69.90.040 Repealed. (*Effective July 1, 2004.*)

69.90.020 Sale of "kosher" and "kosher style" food products prohibited if not kosher—Representations—Penalty. (*Effective July 1, 2004.*) (1) No person may knowingly sell or offer for sale any food product represented as "kosher" or "kosher style" when that person knows that the

food product is not kosher and when the representation is likely to cause a prospective purchaser to believe that it is kosher. Such a representation can be made orally or in writing, or by display of a sign, mark, insignia, or simulation.

(2) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 349; 1985 c 127 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

69.90.040 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 70

PUBLIC HEALTH AND SAFETY

Reviser's note: *Referendum Bill No. 51 was rejected by the voters at the November 2002 election, after the 2002 print edition of the Revised Code of Washington had been published and distributed. The following explains what session laws were affected and the resulting changes that were made to this title.*

Engrossed Substitute Senate Bill No. 6008 (codified as 2002 c 203) was contingent on funding being provided by legislative appropriation (see 2002 c 203 § 13). Funding was provided in Engrossed Substitute Senate Bill No. 6347 (codified as 2002 c 201). However, 2002 c 201 was contingent on passage of Engrossed Substitute House Bill No. 2969 (codified as 2002 c 202), which was sent to the voters as Referendum Bill No. 51, and rejected by the voters. Therefore, 2002 c 201 and 2002 c 203 did not take effect.

We have removed RCW 70.94.995, and the notes following, from this title.

Chapters

- 70.05** Local health departments, boards, officers—Regulations.
- 70.14** Health care services purchased by state agencies.
- 70.41** Hospital licensing and regulation.
- 70.44** Public hospital districts.
- 70.48** City and county jails act.
- 70.54** Miscellaneous health and safety provisions.
- 70.58** Vital statistics.
- 70.74** Washington state explosives act.
- 70.79** Boilers and unfired pressure vessels.
- 70.87** Elevators, lifting devices, and moving walks.
- 70.93** Waste reduction, recycling, and model litter control act.
- 70.94** Washington clean air act.
- 70.95D** Solid waste incinerator and landfill operators.
- 70.95M** Mercury.
- 70.96A** Treatment for alcoholism, intoxication, and drug addiction.
- 70.98** Nuclear energy and radiation.
- 70.103** Lead-based paint.
- 70.105** Hazardous waste management.
- 70.105D** Hazardous waste cleanup—Model toxics control act.
- 70.106** Poison prevention—Labeling and packaging.
- 70.108** Outdoor music festivals.
- 70.110** Flammable fabrics—Children's sleepwear.
- 70.111** Infant crib safety act.

- 70.119A Public water systems—Penalties and compliance.**
70.122 Natural death act.
70.127 In-home services agencies.
70.146 Water pollution control facilities financing.
70.155 Tobacco—Access to minors.
70.157 National uniform tobacco settlement—Non-participating tobacco product manufacturers.
70.158 Tobacco product manufacturers.
70.210 Investing in innovation grants program.

Chapter 70.05 RCW

LOCAL HEALTH DEPARTMENTS, BOARDS, OFFICERS—REGULATIONS

Sections

- 70.05.120 Violations—Remedies—Penalties. (*Effective July 1, 2004.*)

70.05.120 Violations—Remedies—Penalties. (*Effective July 1, 2004.*) (1) Any local health officer or administrative officer appointed under RCW 70.05.040, if any, who shall refuse or neglect to obey or enforce the provisions of chapters 70.05, 70.24, and 70.46 RCW or the rules, regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the state board of health, may be removed as local health officer or administrative officer by the state board of health and shall not again be reappointed except with the consent of the state board of health. Any person may complain to the state board of health concerning the failure of the local health officer or administrative officer to carry out the laws or the rules and regulations concerning public health, and the state board of health shall, if a preliminary investigation so warrants, call a hearing to determine whether the local health officer or administrative officer is guilty of the alleged acts. Such hearings shall be held pursuant to the provisions of chapter 34.05 RCW, and the rules and regulations of the state board of health adopted thereunder.

(2) Any member of a local board of health who shall violate any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or refuse or neglect to obey or enforce any of the rules, regulations or orders of the state board of health made for the prevention, suppression or control of any dangerous contagious or infectious disease or for the protection of the health of the people of this state, is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars.

(3) Any physician who shall refuse or neglect to report to the proper health officer or administrative officer within twelve hours after first attending any case of contagious or infectious disease or any diseases required by the state board of health to be reported or any case suspicious of being one of such diseases, is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars for each case that is not reported.

(4) Any person violating any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or violating or refusing or neglecting to obey any of the rules, regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases by the local board of health or local health officer or administrative officer or state

board of health, or who shall leave any isolation hospital or quarantined house or place without the consent of the proper health officer or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing any case of contagious or infectious disease, is guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment. [2003 c 53 § 350; 1999 c 391 § 6; 1993 c 492 § 241; 1984 c 25 § 8; 1967 ex.s. c 51 § 17.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Findings—Purpose—1999 c 391: See note following RCW 70.05.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Chapter 70.14 RCW

HEALTH CARE SERVICES PURCHASED BY STATE AGENCIES

Sections

- 70.14.050 Drug purchasing cost controls—Establishment of evidence-based prescription drug program.

70.14.050 Drug purchasing cost controls—Establishment of evidence-based prescription drug program. (1) Each agency administering a state purchased health care program as defined in RCW 41.05.011(2) shall, in cooperation with other agencies, take any necessary actions to control costs without reducing the quality of care when reimbursing for or purchasing drugs. To accomplish this purpose, participating agencies may establish an evidence-based prescription drug program.

(2) In developing the evidence-based prescription drug program authorized by this section, agencies:

(a) Shall prohibit reimbursement for drugs that are determined to be ineffective by the United States food and drug administration;

(b) Shall adopt rules in order to ensure that less expensive generic drugs will be substituted for brand name drugs in those instances where the quality of care is not diminished;

(c) Where possible, may authorize reimbursement for drugs only in economical quantities;

(d) May limit the prices paid for drugs by such means as negotiated discounts from pharmaceutical manufacturers, central purchasing, volume contracting, or setting maximum prices to be paid;

(e) Shall consider the approval of drugs with lower abuse potential in substitution for drugs with significant abuse potential;

(f) May take other necessary measures to control costs of drugs without reducing the quality of care; and

(g) Shall adopt rules governing practitioner endorsement and use of any list developed as part of the program authorized by this section.

(3) Agencies shall provide for reasonable exceptions, consistent with RCW 69.41.190, to any list developed as part of the program authorized by this section.

(4) Agencies shall establish an independent pharmacy and therapeutics committee to evaluate the effectiveness of prescription drugs in the development of the program authorized by this section. [2003 1st sp.s. c 29 § 9; 1986 c 303 § 10.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

Chapter 70.41 RCW

HOSPITAL LICENSING AND REGULATION

Sections

70.41.370 Investigation of complaints of violations concerning nursing technicians.

70.41.370 Investigation of complaints of violations concerning nursing technicians. The department shall investigate complaints of violations of RCW 18.79.350 and 18.79.360 by an employer. The department shall maintain records of all employers that have violated RCW 18.79.350 and 18.79.360. [2003 c 258 § 8.]

Severability—Effective date—2003 c 258: See notes following RCW 18.79.330.

Chapter 70.44 RCW

PUBLIC HOSPITAL DISTRICTS

Sections

70.44.060 Powers and duties.

70.44.060 Powers and duties. All public hospital districts organized under the provisions of this chapter shall have power:

(1) To make a survey of existing hospital and other health care facilities within and without such district.

(2) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital and other health care facilities and systems for the maintenance of hospitals, buildings, structures, and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and instituted pursuant to a resolution of the commission and conducted in the same manner and by the same procedure as in or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: PROVIDED, That no public hospital district shall have the right of eminent domain and the power of condemnation against any health care facility.

(3) To lease existing hospital and other health care facilities and equipment and/or other property used in connection therewith, including ambulances, and to pay such rental therefor as the commissioners shall deem proper; to provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said

district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospitals and other health care facilities and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper: PROVIDED, That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district, at rates set by the district commissioners.

(4) For the purpose aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, including state and county lands, for any of the purposes aforesaid, and any and all other facilities necessary or convenient, and in connection with the construction, maintenance, and operation of any such hospitals and other health care facilities, subject, however, to the applicable limitations provided in subsection (2) of this section.

(5) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, and to issue and sell: (a) Revenue bonds, revenue warrants, or other revenue obligations therefor payable solely out of a special fund or funds into which the district may pledge such amount of the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, to pay the same as the commissioners of the district may determine, such revenue bonds, warrants, or other obligations to be issued and sold in the same manner and subject to the same provisions as provided for the issuance of revenue bonds, warrants, or other obligations by cities or towns under the Municipal Revenue Bond Act, chapter 35.41 RCW, as may hereafter be amended; (b) general obligation bonds therefor in the manner and form as provided in RCW 70.44.110 and 70.44.130, as may hereafter be amended; or (c) interest-bearing warrants to be drawn on a fund pending deposit in such fund of money sufficient to redeem such warrants and to be issued and paid in such manner and upon such terms and conditions as the board of commissioners may deem to be in the best interest of the district; and to assign or sell hospital accounts receivable, and accounts receivable for the use of other facilities or services that the district is or hereafter may be authorized by law to provide, for collection with or without recourse. General obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. Revenue bonds, revenue warrants, or other revenue obligations may be issued and sold in accordance with chapter 39.46 RCW.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed fifty cents per thousand dollars of assessed value, and an additional annual tax on all taxable property within such public hospital district not to exceed twenty-five cents per thousand dollars of assessed value, or such further amount as has been or shall be authorized by a vote of the people.

Although public hospital districts are authorized to impose two separate regular property tax levies, the levies shall be considered to be a single levy for purposes of the limitation provided for in chapter 84.55 RCW. Public hospital districts are authorized to levy such a general tax in excess of their regular property taxes when authorized so to do at a special election conducted in accordance with and subject to all of the requirements of the Constitution and the laws of the state of Washington now in force or hereafter enacted governing the limitation of tax levies. The said board of district commissioners is authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition or propositions to levy taxes in excess of its regular property taxes. The superintendent shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file the same in the records of the commission on or before the first day of November. Notice of the filing of said proposed budget and the date and place of hearing on the same shall be published for at least two consecutive weeks, at least one time each week, in a newspaper printed and of general circulation in said county. On or before the fifteenth day of November the commission shall hold a public hearing on said proposed budget at which any taxpayer may appear and be heard against the whole or any part of the proposed budget. Upon the conclusion of said hearing, the commission shall, by resolution, adopt the budget as finally determined and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper county officer of the county in which such public hospital district is located in the same manner as is or may be provided by law for the certification and collection of port district taxes. The commission is authorized, prior to the receipt of taxes raised by levy, to borrow money or issue warrants of the district in anticipation of the revenue to be derived by such district from the levy of taxes for the purpose of such district, and such warrants shall be redeemed from the first money available from such taxes when collected, and such warrants shall not exceed the anticipated revenues of one year, and shall bear interest at a rate or rates as authorized by the commission.

(7) To enter into any contract with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out any of the powers authorized by this chapter.

(8) To sue and be sued in any court of competent jurisdiction: PROVIDED, That all suits against the public hospital district shall be brought in the county in which the public hospital district is located.

(9) To pay actual necessary travel expenses and living expenses incurred while in travel status for (a) qualified physicians or other health care practitioners who are candidates for medical staff positions, and (b) other qualified persons who are candidates for superintendent or other managerial and technical positions, which expenses may include expenses incurred by family members accompanying the candidate, when the district finds that hospitals or other health care facilities owned and operated by it are not adequately staffed and determines that personal interviews with said candidates to be held in the district are necessary or desirable for the adequate staffing of said facilities.

(10) To employ superintendents, attorneys, and other technical or professional assistants and all other employees; to make all contracts useful or necessary to carry out the provisions of this chapter, including, but not limited to, (a) contracts with private or public institutions for employee retirement programs, and (b) contracts with current or prospective employees, physicians, or other health care practitioners providing for the payment or reimbursement by the public hospital district of health care training or education expenses, including but not limited to debt obligations, incurred by current or prospective employees, physicians, or other health care practitioners in return for their agreement to provide services beneficial to the public hospital district; to print and publish information or literature; and to do all other things necessary to carry out the provisions of this chapter. [2003 c 125 § 1; 2001 c 76 § 1; 1997 c 3 § 206 (Referendum Bill No. 47, approved November 4, 1997); 1990 c 234 § 2; 1984 c 186 § 59; 1983 c 167 § 172; 1982 c 84 § 15; 1979 ex.s. c 155 § 1; 1979 ex.s. c 143 § 4; 1977 ex.s. c 211 § 1; 1974 ex.s. c 165 § 2; 1973 1st ex.s. c 195 § 83; 1971 ex.s. c 218 § 2; 1970 ex.s. c 56 § 85; 1969 ex.s. c 65 § 1; 1967 c 164 § 7; 1965 c 157 § 2; 1949 c 197 § 18; 1945 c 264 § 6; Rem. Supp. 1949 § 6090-35.]

Intent—1997 c 3 §§ 201-207: See note following RCW 84.55.010.

Application—Severability—Part headings not law—Referral to electorate—1997 c 3: See notes following RCW 84.40.030.

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—1979 ex.s. c 155: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 155 § 3.]

Severability—1979 ex.s. c 143: See note following RCW 70.44.200.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Eminent domain

by cities: Chapter 8.12 RCW.

generally: State Constitution Art. 1 § 16.

Limitation on levies: State Constitution Art. 7 § 2; RCW 84.52.050.

Port districts, collection of taxes: RCW 53.36.020.

Tortious conduct of political subdivisions, municipal corporations and quasi-municipal corporations, liability for damages: Chapter 4.96 RCW.

Chapter 70.48 RCW CITY AND COUNTY JAILS ACT

Sections

70.48.390 Fee payable by person being booked.

70.48.390 Fee payable by person being booked. A governing unit may require that each person who is booked at a city, county, or regional jail pay a fee based on the jail's actual booking costs or one hundred dollars, whichever is less, to the sheriff's department of the county or police chief of the city in which the jail is located. The fee is payable immediately from any money then possessed by the person being booked, or any money deposited with the sheriff's

department or city jail administration on the person's behalf. If the person has no funds at the time of booking or during the period of incarceration, the sheriff or police chief may notify the court in the county or city where the charges related to the booking are pending, and may request the assessment of the fee. Unless the person is held on other criminal matters, if the person is not charged, is acquitted, or if all charges are dismissed, the sheriff or police chief shall return the fee to the person at the last known address listed in the booking records. [2003 c 99 § 1; 1999 c 325 § 3.]

Chapter 70.54 RCW

MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

Sections

70.54.090	Attachment of objects to utility poles—Penalty. (<i>Effective July 1, 2004.</i>)
70.54.100	Repealed. (<i>Effective July 1, 2004.</i>)
70.54.160	Public restrooms—Pay facilities—Penalty. (<i>Effective July 1, 2004.</i>)
70.54.170	Repealed. (<i>Effective July 1, 2004.</i>)
70.54.360	Hepatitis C—Plan for education, prevention, and management—Rules. (<i>Expires June 30, 2007.</i>)
70.54.370	Meningococcal disease—Students to receive informational materials. (<i>Effective July 1, 2004.</i>)

70.54.090 Attachment of objects to utility poles—Penalty. (*Effective July 1, 2004.*) (1) It shall be unlawful to attach to utility poles any of the following: Advertising signs, posters, vending machines, or any similar object which presents a hazard to, or endangers the lives of, electrical workers. Any attachment to utility poles shall only be made with the permission of the utility involved, and shall be placed not less than twelve feet above the surface of the ground.

(2) A person violating this section is guilty of a misdemeanor. [2003 c 53 § 351; 1953 c 185 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

70.54.100 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.54.160 Public restrooms—Pay facilities—Penalty. (*Effective July 1, 2004.*) (1) Every establishment which maintains restrooms for use by the public shall not discriminate in charges required between facilities used by men and facilities used by women.

(2) When coin lock controls are used, the controls shall be so allocated as to allow for a proportionate equality of free toilet units available to women as compared with those units available to men, and at least one-half of the units in any restroom shall be free of charge. As used in this section, toilet units are defined as constituting commodes and urinals.

(3) In situations involving coin locks placed on restroom entry doors, admission keys shall be readily provided without charge when requested, and notice as to the availability of the keys shall be posted on the restroom entry door.

(4) Any owner, agent, manager, or other person charged with the responsibility of the operation of an establishment who operates such establishment in violation of this section is

guilty of a misdemeanor. [2003 c 53 § 352; 1977 ex.s. c 97 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

70.54.170 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.54.360 Hepatitis C—Plan for education, prevention, and management—Rules. (*Expires June 30, 2007.*)

(1) The secretary of health shall design a state plan for education efforts concerning hepatitis C and the prevention and management of the disease by January 1, 2004. In developing the plan, the secretary shall consult with:

- (a) The public;
- (b) Patient groups and organizations;
- (c) Relevant state agencies that have functions that involve hepatitis C or provide services to persons with hepatitis C;
- (d) Local health departments;
- (e) Public health and clinical laboratories;
- (f) Providers and suppliers of services to persons with hepatitis C;

- (g) Research scientists;
 - (h) The University of Washington; and
 - (i) Relevant health care associations.
- (2) The plan shall include implementation recommendations in the following areas:

(a) Hepatitis C virus prevention and treatment strategies for groups at risk for hepatitis C with an emphasis towards those groups that are disproportionately affected by hepatitis C, including persons infected with HIV, veterans, racial or ethnic minorities that suffer a higher incidence of hepatitis C, and persons who engage in high-risk behavior, such as intravenous drug use;

(b) Educational programs to promote public awareness about hepatitis C and knowledge about risk factors, the value of early detection, screening, services, and available treatment options for hepatitis C, which may be incorporated in public awareness programs concerning bloodborne infections;

(c) Education curricula for appropriate health and health-related providers covered by the uniform disciplinary act, chapter 18.130 RCW;

(d) Training courses for persons providing hepatitis C counseling, public health clinic staff, and any other appropriate provider, which shall focus on disease prevention, early detection, and intervention;

(e) Capacity for voluntary hepatitis C testing programs to be performed at facilities providing voluntary HIV testing under chapter 70.24 RCW;

(f) A comprehensive model for an evidence-based process for the prevention and management of hepatitis C that is applicable to other diseases; and

(g) Sources and availability of funding to implement the plan.

(3) The secretary of health shall develop the state plan described in subsections (1) and (2) of this section only to the extent that, and for as long as, federal or private funds are

available for that purpose, including grants. Funding for chapter 273, Laws of 2003 shall not come from state sources.

(4) The board of health may adopt rules necessary to implement subsection (2)(b) of this section.

(5) The secretary of health shall submit the completed state plan to the legislature by January 1, 2004. After the initial state plan is submitted, the department shall update the state plan biennially and shall submit the plan to the governor and make it available to other interested parties. The update and progress reports are due December 1, 2004, and every two years thereafter.

(6) The state plan recommendations described in subsection (2)(b) of this section shall be implemented by the secretary of health only to the extent that, and for as long as, federal or private funds are available for that purpose, including grants.

(7) This section expires June 30, 2007. [2003 c 273 § 1.]

Private right of action—2003 c 273 § 1: "Section 1 of this act does not create a private right of action." [2003 c 273 § 5.]

70.54.370 Meningococcal disease—Students to receive informational materials. (Effective July 1, 2004.)

(1) Except for community and technical colleges, each degree-granting public or private postsecondary residential campus that provides on-campus or group housing shall provide information on meningococcal disease to each enrolled matriculated first-time student. Community and technical colleges must provide the information only to those students who are offered on-campus or group housing. The information about meningococcal disease shall include:

(a) Symptoms, risks, especially as the risks relate to circumstances of group living arrangements, and treatment; and

(b) Current recommendations from the United States centers for disease control and prevention regarding the receipt of vaccines for meningococcal disease and where the vaccination can be received.

(2) This section shall not be construed to require the department of health or the postsecondary educational institution to provide the vaccination to students.

(3) The department of health shall be consulted regarding the preparation of the information materials provided to the first-time students.

*(5) This section does not create a private right of action. [2003 c 398 § 1.]

***Reviser's note:** Subsection (4) of this section was vetoed by the governor. The vetoed language is as follows:

"(4) If institutions provide electronic enrollment or registration to first-time students, the information required by this section shall be provided electronically and acknowledged by the student before completion of electronic enrollment or registration."

Effective date—2003 c 398: "This act takes effect July 1, 2004." [2003 c 398 § 2.]

Chapter 70.58 RCW VITAL STATISTICS

Sections

70.58.107 Fees charged by department and local registrars.
70.58.280 Penalty. (Effective July 1, 2004.)

70.58.107 Fees charged by department and local registrars. The department of health shall charge a fee of seven-

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teen dollars for certified copies of records and for copies or information provided for research, statistical, or administrative purposes, and eight dollars for a search of the files or records when no copy is made. The department shall prescribe by regulation fees to be paid for preparing sealed files and for opening sealed files.

No fee may be demanded or required for furnishing certified copies of a birth, death, fetal death, marriage, divorce, annulment, or legal separation record for use in connection with a claim for compensation or pension pending before the veterans administration. No fee may be demanded or required for furnishing certified copies of a death certificate of a sex offender for use by a law enforcement agency in maintaining a registered sex offender data base.

The department shall keep a true and correct account of all fees received and transmit the fees to the state treasurer on a weekly basis.

Local registrars shall charge the same fees as the state as hereinabove provided and as prescribed by department regulation except in cases where payment is made by credit card, charge card, debit card, smart card, stored value card, federal wire, automatic clearinghouse system, or other electronic communication. Payment by these electronic methods may be subject to an additional fee consistent with the requirements established by RCW 36.29.190. All such fees collected, except for seven dollars of each fee collected for the issuance of birth certificates and first copies of death certificates and fourteen dollars of each fee collected for additional copies of the same death certificate ordered at the same time as the first copy, shall be paid to the jurisdictional health department.

All local registrars in cities and counties shall keep a true and correct account of all fees received under this section for the issuance of certified copies and shall transmit seven dollars of the fees collected for birth certificates and first copies of death certificates and fourteen dollars of the fee collected for additional copies of death certificates to the state treasurer on or before the first day of January, April, July, and October. All but five dollars of the fees turned over to the state treasurer by local registrars shall be paid to the department of health for the purpose of developing and maintaining the state vital records systems, including a web-based electronic death registration system.

Five dollars of each fee imposed for the issuance of certified copies, except for copies suitable for display issued under RCW 70.58.085, at both the state and local levels shall be held by the state treasurer in the death investigations' account established by RCW 43.79.445. [2003 c 272 § 1; 2003 c 241 § 1; 1997 c 223 § 1; 1991 c 3 § 343; 1988 c 40 § 1; 1987 c 223 § 3.]

Reviser's note: This section was amended by 2003 c 241 § 1 and by 2003 c 272 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

70.58.280 Penalty. (Effective July 1, 2004.) (1) Every person who violates or willfully fails, neglects, or refuses to comply with any provisions of *this act is guilty of a misdemeanor and for a second offense shall be punished by a fine of not less than twenty-five dollars, and for a third and each subsequent offense shall be punished by a fine of not less

than fifty dollars or more than two hundred and fifty dollars or by imprisonment for not more than ninety days, or by both fine and imprisonment.

(2) Every person who willfully furnishes any false information for any certificate required by *this act or who makes any false statement in any such certificate is guilty of a gross misdemeanor. [2003 c 53 § 353; 1915 c 180 § 12; 1907 c 83 § 21; RRS § 6038.]

*Reviser's note: For "this act," see note following RCW 70.58.050.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 70.74 RCW

WASHINGTON STATE EXPLOSIVES ACT

Sections

70.74.180 Explosive devices prohibited—Penalty. (*Effective July 1, 2004.*)

70.74.180 Explosive devices prohibited—Penalty. (*Effective July 1, 2004.*) Any person who has in his or her possession or control any shell, bomb, or similar device, charged or filled with one or more explosives, intending to use it or cause it to be used for an unlawful purpose, is guilty of a class A felony, and upon conviction shall be punished by imprisonment in a state prison for a term of not more than twenty years. [2003 c 53 § 354; 1984 c 55 § 1; 1969 ex.s. c 137 § 21; 1931 c 111 § 18; RRS § 5440-18.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 70.79 RCW

BOILERS AND UNFIRED PRESSURE VESSELS

Sections

70.79.350 Inspection fees—Receipts for—Pressure systems safety fund.

70.79.350 Inspection fees—Receipts for—Pressure systems safety fund. The chief inspector shall give an official receipt for all fees required by chapter 70.79 RCW and shall transfer all sums so received to the treasurer of the state of Washington as ex officio custodian thereof and the treasurer shall place all sums in a special fund hereby created and designated as the "pressure systems safety fund". Funds shall be paid out upon vouchers duly and regularly issued therefor and approved by the director of the department of labor and industries. The treasurer, as ex officio custodian of the fund, shall keep an accurate record of any payments into the fund, and of all disbursements therefrom. The fund shall be used exclusively to defray only the expenses of administering chapter 70.79 RCW by the chief inspector as authorized by law and the expenses incident to the maintenance of the office. The fund shall be charged with its pro rata share of the cost of administering the fund which is to be determined by the director of financial management and by the director of the department of labor and industries.

During the 2003-2005 fiscal biennium, the legislature may transfer from the pressure systems safety fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2003 1st sp.s. c 25 § 931; 1979 c 151 § 171; 1977 ex.s. c 175 § 3; 1951 c 32 § 34.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Chapter 70.87 RCW

ELEVATORS, LIFTING DEVICES, AND MOVING WALKS

Sections

70.87.010 Definitions.
 70.87.020 Conveyances to be safe and in conformity with law.
 70.87.030 Rules.
 70.87.050 Conveyances in buildings occupied by state, county, or political subdivision.
 70.87.060 Responsibility for operation and maintenance of equipment and for periodic tests.
 70.87.080 Permits—When required—Application for—Posting.
 70.87.100 Conveyance work to be performed by elevator contractors—Acceptance tests—Inspections.
 70.87.125 Suspension or revocation of license or permit—Grounds—Notice—Stay of suspension or revocation—Removal of suspension or reinstatement of license or permit.
 70.87.145 Order to discontinue operation—Notice—Conditions—Contents of order—Recision of order—Violation—Penalty—Random inspections.
 70.87.170 Review of department action in accordance with administrative procedure act.
 70.87.180 Violations.
 70.87.200 Exemptions.
 70.87.220 Elevator safety advisory committee.
 70.87.230 Conveyance work—Who may perform.
 70.87.240 Elevator contractor license, elevator mechanic license—Qualifications—Reciprocity.
 70.87.245 Material lift mechanic license.
 70.87.250 Licenses—Renewals—Fees—Temporary licenses—Continuing education—Records.
 70.87.260 Liability not limited or assumed by state.
 70.87.270 Exemptions from licensure.
 70.87.280 License categories—Rules.
 70.87.290 Rules—Effective date.
 70.87.300 Private residential conveyances—Report. (*Expires July 1, 2004.*)

70.87.010 Definitions. For the purposes of this chapter, except where a different interpretation is required by the context:

(1) "Owner" means any person having title to or control of a conveyance, as guardian, trustee, lessee, or otherwise;

(2) "Conveyance" means an elevator, escalator, dumbwaiter, belt manlift, automobile parking elevator, moving walk, and other elevating devices, as defined in this section;

(3) "Existing installations" means an installation defined as an "installation, existing" in this chapter or in rules adopted under this chapter;

(4) "Elevator" means a hoisting or lowering machine equipped with a car or platform that moves in guides and serves two or more floors or landings of a building or structure;

(a) "Passenger elevator" means an elevator (i) on which passengers are permitted to ride and (ii) that may be used to carry freight or materials when the load carried does not exceed the capacity of the elevator;

(b) "Freight elevator" means an elevator (i) used primarily for carrying freight and (ii) on which only the operator, the persons necessary for loading and unloading, and other employees approved by the department are permitted to ride;

(c) "Sidewalk elevator" means a freight elevator that: (i) Operates between a sidewalk or other area outside the building and floor levels inside the building below the outside area, (ii) does not have a landing opening into the building at

its upper limit of travel, and (iii) is not used to carry automobiles;

(d) "Hand elevator" means an elevator utilizing manual energy to move the car;

(e) "Inclined elevator" means an elevator that travels at an angle of inclination of seventy degrees or less from the horizontal;

(f) "Multideck elevator" means an elevator having two or more compartments located one immediately above the other;

(g) "Observation elevator" means an elevator designed to permit exterior viewing by passengers while the car is traveling;

(h) "Power elevator" means an elevator utilizing energy other than gravitational or manual to move the car;

(i) "Electric elevator" means an elevator where the energy is applied by means of an electric driving machine;

(j) "Hydraulic elevator" means an elevator where the energy is applied by means of a liquid under pressure in a cylinder equipped with a plunger or piston;

(k) "Direct-plunger hydraulic elevator" means a hydraulic elevator having a plunger or cylinder directly attached to the car frame or platform;

(l) "Electro-hydraulic elevator" means a direct-plunger elevator where liquid is pumped under pressure directly into the cylinder by a pump driven by an electric motor;

(m) "Maintained-pressure hydraulic elevator" means a direct-plunger elevator where liquid under pressure is available at all times for transfer into the cylinder;

(n) "Roped hydraulic elevator" means a hydraulic elevator having its plunger or piston connected to the car with wire ropes or indirectly coupled to the car by means of wire ropes and sheaves;

(o) "Rack and pinion elevator" means a power elevator, with or without a counterweight, that is supported, raised, and lowered by a motor or motors that drive a pinion or pinions on a stationary rack mounted in the hoistway;

(p) "Screw column elevator" means a power elevator having an uncounterweighted car that is supported, raised, and lowered by means of a screw thread;

(q) "Rooftop elevator" means a power passenger or freight elevator that operates between a landing at roof level and one landing below and opens onto the exterior roof level of a building through a horizontal opening;

(r) "Special purpose personnel elevator" means an elevator that is limited in size, capacity, and speed, and permanently installed in structures such as grain elevators, radio antenna, bridge towers, underground facilities, dams, power plants, and similar structures to provide vertical transportation of authorized personnel and their tools and equipment only;

(s) "Workmen's construction elevator" means an elevator that is not part of the permanent structure of a building and is used to raise and lower workers and other persons connected with, or related to, the building project;

(t) "Boat launching elevator" means a conveyance that serves a boat launching structure and a beach or water surface and is used for the carrying or handling of boats in which people ride;

(u) "Limited-use/limited-application elevator" means a power passenger elevator where the use and application is

limited by size, capacity, speed, and rise, intended principally to provide vertical transportation for people with physical disabilities;

(5) "Escalator" means a power-driven, inclined, continuous stairway used for raising and lowering passengers;

(6) "Dumbwaiter" means a hoisting and lowering mechanism equipped with a car (a) that moves in guides in a substantially vertical direction, (b) the floor area of which does not exceed nine square feet, (c) the inside height of which does not exceed four feet, (d) the capacity of which does not exceed five hundred pounds, and (e) that is used exclusively for carrying materials;

(7) "Automobile parking elevator" means an elevator: (a) Located in either a stationary or horizontally moving hoistway; (b) used exclusively for parking automobiles where, during the parking process, each automobile is moved either under its own power or by means of a power-driven transfer device onto and off the elevator directly into parking spaces or cubicles in line with the elevator; and (c) in which persons are not normally stationed on any level except the receiving level;

(8) "Moving walk" means a passenger carrying device (a) on which passengers stand or walk and (b) on which the passenger carrying surface remains parallel to its direction of motion;

(9) "Belt manlift" means a power driven endless belt provided with steps or platforms and a hand hold for the transportation of personnel from floor to floor;

(10) "Department" means the department of labor and industries;

(11) "Director" means the director of the department or his or her representative;

(12) "Inspector" means an elevator inspector of the department or an elevator inspector of a municipality having in effect an elevator ordinance pursuant to RCW 70.87.200;

(13) "Permit" means a permit issued by the department: (a) To perform conveyance work, other than maintenance; or (b) to operate a conveyance;

(14) "Person" means this state, a political subdivision, any public or private corporation, any firm, or any other entity as well as an individual;

(15) "One-man capacity manlift" means a single passenger, hand-powered counterweighted device, or electric-powered device, that travels vertically in guides and serves two or more landings;

(16) "Private residence conveyance" means a conveyance installed in or on the premises of a single-family dwelling and operated for transporting persons or property from one elevation to another;

(17) "Material hoist" means a hoist that is not a part of a permanent structure used to raise or lower materials during construction, alteration, or demolition. It is not applicable to the temporary use of permanently installed personnel elevators as material hoists;

(18) "Material lift" means a lift that (a) is permanently installed, (b) is comprised of a car or platform that moves in guides, (c) serves two or more floors or landings, (d) travels in a vertical or inclined position, (e) is an isolated, self-contained lift, (f) is not part of a conveying system, and (g) is installed in a commercial or industrial area not accessible to

the general public or intended to be operated by the general public;

(19) "Casket lift" means a lift that (a) is installed at a mortuary, (b) is designed exclusively for carrying of caskets, (c) moves in guides in a basically vertical direction, and (d) serves two or more floors or landings;

(20) "Wheelchair lift" means a lift that travels in a vertical or inclined direction and is designed for use by physically handicapped persons;

(21) "Stairway chair lift" means a lift that travels in a basically inclined direction and is designed for use by physically handicapped persons;

(22) "Personnel hoist" means a hoist that is not a part of a permanent structure, is installed inside or outside buildings during construction, alteration, or demolition, and used to raise or lower workers and other persons connected with, or related to, the building project. The hoist may also be used for transportation of materials;

(23) "Advisory committee" means the elevator advisory committee as described in this chapter;

(24) "Elevator helper/apprentice" means a person who works under the general direction of a licensed elevator mechanic. A license is not required to be an elevator helper/apprentice;

(25) "Elevator contractor" means any person, firm, or company that possesses an elevator contractor license in accordance with this chapter and who is engaged in the business of performing conveyance work covered by this chapter;

(26) "Elevator mechanic" means any person who possesses an elevator mechanic license in accordance with this chapter and who is engaged in performing conveyance work covered by this chapter;

(27) "License" means a written license, duly issued by the department, authorizing a person, firm, or company to carry on the business of performing conveyance work or to perform conveyance work covered by this chapter;

(28) "Elevator contractor license" means a license that is issued to an elevator contractor who has met the qualification requirements established in RCW 70.87.240;

(29) "Elevator mechanic license" means a license that is issued to a person who has met the qualification requirements established in RCW 70.87.240;

(30) "Licensee" means the elevator mechanic or elevator contractor;

(31) "Conveyance work" means the alteration, construction, dismantling, erection, installation, maintenance, relocation, and wiring of a conveyance;

(32) "Alteration" means any change to equipment, including its parts, components, and/or subsystems, other than maintenance, repair, or replacement;

(33) "Maintenance" means a process of routine examination, lubrication, cleaning, servicing, and adjustment of parts, components, and/or subsystems for the purpose of ensuring performance in accordance with this chapter. "Maintenance" includes repair and replacement, but not alteration;

(34) "Repair" means the reconditioning or renewal of parts, components, and/or subsystems necessary to keep equipment in compliance with this chapter;

(35) "Replacement" means the substitution of a device, component, and/or subsystem in its entirety with a unit that is

basically the same as the original for the purpose of ensuring performance in accordance with this chapter;

(36) "Public agency" means a county, incorporated city or town, municipal corporation, state agency, institution of higher education, political subdivision, or other public agency and includes any department, bureau, office, board, commission or institution of such public entities;

(37) "Platform" means a rigid surface that is maintained in a horizontal position at all times when in use, and upon which passengers stand or a load is carried. [2003 c 143 § 9; 2002 c 98 § 1; 1998 c 137 § 1; 1997 c 216 § 1; 1983 c 123 § 1; 1973 1st ex.s. c 52 § 9; 1969 ex.s. c 108 § 1; 1963 c 26 § 1.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

70.87.020 Conveyances to be safe and in conformity with law. (1) The purpose of this chapter is to provide for safety of life and limb, to promote safety awareness, and to ensure the safe design, mechanical and electrical operation, and inspection of conveyances, and performance of conveyance work, and all such operation, inspection, and conveyance work subject to the provisions of this chapter shall be reasonably safe to persons and property and in conformity with the provisions of this chapter and the applicable statutes of the state of Washington, and all orders, and rules of the department. The use of unsafe and defective conveyances imposes a substantial probability of serious and preventable injury to employees and the public exposed to unsafe conditions. The prevention of these injuries and protection of employees and the public from unsafe conditions is in the best interest of the people of this state. Personnel performing work covered by this chapter must, by documented training or experience or both, be familiar with the operation and safety functions of the components and equipment. Training and experience must include, but not be limited to, recognizing the safety hazards and performing the procedures to which the personnel performing conveyance work covered by this chapter are assigned in conformance with the requirements of this chapter. This chapter establishes the minimum standards for personnel performing conveyance work.

(2) This chapter is not intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, code effectiveness, durability, and safety to those required by this chapter, provided that there is technical documentation to demonstrate the equivalency of the system, method, or device, as prescribed in this chapter and the rules adopted under this chapter.

(3) In any suit for damages allegedly caused by a failure or malfunction of the conveyance, conformity with the rules of the department is prima facie evidence that the conveyance work, operation, and inspection is reasonably safe to persons and property. [2003 c 143 § 10; 2002 c 98 § 2; 1983 c 123 § 2; 1963 c 26 § 2.]

Part headings and captions not law—2003 c 143: "Part headings and captions used in this act are not any part of the law." [2003 c 143 § 23.]

Effective date—2003 c 143: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 143 § 24.]

70.87.030 Rules. The department shall adopt rules governing the mechanical and electrical operation, acceptance tests, conveyance work, operation, and inspection that are necessary and appropriate and shall also adopt minimum standards governing existing installations. In the execution of this rule-making power and before the adoption of rules, the department shall consider the rules for safe conveyance work, operation, and inspection, including the American National Standards Institute Safety Code for Personnel and Material Hoists, the American Society of Mechanical Engineers Safety Code for Elevators, Dumbwaiters, and Escalators, and any amendatory or supplemental provisions thereto. The department by rule shall establish a schedule of fees to pay the costs incurred by the department for the work related to administration and enforcement of this chapter. Nothing in this chapter limits the authority of the department to prescribe or enforce general or special safety orders as provided by law.

The department may consult with: Engineering authorities and organizations concerned with standard safety codes; rules and regulations governing conveyance work, operation, and inspection; and the qualifications that are adequate, reasonable, and necessary for the elevator mechanic, contractor, and inspector. [2003 c 143 § 11; 2002 c 98 § 3; 1998 c 137 § 2; 1994 c 164 § 28; 1983 c 123 § 3; 1973 1st ex.s. c 52 § 10; 1971 c 66 § 1; 1970 ex.s. c 22 § 1; 1963 c 26 § 3.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

70.87.050 Conveyances in buildings occupied by state, county, or political subdivision. The conveyance work on, and the operation and inspection of any conveyance located in, or used in connection with, any building owned by the state, a county, or a political subdivision, other than those located within and owned by a city having an elevator code, shall be under the jurisdiction of the department. [2003 c 143 § 12; 2002 c 98 § 4; 1983 c 123 § 5; 1969 ex.s. c 108 § 2; 1963 c 26 § 5.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.060 Responsibility for operation and maintenance of equipment and for periodic tests. (1) The person, elevator contractor, or public agency performing conveyance work is responsible for operation and maintenance of the conveyance until the department has issued an operating permit for the conveyance, except during the period when a limited operating permit in accordance with RCW 70.87.090(2) is in effect, and is also responsible for all tests of a new, relocated, or altered conveyance until the department has issued an operating permit for the conveyance.

(2) The owner or his or her duly appointed agent shall be responsible for the safe operation and proper maintenance of the conveyance after the department has issued the operating permit and also during the period of effectiveness of any limited operating permit in accordance with RCW 70.87.090(2). The owner shall be responsible for all periodic tests required by the department. [2003 c 143 § 13; 1983 c 123 § 6; 1963 c 26 § 6.]

[2003 RCW Supp—page 816]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.080 Permits—When required—Application for—Posting. (1) A permit shall be obtained from the department before performing work, other than maintenance, on a conveyance under the jurisdiction of the department.

(2) The installer of the conveyance shall submit an application for the permit in duplicate, in a form that the department may prescribe.

(3) The permit issued by the department shall be kept posted conspicuously at the site of installation.

(4) A permit is not required for maintenance.

(5) After the effective date of rules adopted under this chapter establishing licensing requirements, the department may issue a permit for conveyance work only to an elevator contractor unless the permit is for conveyance work on private residence conveyances. After July 1, 2004, the department may not issue a permit for conveyance work on private residence conveyances to a person other than an elevator contractor. [2003 c 143 § 14; 1983 c 123 § 8; 1963 c 26 § 8.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.100 Conveyance work to be performed by elevator contractors—Acceptance tests—Inspections. (1) All conveyance installations, relocations, or alterations must be performed by an elevator contractor employing an elevator mechanic.

(2) The elevator contractor employing an elevator mechanic performing such conveyance work shall notify the department before completion of the work, and shall subject the new, moved, or altered portions of the conveyance to the acceptance tests.

(3) All new, altered, or relocated conveyances for which a permit has been issued, shall be inspected for compliance with the requirements of this chapter by an authorized representative of the department. The authorized representative shall also witness the test specified. [2003 c 143 § 15; 2002 c 98 § 5; 1983 c 123 § 11; 1963 c 26 § 10.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.125 Suspension or revocation of license or permit—Grounds—Notice—Stay of suspension or revocation—Removal of suspension or reinstatement of license or permit. (1) A license issued under this chapter may be suspended, revoked, or subject to civil penalty by the department upon verification that any one or more of the following reasons exist:

(a) Any false statement as to a material matter in the application;

(b) Fraud, misrepresentation, or bribery in securing a license;

(c) Failure to notify the department and the owner or lessee of a conveyance or related mechanisms of any condition not in compliance with this chapter;

(d) A violation of any provisions of this chapter; and

(e) If the elevator contractor does not employ an individual designated as the primary point of contact with the department and who has successfully completed the elevator con-

tractor examination. In the case of a separation of employment, termination of this relationship or designation, or death of the designated individual, the elevator contractor must, within ninety days, designate a new individual who has successfully completed the elevator contractor examination.

(2) The department may suspend or revoke a permit if:

(a) The permit was obtained through fraud or by error if, in the absence of error, the department would not have issued the permit;

(b) The conveyance for which the permit was issued has not been worked on in accordance with this chapter; or

(c) The conveyance has become unsafe.

(3) The department shall suspend any license issued under this chapter promptly after receiving notice from the department of social and health services that the holder of the license has been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a support order. If the person has continued to meet all other license requirements during the suspension, reissuance of the license shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

(4) The department shall notify in writing the owner, licensee, or person performing conveyance work, of its action and the reason for the action. The department shall send the notice by certified mail to the last known address of the owner or person. The notice shall inform the owner or person that a hearing may be requested pursuant to RCW 70.87.170.

(5)(a) If the department has suspended or revoked a permit or license because of fraud or error, and a hearing is requested, the suspension or revocation shall be stayed until the hearing is concluded and a decision is issued.

(b) If the department has revoked or suspended a license because the licensee performing the work covered by this chapter is working in a manner that does not effectively prevent injuries or deaths or protect employees and the public from unsafe conditions as is required by this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(c) If the department has revoked or suspended a permit because the conveyance is unsafe or the conveyance work is not permitted and performed in accordance with this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(6) The department must remove a suspension or reinstate a revoked license if the licensee pays all the assessed civil penalties and is able to demonstrate to the department that the licensee has met all the qualifications established by this chapter.

(7) The department shall remove a suspension or reinstate a revoked permit if a conveyance is repaired or modified to bring it into compliance with this chapter. [2003 c 143 § 16; 2002 c 98 § 6; 1983 c 123 § 10.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.145 Order to discontinue operation—Notice—Conditions—Contents of order—Recision of order—Violation—Penalty—Random inspections. (1) An authorized representative of the department may order the owner or person operating a conveyance to discontinue the operation of a

conveyance, and may place a notice that states that the conveyance may not be operated on a conspicuous place in the conveyance, if:

(a) The conveyance work has not been permitted and performed in accordance with this chapter; or

(b) The conveyance has otherwise become unsafe.

The order is effective immediately, and shall not be stayed by a request for a hearing.

(2) The department shall prescribe a form for the order to discontinue operation. The order shall specify why the conveyance violates this chapter or is otherwise unsafe, and shall inform the owner or operator that he or she may request a hearing pursuant to RCW 70.87.170. A request for a hearing does not stay the effect of the order.

(3) The department shall rescind the order to discontinue operation if the conveyance is fixed or modified to bring it into compliance with this chapter.

(4) An owner or a person that knowingly operates or allows the operation of a conveyance in contravention of an order to discontinue operation, or removes a notice not to operate, is:

(a) Guilty of a misdemeanor; and

(b) Subject to a civil penalty under RCW 70.87.185.

(5) The department may conduct random on-site inspections and tests on existing installations, witnessing periodic inspections and testing in order to ensure satisfactory conveyance work by persons, firms, or companies performing conveyance work, and assist in development of public awareness programs. [2003 c 143 § 17; 2002 c 98 § 7; 1983 c 123 § 15.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.170 Review of department action in accordance with administrative procedure act. (1) Any person aggrieved by an order or action of the department denying, suspending, revoking, or refusing to renew a permit or license; assessing a penalty for a violation of this chapter; or ordering the operation of a conveyance to be discontinued, may request a hearing within fifteen days after notice of the department's order or action is received. The date the hearing was requested shall be the date the request for hearing was postmarked. The party requesting the hearing must accompany the request with a certified or cashier's check for two hundred dollars payable to the department. The department shall refund the two hundred dollars if the party requesting the hearing prevails at the hearing; otherwise, the department shall retain the two hundred dollars.

If the department does not receive a timely request for hearing, the department's order or action is final and may not be appealed.

(2) If the aggrieved party requests a hearing, the department shall ask an administrative law judge to preside over the hearing. The hearing shall be conducted in accordance with chapter 34.05 RCW. [2003 c 143 § 18; 2002 c 98 § 8; 1983 c 123 § 16; 1963 c 26 § 17.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.180 Violations. (1) The performance of conveyance work, other than maintenance, or the operation of a conveyance without a permit by any person owning or having the

custody, management, or operation thereof, except as provided in RCW 70.87.080 and 70.87.090, is a misdemeanor. Each day of violation is a separate offense. A prosecution may not be maintained if a person has requested the issuance or renewal of a permit but the department has not acted.

(2) The performance of conveyance work, other than the maintenance of conveyances as specified in RCW 70.87.270, without a license by any person is a misdemeanor. Each day of violation is a separate offense. A prosecution may not be maintained if a person has requested the issuance or renewal of a license but the department has not acted. [2003 c 143 § 19; 2002 c 98 § 9; 1983 c 123 § 17; 1963 c 26 § 18.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.200 Exemptions. (1) The provisions of this chapter do not apply where:

(a) A conveyance is permanently removed from service or made effectively inoperative; or

(b) Lifts, man hoists, or material hoists are erected temporarily for use during construction work only and are of such a design that they must be operated by a workman stationed at the hoisting machine.

(2) Except as limited by RCW 70.87.050, municipalities having in effect an elevator code prior to June 13, 1963 may continue to assume jurisdiction over conveyance work and may inspect, issue permits, collect fees, and prescribe minimum requirements for conveyance work and operation if the requirements are equal to the requirements of this chapter and to all rules pertaining to conveyances adopted and administered by the department. Upon the failure of a municipality having jurisdiction over conveyances to carry out the provisions of this chapter with regard to a conveyance, the department may assume jurisdiction over the conveyance. If a municipality elects not to maintain jurisdiction over certain conveyances located therein, it may enter into a written agreement with the department transferring exclusive jurisdiction of the conveyances to the department. The city may not reassume jurisdiction after it enters into such an agreement with the department. [2003 c 143 § 20; 1983 c 123 § 22; 1969 ex.s. c 108 § 4; 1963 c 26 § 20.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.220 Elevator safety advisory committee. (1) The department may adopt the rules necessary to establish and administer the elevator safety advisory committee. The purpose of the advisory committee is to advise the department on the adoption of rules that apply to conveyances; methods of enforcing and administering this chapter; and matters of concern to the conveyance industry and to the individual installers, owners, and users of conveyances.

(2) The advisory committee shall consist of seven persons. The director of the department or his or her designee with the advice of the chief elevator inspector shall appoint the committee members as follows:

(a) One representative of licensed elevator contractors;

(b) One representative of elevator mechanics licensed to perform all types of conveyance work;

(c) One representative of owner-employed mechanics exempt from licensing requirements under RCW 70.87.270;

(d) One registered architect or professional engineer representative;

(e) One building owner or manager representative;

(f) One registered general commercial contractor representative; and

(g) One ad hoc member representing a municipality maintaining jurisdiction of conveyances in accordance with RCW 70.87.210 [70.87.200].

(3) The committee members shall serve terms of four years.

(4) The committee shall meet on the third Tuesday of February, May, August, and November of each year, and at other times at the discretion of the chief elevator inspector. The committee members shall serve without per diem or travel expenses.

(5) The chief elevator inspector shall be the secretary for the advisory committee. [2003 c 143 § 7; 2002 c 98 § 11.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.230 Conveyance work—Who may perform. Except as provided in RCW 70.87.270, a person may not perform conveyance work within the state unless he or she is an elevator mechanic who is regularly employed by and is working: (1) For an owner exempt from licensing requirements under RCW 70.87.270 and performing maintenance; (2) for a public agency performing maintenance; or (3) under the direct supervision of an elevator contractor. A person, firm, public agency, or company is not required to be an elevator contractor for removing or dismantling conveyances that are destroyed as a result of a complete demolition of a secured building or structure or where the building is demolished back to the basic support structure whereby no access is permitted therein to endanger the safety and welfare of a person. [2003 c 143 § 1; 2002 c 98 § 10.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.240 Elevator contractor license, elevator mechanic license—Qualifications—Reciprocity. (1) Any person, firm, public agency, or company wishing to engage in the business of performing conveyance work within the state must apply for an elevator contractor license with the department on a form provided by the department and be a registered general or specialty contractor under chapter 18.27 RCW.

(2) Except as provided by RCW 70.87.270, any person wishing to perform conveyance work within the state must apply for an elevator mechanic license with the department on a form provided by the department.

(3) An elevator contractor license may not be granted to any person or firm who does not possess the following qualifications:

(a) Five years' experience performing conveyance work, as verified by current and previous elevator contractors licensed to do business; or

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(4) Except as provided in subsection (5) of this section and RCW 70.87.245, an elevator mechanic license may not

be granted to any person who does not possess the following qualifications:

(a) An acceptable combination of documented experience and education credits: Not less than three years' experience performing conveyance work, as verified by current and previous employers licensed to do business in this state or public agency employers; and

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(5) Any person who furnishes the department with acceptable proof that he or she has performed conveyance work in the category for which a license is sought shall upon making application for a license and paying the license fee receive a license without an examination. The person must have:

(a) Worked without direct and immediate supervision for a general or specialty contractor registered under chapter 18.27 RCW and engaged in the business of performing conveyance work in this state. This employment may not be less than each and all of the three years immediately before March 1, 2004. The person must apply within ninety days after the effective date of rules adopted under this chapter establishing licensing requirements;

(b) Worked without direct and immediate supervision for an owner exempt from licensing requirements under RCW 70.87.270 or a public agency as an individual responsible for maintenance of conveyances owned by the owner exempt from licensing requirements under RCW 70.87.270 or the public agency. This employment may not be less than each and all of the three years immediately before March 1, 2004. The person must apply within ninety days after the effective date of rules adopted under this chapter establishing licensing requirements;

(c) Obtained a certificate of completion and successfully passed the mechanic examination of a nationally recognized training program for the elevator industry such as the national elevator industry educational program or its equivalent; or

(d) Obtained a certificate of completion of an apprenticeship program for an elevator mechanic, having standards substantially equal to those of this chapter, and registered with the Washington state apprenticeship and training council.

(6) A license must be issued to an individual holding a valid license from a state having entered into a reciprocal agreement with the department and having standards substantially equal to those of this chapter, upon application and without examination. [2003 c 143 § 2; 2002 c 98 § 12.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.245 Material lift mechanic license. A material lift mechanic license to perform conveyance work on material lifts subject to WAC 296-96-05010 may be granted to any person who possesses the following qualifications:

(1) The person: (a) Must be employed by an elevator contractor that complies with subsections (2) and (3) of this section; (b) must have successfully completed the training described in subsection (2) of this section; and (c) after successfully completing such training, must have passed a written examination administered by the department that is

designed to demonstrate competency with regard to conveyance work on material lifts;

(2) The employer must provide the persons specified in subsection (1) of this section adequate training, including any training provided by the manufacturer, ensuring worker safety and adherence to the published operating specifications of the conveyance manufacturer; and

(3) The employer must maintain: (a) A conveyance work log identifying the equipment, describing the conveyance work performed, and identifying the person who performed the conveyance work; (b) a training log describing the course of study applicable to each conveyance and identifying each employee who has successfully completed the training described in subsection (2) of this section and when such training was completed; and (c) a record evidencing that the employer has notified the conveyance owner in writing that the conveyance is not designed to, is not intended to, and should not be used to convey workers. [2003 c 143 § 3.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.250 Licenses—Renewals—Fees—Temporary licenses—Continuing education—Records. (1) Upon approval of an application, the department may issue a license that is biennially renewable. The fee for the license and for any renewal shall be set by the department in rule.

(2) The department may issue temporary elevator mechanic licenses. These temporary elevator mechanic licenses will be issued to those certified as qualified and competent by licensed elevator contractors. The company shall furnish proof of competency as the department may require. Each license must recite that it is valid for a period of thirty days from the date of issuance and for such particular conveyance or geographical areas as the department may designate, and otherwise entitles the licensee to the rights and privileges of an elevator mechanic license issued in this chapter. A temporary elevator mechanic license may be renewed by the department and a fee as established in rule must be charged for any temporary elevator mechanic license or renewal.

(3) The renewal of all licenses granted under this section is conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of licensees on new and existing rules of the department. The course must consist of not less than eight hours of instruction that must be attended and completed within one year immediately preceding any license renewal.

(4) The courses must be taught by instructors through continuing education providers that may include, but are not limited to, association seminars and labor training programs. The department must approve the continuing education providers. All instructors must be approved by the department and are exempt from the requirements of subsection (3) of this section with regard to his or her application for license renewal, provided that such applicant was qualified as an instructor at any time during the one year immediately preceding the scheduled date for such renewal.

(5) A licensee who is unable to complete the continuing education course required under this section before the expiration of his or her license due to a temporary disability may apply for a waiver from the department. This will be on a

form provided by the department and signed under the pains and penalties of perjury and accompanied by a certified statement from a competent physician attesting to the temporary disability. Upon the termination of the temporary disability, the licensee must submit to the department a certified statement from the same physician, if practicable, attesting to the termination of the temporary disability. At which time a waiver sticker, valid for ninety days, must be issued to the licensee and affixed to his or her license.

(6) Approved training providers must keep uniform records, for a period of ten years, of attendance of licensees and these records must be available for inspection by the department at its request. Approved training providers are responsible for the security of all attendance records and certificates of completion. However, falsifying or knowingly allowing another to falsify attendance records or certificates of completion constitutes grounds for suspension or revocation of the approval required under this section. [2003 c 143 § 21; 2002 c 98 § 13.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.260 Liability not limited or assumed by state.

This chapter cannot be construed to relieve or lessen the responsibility or liability of any person, firm, or corporation owning, operating, controlling, testing, inspecting, or performing conveyance work on any conveyance or other related mechanisms covered by this chapter for damages to person or property caused by any defect therein, nor does the state assume any such liability or responsibility therefore or any liability to any person for whatever reason whatsoever by the adoption of this chapter or any acts or omissions arising hereunder. [2003 c 143 § 22; 2002 c 98 § 14.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.270 Exemptions from licensure. (1) The licensing requirements of this chapter do not apply to the maintenance of conveyances specified in (a) of this subsection if a person specified in (b) of this subsection performs the maintenance and the owner complies with the requirements specified in (c) and (d) of this subsection.

(a) The conveyance: (i) Must be a conveyance other than a passenger elevator to which the general public has access; and (ii) must be located in a facility in which agricultural products are stored, food products are processed, goods are manufactured, energy is generated, or similar industrial or agricultural processes are performed.

(b) The person performing the maintenance: (i) Must be regularly employed by the owner; (ii) must have completed the training described in (c) of this subsection; and (iii) must have attained journey level status in an electrical or mechanical trade, but only if the employer has or uses an established journey level program to train its electrical or mechanical trade employees and the employees perform maintenance in the course of their regular employment.

(c) The owner must provide the persons specified in (b) of this subsection adequate training to ensure worker safety and adherence to the published operating specifications of the conveyance manufacturer, the applicable provisions of this chapter, and any rules adopted under this chapter.

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(d) The owner also must maintain both a maintenance log and a training log. The maintenance log must describe maintenance work performed on the conveyance and identify the person who performed the work. The training log must describe the course of study provided to the persons specified in (b) of this subsection, including whether it is general or conveyance specific, and when the persons completed the course of study.

(2) It is a violation of chapter 49.17 RCW for an owner or an employer: (a) To allow a conveyance exempt from the licensing requirements of this chapter under subsection (1) of this section to be maintained by a person other than a person specified in subsection (1)(b) of this section or a licensee; or (b) to fail to maintain the logs required under subsection (1)(d) of this section. [2003 c 143 § 4.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.280 License categories—Rules. In order to effectively administer and implement the elevator mechanic licensing of this chapter, the department may establish elevator mechanic license categories in rule. [2003 c 143 § 5.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.290 Rules—Effective date. The department of labor and industries may not adopt rules to implement chapter 98, Laws of 2002, and to implement chapter 143, Laws of 2003 that take effect before March 1, 2004. [2003 c 143 § 6.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.300 Private residential conveyances—Report. (Expires July 1, 2004.) (1) The elevator safety advisory committee shall review this chapter as it pertains to the regulation of private residence conveyances. The advisory committee shall report its findings and recommendations to the legislature by January 1, 2004. Until July 1, 2004, the licensing requirements of this chapter do not apply to conveyance work on private residential conveyances if the person performing the conveyance work is working at the direction of the owner, and the owner resides in the residence at which the conveyance is located. This section shall not be construed as modifying any other requirements of this chapter applicable to private residential conveyances.

(2) This section expires July 1, 2004. [2003 c 143 § 8.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

Chapter 70.93 RCW

WASTE REDUCTION, RECYCLING, AND MODEL LITTER CONTROL ACT

(Formerly: Model litter control and recycling act)

Sections

70.93.030	Definitions.
70.93.060	Littering prohibited—Penalties—Litter cleanup restitution payment.
70.93.100	Repealed.

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

- (1) "Conveyance" means a boat, airplane, or vehicle.
- (2) "Department" means the department of ecology.
- (3) "Director" means the director of the department of ecology.
- (4) "Disposable package or container" means all packages or containers defined as such by rules adopted by the department of ecology.
- (5) "Junk vehicle" has the same meaning as defined in RCW 46.55.010.
- (6) "Litter" means all waste material including but not limited to disposable packages or containers thrown or deposited as herein prohibited and solid waste that is illegally dumped, but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing. "Litter" includes the material described in subsection (10) of this section as "potentially dangerous litter."
- (7) "Litter bag" means a bag, sack, or other container made of any material which is large enough to serve as a receptacle for litter inside the vehicle or watercraft of any person. It is not necessarily limited to the state approved litter bag but must be similar in size and capacity.
- (8) "Litter receptacle" means those containers adopted by the department of ecology and which may be standardized as to size, shape, capacity, and color and which shall bear the state anti-litter symbol, as well as any other receptacles suitable for the depositing of litter.
- (9) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or other entity whatsoever.
- (10) "Potentially dangerous litter" means litter that is likely to injure a person or cause damage to a vehicle or other property. "Potentially dangerous litter" means:
 - (a) Cigarettes, cigars, or other tobacco products that are capable of starting a fire;
 - (b) Glass;
 - (c) A container or other product made predominantly or entirely of glass;
 - (d) A hypodermic needle or other medical instrument designed to cut or pierce;
 - (e) Raw human waste, including soiled baby diapers, regardless of whether or not the waste is in a container of any sort; and
 - (f) Nails or tacks.
- (11) "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests.
- (12) "Recycling" means transforming or remanufacturing waste materials into a finished product for use other than landfill disposal or incineration.
- (13) "Recycling center" means a central collection point for recyclable materials.
- (14) "To litter" means a single or cumulative act of disposing of litter.
- (15) "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a

public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(16) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.

(17) "Watercraft" means any boat, ship, vessel, barge, or other floating craft. [2003 c 337 § 2; 2000 c 154 § 1; 1998 c 257 § 3; 1991 c 319 § 102; 1979 c 94 § 3; 1971 ex.s. c 307 § 3.]

Findings—2003 c 337: See note following RCW 70.93.060.

Severability—2000 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 154 § 5.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

70.93.060 Littering prohibited—Penalties—Litter cleanup restitution payment. (1) It is a violation of this section to abandon a junk vehicle upon any property. In addition, no person shall throw, drop, deposit, discard, or otherwise dispose of litter upon any public property in the state or upon private property in this state not owned by him or her or in the waters of this state whether from a vehicle or otherwise including but not limited to any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley except:

(a) When the property is designated by the state or its agencies or political subdivisions for the disposal of garbage and refuse, and the person is authorized to use such property for that purpose;

(b) Into a litter receptacle in a manner that will prevent litter from being carried away or deposited by the elements upon any part of the private or public property or waters.

(2)(a) Except as provided in subsection (4) of this section, it is a class 3 civil infraction as provided in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or fifty dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(c) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or one hundred dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person

to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(d) If a junk vehicle is abandoned in violation of this section, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle.

(3) If the violation occurs in a state park, the court shall, in addition to any other penalties assessed, order the person to perform twenty-four hours of community restitution in the state park where the violation occurred if the state park has stated an intent to participate as provided in RCW 79A.05.050.

(4) It is a class 1 civil infraction as provided in RCW 7.80.120 for a person to discard, in violation of this section, potentially dangerous litter in any amount. [2003 c 337 § 3; 2002 c 175 § 45; 2001 c 139 § 1; 2000 c 154 § 2; 1997 c 159 § 1; 1996 c 263 § 1; 1993 c 292 § 1; 1983 c 277 § 1; 1979 ex.s. c 39 § 1; 1971 ex.s. c 307 § 6.]

Findings—2003 c 337: "(1) The legislature finds that the littering of potentially dangerous products poses a greater danger to the public safety than other classes of litter. Broken glass, human waste, and other dangerous materials along roadways, within parking lots, and on pedestrian, bicycle, and recreation trails elevates the risk to public safety, such as vehicle tire punctures, and the risk to the community volunteers who spend their time gathering and properly disposing of the litter left behind by others. As such, the legislature finds that a higher penalty should be imposed on those who improperly dispose of potentially dangerous products, such as is imposed on those who improperly dispose of tobacco products.

(2) The legislature further finds that litter is a nuisance, and, in order to alleviate such a nuisance, counties must be provided statutory authority to declare what shall be a nuisance, to abate a nuisance, and to impose and collect fines upon parties who may create, cause, or commit a nuisance." [2003 c 337 § 1.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Severability—2000 c 154: See note following RCW 70.93.030.

Lighted material, etc.—Receptacles in conveyances: RCW 76.04.455.

Throwing dangerous materials on highway prohibited—Removal: RCW 46.61.645.

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

Chapter 70.94 RCW

WASHINGTON CLEAN AIR ACT

Sections

70.94.017	Air pollution control account—Subaccount distribution. (<i>Expires July 1, 2008.</i>)
70.94.085	Cost-reimbursement agreements.
70.94.430	Penalties. (<i>Effective July 1, 2004.</i>)
70.94.483	Wood stove education and enforcement account created—Fee imposed on solid fuel burning device sales.
70.94.996	Grant program for ride sharing. (<i>Expires January 1, 2014.</i>)

70.94.017 Air pollution control account—Subaccount distribution. (*Expires July 1, 2008.*) (1) Money deposited in the segregated subaccount of the air pollution control account under RCW 46.68.020(2) shall be distributed as follows:

(a) Eighty-five percent shall be distributed to air pollution control authorities created under this chapter. The

money must be distributed in direct proportion with the amount of fees imposed under RCW 46.12.080, 46.12.170, and 46.12.181 that are collected within the boundaries of each authority. However, an amount in direct proportion with those fees collected in counties for which no air pollution control authority exists must be distributed to the department.

(b) The remaining fifteen percent shall be distributed to the department.

(2) Money distributed to air pollution control authorities and the department under subsection (1) of this section must be used as follows:

(a) Eighty-five percent of the money received by an air pollution control authority or the department must be used to retrofit school buses with exhaust emission control devices or to provide funding for fueling infrastructure necessary to allow school bus fleets to use alternative, cleaner fuels.

(b) The remaining fifteen percent may be used by the air pollution control authority or department to reduce vehicle air contaminant emissions and clean up air pollution, or reduce and monitor toxic air contaminants.

(3) Money in the air pollution control account may be spent by the department only after appropriation.

(4) The department shall provide a report to the legislative transportation committees on the progress of the implementation of this section by December 31, 2004. [2003 c 264 § 1.]

Expiration date—2003 c 264 §§ 1 and 3: See note following RCW 90.56.335.

70.94.085 Cost-reimbursement agreements. (1) An authority may enter into a written cost-reimbursement agreement with a permit applicant to recover from the applicant the reasonable costs incurred by the authority in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement.

(2) The written cost-reimbursement agreement shall be negotiated with the permit applicant. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the air pollution control authority to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The air pollution control authority may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The air pollution control authority shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The air pollution control authority shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that pro-

vides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The air pollution control authority may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The provisions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. Members of the air pollution control authority's board of directors shall be considered as state officers, and employees of the air pollution control authority shall be considered as state employees, for the sole purpose of applying the restrictions of chapter 42.52 RCW to this section.

(3) An air pollution control authority may not enter into any new cost-reimbursement agreements on or after July 1, 2007. The authority may continue to administer any cost-reimbursement agreement that was entered into before July 1, 2007, until the project is completed. [2003 c 70 § 5; 2000 c 251 § 6.]

Intent—Captions not law—Effective date—2000 c 251: See notes following RCW 43.21A.690.

70.94.430 Penalties. (Effective July 1, 2004.) (1) Any person who knowingly violates any of the provisions of chapter 70.94 or 70.120 RCW, or any ordinance, resolution, or regulation in force pursuant thereto is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than one year, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than one year, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than fifty thousand dollars, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars. [2003 c 53 § 355; 1991 c 199 § 310; 1984 c 255 § 1; 1973 1st ex.s. c 176 § 1; 1967 c 238 § 61.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.483 Wood stove education and enforcement account created—Fee imposed on solid fuel burning device sales. (1) The wood stove education and enforcement

account is hereby created in the state treasury. Money placed in the account shall include all money received under subsection (2) of this section and any other money appropriated by the legislature. Money in the account shall be spent for the purposes of the wood stove education program established under RCW 70.94.480 and for enforcement of the wood stove program, and shall be subject to legislative appropriation. However, during the 2003-05 fiscal biennium, the legislature may transfer from the wood stove education and enforcement account to the air pollution control account such amounts as specified in the omnibus operating budget bill.

(2) The department of ecology, with the advice of the advisory committee, shall set a flat fee of thirty dollars, on the retail sale, as defined in RCW 82.04.050, of each solid fuel burning device after January 1, 1992. The fee shall be imposed upon the consumer and shall not be subject to the retail sales tax provisions of chapters 82.08 and 82.12 RCW. The fee may be adjusted annually above thirty dollars to account for inflation as determined by the state office of the economic and revenue forecast council. The fee shall be collected by the department of revenue in conjunction with the retail sales tax under chapter 82.08 RCW. If the seller fails to collect the fee herein imposed or fails to remit the fee to the department of revenue in the manner prescribed in chapter 82.08 RCW, the seller shall be personally liable to the state for the amount of the fee. The collection provisions of chapter 82.32 RCW shall apply. The department of revenue shall deposit fees collected under this section in the wood stove education and enforcement account. [2003 1st sp.s. c 25 § 932; 1991 sp.s. c 13 §§ 64, 65; 1991 c 199 § 505; 1990 c 128 § 5; 1987 c 405 § 10.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

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

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.996 Grant program for ride sharing. (Expires January 1, 2014.) (1) To the extent that funds are appropriated, the department of transportation shall administer a performance-based grant program for private employers, public agencies, nonprofit organizations, developers, and property managers who provide financial incentives for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, including telework, before July 1, 2013, to their own or other employees.

(2) The amount of the grant will be determined based on the value to the transportation system of the vehicle trips reduced. The commute trip reduction task force shall develop an award rate giving priority to applications achieving the greatest reduction in trips and commute miles per public dollar requested and considering the following criteria: The local cost of providing new highway capacity, congestion levels, and geographic distribution.

(3) No private employer, public agency, nonprofit organization, developer, or property manager is eligible for grants under this section in excess of one hundred thousand dollars in any fiscal year.

(4) The total of grants provided under this section may not exceed seven hundred fifty thousand dollars in any fiscal year.

(5) The department of transportation shall report to the department of revenue by the 15th day of each month the aggregate monetary amount of grants provided under this section in the prior month and the identity of the recipients of those grants.

(6) The source of funds for this grant program is the multimodal transportation account.

(7) This section expires January 1, 2014. [2003 c 364 § 9.]

Effective date—Contingency—Captions not law—2003 c 364: See notes following RCW 82.70.020.

Chapter 70.95D RCW SOLID WASTE INCINERATOR AND LANDFILL OPERATORS

Sections

70.95D.100 Penalties. (*Effective July 1, 2004.*)

70.95D.100 Penalties. (*Effective July 1, 2004.*) (1) Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency, with the exception of incinerator operators, violating any provision of this chapter or the rules adopted under this chapter, is guilty of a misdemeanor.

(2) Any incinerator operator who violates any provision of this chapter is guilty of a gross misdemeanor.

(3) Each day of operation in violation of this chapter or any rules adopted under this chapter shall constitute a separate offense.

(4) The prosecuting attorney or the attorney general, as appropriate, shall secure injunctions of continuing violations of any provisions of this chapter or the rules adopted under this chapter. [2003 c 53 § 356; 1989 c 431 § 74.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 70.95M RCW MERCURY

Sections

70.95M.010	Definitions.
70.95M.020	Fluorescent lamps—Labeling requirements.
70.95M.030	Mercury disposal education plan.
70.95M.040	Schools—Purchase of mercury prohibited.
70.95M.050	Prohibited sales—Novelties, manometers, thermometers, thermostats, motor vehicles.
70.95M.060	Rules—Product preference.
70.95M.070	Clearinghouse—Department participation.
70.95M.080	Penalties.
70.95M.090	Crematories—Nonapplicability of chapter.
70.95M.100	Prescription drugs, biological products, over-the-counter items—Nonapplicability of chapter.
70.95M.110	Medical equipment, research tests—Nonapplicability of chapter.
70.95M.120	Fiscal impact—Toxics control account.
70.95M.130	National mercury repository site.

70.95M.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

[2003 RCW Supp—page 824]

(1) "Automotive mercury switch" includes a convenience switch, such as a switch for a trunk or hood light, and a mercury switch in antilock brake systems.

(2) "Department" means the department of ecology.

(3) "Director" means the director of the department of ecology.

(4) "Health care facility" includes a hospital, nursing home, extended care facility, long-term care facility, clinical or medical laboratory, state or private health or mental institution, clinic, physician's office, or health maintenance organization.

(5) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a mercury-added product or an importer or domestic distributor of a mercury-added product produced in a foreign country. In the case of a multicomponent product containing mercury, the manufacturer is the last manufacturer to produce or assemble the product. If the multicomponent product or mercury-added product is produced in a foreign country, the manufacturer is the first importer or domestic distributor.

(6) "Mercury-added button-cell battery" means a button-cell battery to which the manufacturer intentionally introduces mercury for the operation of the battery.

(7) "Mercury-added novelty" means a mercury-added product intended mainly for personal or household enjoyment or adornment. Mercury-added novelties include, but are not limited to, items intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, items of apparel, and other similar products. Mercury-added novelty does not include games, toys, or products that require a button-cell or lithium battery, liquid crystal display screens, or a lamp that contains mercury.

(8) "Mercury-added product" means a product, commodity, or chemical, or a product with a component that contains mercury or a mercury compound intentionally added to the product, commodity, or chemical in order to provide a specific characteristic, appearance, or quality, or to perform a specific function, or for any other reason. Mercury-added products include, but are not limited to, mercury thermometers, mercury thermostats, and mercury switches in motor vehicles.

(9) "Mercury manometer" means a mercury-added product that is used for measuring blood pressure.

(10) "Mercury thermometer" means a mercury-added product that is used for measuring temperature.

(11) "Retailer" means a retailer of a mercury-added product. [2003 c 260 § 2.]

70.95M.020 Fluorescent lamps—Labeling requirements. (1) Effective January 1, 2004, a manufacturer, wholesaler, or retailer may not knowingly sell at retail a fluorescent lamp if the fluorescent lamp contains mercury and was manufactured after November 30, 2003, unless the fluorescent lamp is labeled in accordance with the guidelines listed under subsection (2) of this section. Primary responsibility for affixing labels required under this section is on the manufacturer, and not on the wholesaler or retailer.

(2) Except as provided in subsection (3) of this section, a lamp is considered labeled pursuant to subsection (1) of this section if the lamp has all of the following:

(a) A label affixed to the lamp that displays the internationally recognized symbol for the element mercury; and

(b) A label on the lamp's packaging that: (i) Clearly informs the purchaser that mercury is present in the item; (ii) explains that the fluorescent lamp should be disposed of according to applicable federal, state, and local laws; and (iii) provides a toll-free telephone number, and a uniform resource locator internet address to a web site, that contains information on applicable disposal laws.

(3) The manufacturer of a mercury-added lamp is in compliance with the requirements of this section if the manufacturer is in compliance with the labeling requirements of another state.

(4) The provisions of this section do not apply to products containing mercury-added lamps. [2003 c 260 § 3.]

70.95M.030 Mercury disposal education plan. The department of health must develop an educational plan for schools, local governments, businesses, and the public on the proper disposal methods for mercury and mercury-added products. [2003 c 260 § 4.]

70.95M.040 Schools—Purchase of mercury prohibited. A school may not purchase for use in a primary or secondary classroom bulk elemental mercury or chemical mercury compounds. By January 1, 2006, all primary and secondary schools in the state must remove and properly dispose of all bulk elemental mercury, chemical mercury, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers. [2003 c 260 § 5.]

70.95M.050 Prohibited sales—Novelties, manometers, thermometers, thermostats, motor vehicles. (1) Effective January 1, 2006, no person may sell, offer for sale, or distribute for sale or use in this state a mercury-added novelty. A manufacturer of mercury-added novelties must notify all retailers that sell the product about the provisions of this section and how to properly dispose of any remaining mercury-added novelty inventory.

(2)(a) Effective January 1, 2006, no person may sell, offer for sale, or distribute for sale or use in this state a manometer used to measure blood pressure or a thermometer that contains mercury. This subsection (2)(a) does not apply to:

(i) An electronic thermometer with a button-cell battery containing mercury;

(ii) A thermometer that contains mercury and that is used for food research and development or food processing, including meat, dairy products, and pet food processing;

(iii) A thermometer that contains mercury and that is a component of an animal agriculture climate control system or industrial measurement system or for veterinary medicine until such a time as the system is replaced or a nonmercury component for the system or application is available;

(iv) A thermometer or manometer that contains mercury that is used for calibration of other thermometers, manometers, apparatus, or equipment, unless a nonmercury calibra-

tion standard is approved for the application by the national institute of standards and technology;

(v) A thermometer that is provided by prescription. A manufacturer of a mercury thermometer shall supply clear instructions on the careful handling of the thermometer to avoid breakage and proper cleanup should a breakage occur; or

(vi) A manometer or thermometer sold or distributed to a hospital, or a health care facility controlled by a hospital, if the hospital has adopted a plan for mercury reduction consistent with the goals of the mercury chemical action plan developed by the department under section 302, chapter 371, Laws of 2002.

(b) A manufacturer of thermometers that contain mercury must notify all retailers that sell the product about the provisions of this section and how to properly dispose of any remaining thermometer inventory.

(3) Effective January 1, 2006, no person may sell, install, or reinstall a commercial or residential thermostat that contains mercury unless the manufacturer of the thermostat conducts or participates in a thermostat recovery or recycling program designed to assist contractors in the proper disposal of thermostats that contain mercury in accordance with 42 U.S.C. Sec. 6901, et seq., the federal resource conservation and recovery act.

(4) No person may sell, offer for sale, or distribute for sale or use in this state a motor vehicle manufactured after January 1, 2006, if the motor vehicle contains an automotive mercury switch.

(5) Nothing in this section restricts the ability of a manufacturer, importer, or domestic distributor from transporting products through the state, or storing products in the state for later distribution outside the state. [2003 c 260 § 6.]

70.95M.060 Rules—Product preference. (1) The department of general administration must, by January 1, 2005, revise its rules, policies, and guidelines to implement the purpose of this chapter.

(2) The department of general administration must give priority and preference to the purchase of equipment, supplies, and other products that contain no mercury-added compounds or components, unless: (a) There is no economically feasible nonmercury-added alternative that performs a similar function; or (b) the product containing mercury is designed to reduce electricity consumption by at least forty percent and there is no nonmercury or lower mercury alternative available that saves the same or a greater amount of electricity as the exempted product. In circumstances where a nonmercury-added product is not available, preference must be given to the purchase of products that contain the least amount of mercury added to the product necessary for the required performance. [2003 c 260 § 7.]

70.95M.070 Clearinghouse—Department participation. The department is authorized to participate in a regional or multistate clearinghouse to assist in carrying out any of the requirements of this chapter. A clearinghouse may also be used for examining notification and label requirements, developing education and outreach activities, and maintaining a list of all mercury-added products. [2003 c 260 § 8.]

70.95M.080 Penalties. A violation of this chapter is punishable by a civil penalty not to exceed one thousand dollars for each violation in the case of a first violation. Repeat violators are liable for a civil penalty not to exceed five thousand dollars for each repeat violation. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070. [2003 c 260 § 9.]

70.95M.090 Crematories—Nonapplicability of chapter. Nothing in this chapter applies to crematories as that term is defined in RCW 68.04.070. [2003 c 260 § 10.]

70.95M.100 Prescription drugs, biological products, over-the-counter items—Nonapplicability of chapter. Nothing in this chapter applies to prescription drugs regulated by the food and drug administration under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.), to biological products regulated by the food and drug administration under the public health service act (42 U.S.C. Sec. 262 et seq.), or to any substance that may be lawfully sold over-the-counter without a prescription under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.). [2003 c 260 § 12.]

70.95M.110 Medical equipment, research tests—Nonapplicability of chapter. Nothing in RCW 70.95M.020, 70.95M.050 (1), (3), or (4), or 70.95M.060 applies to medical equipment or reagents used in medical or research tests regulated by the food and drug administration under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.). [2003 c 260 § 13.]

70.95M.120 Fiscal impact—Toxics control account. Any fiscal impact on the department or the department of health that results from the implementation of this chapter must be paid for out of funds that are appropriated by the legislature from the state toxics control account for the implementation of the department's persistent bioaccumulative toxic chemical strategy. [2003 c 260 § 11.]

70.95M.130 National mercury repository site. The department of ecology shall petition the United States environmental protection agency requesting development of a national mercury repository site. [2003 c 260 § 14.]

Chapter 70.96A RCW

TREATMENT FOR ALCOHOLISM, INTOXICATION, AND DRUG ADDICTION

(Formerly: Uniform alcoholism and intoxication treatment)

Sections

70.96A.350	Criminal justice treatment account.
70.96A.420	Statewide treatment and operating standards for opiate substitution programs—Evaluation and report.
70.96A.520	Chemical dependency treatment expenditures—Prioritization.

70.96A.350 Criminal justice treatment account. (1) The criminal justice treatment account is created in the state treasury. Moneys in the account may be expended solely for: (a) Substance abuse treatment and treatment support services

for offenders with an addiction or a substance abuse problem that, if not treated, would result in addiction, against whom charges are filed by a prosecuting attorney in Washington state; and (b) the provision of drug and alcohol treatment services and treatment support services for nonviolent offenders within a drug court program. Moneys in the account may be spent only after appropriation.

(2) For purposes of this section:

(a) "Treatment" means services that are critical to a participant's successful completion of his or her substance abuse treatment program, but does not include the following services: Housing other than that provided as part of an inpatient substance abuse treatment program, vocational training, and mental health counseling; and

(b) "Treatment support" means transportation to or from inpatient or outpatient treatment services when no viable alternative exists, and child care services that are necessary to ensure a participant's ability to attend outpatient treatment sessions.

(3) Revenues to the criminal justice treatment account consist of: (a) Funds transferred to the account pursuant to this section; and (b) any other revenues appropriated to or deposited in the account.

(4)(a) For the fiscal biennium beginning July 1, 2003, the state treasurer shall transfer eight million nine hundred fifty thousand dollars from the general fund into the criminal justice treatment account, divided into eight equal quarterly payments. For the fiscal year beginning July 1, 2005, and each subsequent fiscal year, the state treasurer shall transfer eight million two hundred fifty thousand dollars from the general fund to the criminal justice treatment account, divided into four equal quarterly payments. For the fiscal year beginning July 1, 2006, and each subsequent fiscal year, the amount transferred shall be increased on an annual basis by the implicit price deflator as published by the federal bureau of labor statistics.

(b) For the fiscal biennium beginning July 1, 2003, and each biennium thereafter, the state treasurer shall transfer two million nine hundred eighty-four thousand dollars from the general fund into the violence reduction and drug enforcement account, divided into eight quarterly payments. The amounts transferred pursuant to this subsection (4)(b) shall be used solely for providing drug and alcohol treatment services to offenders confined in a state correctional facility who are assessed with an addiction or a substance abuse problem that if not treated would result in addiction.

(c) In each odd-numbered year, the legislature shall appropriate the amount transferred to the criminal justice treatment account in (a) of this subsection to the division of alcohol and substance abuse for the purposes of subsection (5) of this section.

(5) Moneys appropriated to the division of alcohol and substance abuse from the criminal justice treatment account shall be distributed as specified in this subsection. The department shall serve as the fiscal agent for purposes of distribution. Until July 1, 2004, the department may not use moneys appropriated from the criminal justice treatment account for administrative expenses and shall distribute all amounts appropriated under subsection (4)(c) of this section in accordance with this subsection. Beginning in July 1, 2004, the department may retain up to three percent of the

amount appropriated under subsection (4)(c) of this section for its administrative costs.

(a) Seventy percent of amounts appropriated to the division from the account shall be distributed to counties pursuant to the distribution formula adopted under this section. The division of alcohol and substance abuse, in consultation with the department of corrections, the sentencing guidelines commission, the Washington state association of counties, the Washington state association of drug court professionals, the superior court judges' association, the Washington association of prosecuting attorneys, representatives of the criminal defense bar, representatives of substance abuse treatment providers, and any other person deemed by the division to be necessary, shall establish a fair and reasonable methodology for distribution to counties of moneys in the criminal justice treatment account. County or regional plans submitted for the expenditure of formula funds must be approved by the panel established in (b) of this subsection.

(b) Thirty percent of the amounts appropriated to the division from the account shall be distributed as grants for purposes of treating offenders against whom charges are filed by a county prosecuting attorney. The division shall appoint a panel of representatives from the Washington association of prosecuting attorneys, the Washington association of sheriffs and police chiefs, the superior court judges' association, the Washington state association of counties, the Washington defender's association or the Washington association of criminal defense lawyers, the department of corrections, the Washington state association of drug court professionals, substance abuse treatment providers, and the division. The panel shall review county or regional plans for funding under (a) of this subsection and grants approved under this subsection. The panel shall attempt to ensure that treatment as funded by the grants is available to offenders statewide.

(6) The county alcohol and drug coordinator, county prosecutor, county sheriff, county superior court, a substance abuse treatment provider appointed by the county legislative authority, a member of the criminal defense bar appointed by the county legislative authority, and, in counties with a drug court, a representative of the drug court shall jointly submit a plan, approved by the county legislative authority or authorities, to the panel established in subsection (5)(b) of this section, for disposition of all the funds provided from the criminal justice treatment account within that county. The funds shall be used solely to provide approved alcohol and substance abuse treatment pursuant to RCW 70.96A.090 and treatment support services. No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group of counties participating in a regional agreement shall be spent for treatment support services.

(7) Counties are encouraged to consider regional agreements and submit regional plans for the efficient delivery of treatment under this section.

(8) Moneys allocated under this section shall be used to supplement, not supplant, other federal, state, and local funds used for substance abuse treatment.

(9) Counties must meet the criteria established in RCW 2.28.170(3)(b). [2003 c 379 § 11; 2002 c 290 § 4.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Effective date—2002 c 290 §§ 1, 4-6, 12, 13, 26, and 27: "Sections 1, 4 through 6, 12, 13, 26, and 27 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 1, 2002]." [2002 c 290 § 32.]

Intent—2002 c 290: See note following RCW 9.94A.517.

Severability—2002 c 290: See RCW 9.94A.924.

70.96A.420 Statewide treatment and operating standards for opiate substitution programs—Evaluation and report. (1) The department, in consultation with opiate substitution treatment service providers and counties and cities, shall establish statewide treatment standards for certified opiate substitution treatment programs. The department shall enforce these treatment standards. The treatment standards shall include, but not be limited to, reasonable provisions for all appropriate and necessary medical procedures, counseling requirements, urinalysis, and other suitable tests as needed to ensure compliance with this chapter.

(2) The department, in consultation with opiate substitution treatment programs and counties, shall establish statewide operating standards for certified opiate substitution treatment programs. The department shall enforce these operating standards. The operating standards shall include, but not be limited to, reasonable provisions necessary to enable the department and counties to monitor certified and licensed opiate substitution treatment programs for compliance with this chapter and the treatment standards authorized by this chapter and to minimize the impact of the opiate substitution treatment programs upon the business and residential neighborhoods in which the program is located.

(3) The department shall establish criteria for evaluating the compliance of opiate substitution treatment programs with the goals and standards established under this chapter. As a condition of certification, opiate substitution programs shall submit an annual report to the department and county legislative authority, including data as specified by the department necessary for outcome analysis. The department shall analyze and evaluate the data submitted by each treatment program and take corrective action where necessary to ensure compliance with the goals and standards enumerated under this chapter. [2003 c 207 § 6; 2001 c 242 § 3; 1998 c 245 § 135; 1995 c 321 § 3; 1989 c 270 § 22.]

70.96A.520 Chemical dependency treatment expenditures—Prioritization. The department shall prioritize expenditures for treatment provided under RCW 13.40.165. The department shall provide funds for inpatient and outpatient treatment providers that are the most successful, using the standards developed by the University of Washington under section 27, chapter 338, Laws of 1997. The department may consider variations between the nature of the programs provided and clients served but must provide funds first for those programs that demonstrate the greatest success in treatment within categories of treatment and the nature of the persons receiving treatment. [2003 c 207 § 7; 1997 c 338 § 28.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Chapter 70.98 RCW

NUCLEAR ENERGY AND RADIATION

Sections

70.98.098 Financial assurance—Generally.

70.98.098 Financial assurance—Generally. (1) In making the determination of the appropriate level of financial assurance, the secretary shall consider: (a) The report prepared by the department of ecology pursuant to RCW 43.200.200; (b) the potential cost of decontamination, treatment, disposal, decommissioning, and cleanup of facilities or equipment; (c) federal cleanup and decommissioning requirements; and (d) the legal defense cost, if any, that might be paid from the required financial assurance.

(2) The secretary may establish different levels of required financial assurance for various classes of permit or license holders.

(3) The secretary shall establish by rule the instruments or mechanisms by which a person may demonstrate financial assurance as required by RCW 70.98.095.

(4) To the extent that money in the site closure account together with the amount of money identified for repayment to the site closure account pursuant to RCW 43.200.080 equals or exceeds the cost estimate approved by the department of health for closure and decommissioning of the Hanford low-level radioactive waste disposal facility, the money in the site closure account together with the amount of money identified for repayment to the site closure account shall constitute adequate financial assurance for purposes of the department of health financial assurance requirements under RCW 70.98.095. [2003 1st sp.s. c 21 § 2; 1992 c 61 § 4; 1990 c 82 § 3.]

Chapter 70.103 RCW

LEAD-BASED PAINT

Sections

70.103.010 Finding. (*Contingent expiration date.*)
 70.103.020 Definitions. (*Contingent expiration date.*)
 70.103.030 Certification and training—Local governments—Rules. (*Contingent expiration date.*)
 70.103.040 Certification and accreditation—Rules. (*Contingent expiration date.*)
 70.103.050 Rules—Report. (*Contingent expiration date.*)
 70.103.060 Lead paint account. (*Contingent expiration date.*)
 70.103.070 Inspections. (*Contingent expiration date.*)
 70.103.080 Certification required to perform lead-based paint activities—Certificate revocation—Penalties. (*Contingent expiration date.*)
 70.103.090 Chapter contingent on federal action. (*Contingent expiration date.*)

70.103.010 Finding. (*Contingent expiration date.*) (1) The legislature finds that lead hazards associated with lead-based paint represent a significant and preventable environmental health problem. Lead-based paint is the most widespread of the various sources of lead exposure to the public. Census data show that one million five hundred sixty thousand homes in Washington state were built prior to 1978 when the sale of residential lead-based paint was banned. These are homes that are believed to contain some lead-based paint.

Lead negatively affects every system of the body. It is harmful to individuals of all ages and is especially harmful to

children, fetuses, and adults of childbearing age. The effects of lead on a child's cognitive, behavioral, and developmental abilities may necessitate large expenditures of public funds for health care and special education. The irreversible damage to children and subsequent expenditures could be avoided if exposure to lead is reduced.

(2) The federal government regulates lead poisoning and lead hazard reduction through:

- (a)(i) The lead-based paint poisoning prevention act;
- (ii) The lead contamination control act;
- (iii) The safe drinking water act;
- (iv) The resource conservation and recovery act of 1976;

and

(v) The residential lead-based paint hazard reduction act of 1992; and

(b) Implementing regulations of:

- (i) The environmental protection agency;
- (ii) The department of housing and urban development;
- (iii) The occupational safety and health administration;

and

(iv) The centers for disease control and prevention.

(3) In 1992, congress passed the federal residential lead-based paint hazard reduction act, which allows states to provide for the accreditation of lead-based paint activities programs, the certification of persons completing such training programs, and the licensing of lead-based paint activities contractors under standards developed by the United States environmental protection agency.

(4) The legislature recognizes the state's need to protect the public from exposure to lead hazards. A qualified and properly trained work force is needed to assist in the prevention, detection, reduction, and elimination of hazards associated with lead-based paint. The purpose of training workers, supervisors, inspectors, risk assessors, and project designers engaged in lead-based paint activities is to protect building occupants, particularly children ages six years and younger from potential lead-based paint hazards and exposures both during and after lead-based paint activities. Qualified and properly trained individuals and firms will help to ensure lead-based paint activities are conducted in a way that protects the health of the citizens of Washington state and safeguards the environment. The state lead-based paint activities program requires that all lead-based paint activities be performed by certified personnel trained by an accredited program, and that all lead-based paint activities meet minimum work practice standards established by the department of community, trade, and economic development. Therefore, the lead-based paint activities accreditation, training, and certification program shall be established in accordance with this chapter. The lead-based paint activities accreditation, training, and certification program shall be administered by the department of community, trade, and economic development and shall be used as a means to assure the protection of the general public from exposure to lead hazards.

(5) For the welfare of the people of the state of Washington, this chapter establishes a lead-based paint activities program within the department of community, trade, and economic development to protect the general public from exposure to lead hazards and to ensure the availability of a trained and qualified work force to identify and address lead-based paint hazards. The legislature recognizes the department of

community, trade, and economic development is not a regulatory agency and may delegate enforcement responsibilities under chapter 322, Laws of 2003 to local governments or private entities. [2003 c 322 § 1.]

70.103.020 Definitions. (Contingent expiration date.)

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

(1) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards.

(a) Abatement includes, but is not limited to:

(i) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust, or soil; and

(ii) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(b) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in (a)(i) and (ii) of this subsection;

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified firms or individuals, unless such projects are covered by (c) of this subsection;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by (c) of this subsection; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to state or local abatement orders.

(c) Abatement does not include renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) "Accredited training program" means a training program that has been accredited by the department to provide training for individuals engaged in lead-based paint activities.

(3) "Certified inspector" means an individual who has been trained by an accredited training program, meets all the

qualifications established by the department, and is certified by the department to conduct inspections.

(4) "Certified abatement worker" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to perform abatements.

(5) "Certified firm" includes a company, partnership, corporation, sole proprietorship, association, agency, or other business entity that meets all the qualifications established by the department and performs lead-based paint activities to which the department has issued a certificate.

(6) "Certified project designer" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to prepare abatement project designs, occupant protection plans, and abatement reports.

(7) "Certified risk assessor" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to conduct risk assessments and sample for the presence of lead in dust and soil for the purposes of abatement clearance testing.

(8) "Certified supervisor" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

(9) "Department" means the Washington state department of community, trade, and economic development.

(10) "Director" means the director of the Washington state department of community, trade, and economic development.

(11) "Federal laws and rules" means:

(a) Title IV, toxic substances control act (15 U.S.C. Sec. 2681 et seq.) and the rules adopted by the United States environmental protection agency under that law for authorization of state programs;

(b) Any regulations or requirements adopted by the United States department of housing and urban development regarding eligibility for grants to states and local governments; and

(c) Any other requirements adopted by a federal agency with jurisdiction over lead-based paint hazards.

(12) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

(13) "Lead-based paint activity" includes inspection, testing, risk assessment, lead-based paint hazard reduction project design or planning, or abatement of lead-based paint hazards.

(14) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the administrator of the United States environmental protection agency under the toxic substances control act, section 403.

(15) "State program" means a state administered lead-based paint activities certification and training program that

meets the federal environmental protection agency requirements.

(16) "Person" includes an individual, corporation, firm, partnership, or association, an Indian tribe, state, or political subdivision of a state, and a state department or agency.

(17) "Risk assessment" means:

(a) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and

(b) The provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards. [2003 c 322 § 2.]

70.103.030 Certification and training—Local governments—Rules. (Contingent expiration date.) (1) The department shall administer and enforce a state program for worker training and certification, and training program accreditation, which shall include those program elements necessary to assume responsibility for federal requirements for a program as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R. Part 745, Subparts L and Q (1996), and Title X of the housing and community development act of 1992 (P.L. 102-550). The department may delegate or enter into a memorandum of understanding with local governments or private entities for implementation of components of the state program.

(2) The department is authorized to adopt rules that are consistent with federal requirements to implement a state program. Rules adopted under this section shall:

(a) Establish minimum accreditation requirements for lead-based paint activities for training providers;

(b) Establish work practice standards for conduct of lead-based paint activities;

(c) Establish certification requirements for individuals and firms engaged in lead-based paint activities including provisions for recognizing certifications accomplished under existing certification programs;

(d) Require the use of certified personnel in all lead-based paint activities;

(e) Be revised as necessary to comply with federal law and rules and to maintain eligibility for federal funding;

(f) Facilitate reciprocity and communication with other states having a lead-based paint certification program;

(g) Provide for decertification, deaccreditation, and financial assurance for a person certified by or a training provider accredited by the department; and

(h) Be issued in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) The department may accept federal funds for the administration of the program.

(4) This program shall equal, but not exceed, legislative authority under federal requirements as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), and Title X of the housing and community development act of 1992 (P.L. 102-550).

(5) Any rules adopted by the department shall be consistent with federal laws, regulations, and requirements relating to lead-based paint activities specified by the residential lead-

based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the housing and community development act of 1992 (P.L. 102-550), and rules adopted pursuant to chapter 70.105D RCW, to ensure consistency in regulatory action. The rules may not be more restrictive than corresponding federal and state regulations unless such stringency is specifically authorized by this chapter.

(6) The department shall collect a fee in the amount of twenty-five dollars for certification and recertification of lead paint firms, inspectors, project developers, risk assessors, supervisors, and abatement workers.

(7) The department shall collect a fee in the amount of two hundred dollars for the accreditation of lead paint training programs. [2003 c 322 § 3.]

70.103.040 Certification and accreditation—Rules. (Contingent expiration date.) (1) The department shall establish a program for certification of persons involved in lead-based paint activities and for accreditation of training providers in compliance with federal laws and rules.

(2) Rules adopted under this section shall:

(a) Establish minimum accreditation requirements for lead-based paint activities for training providers;

(b) Establish work practice standards for conduct of lead-based paint activities;

(c) Establish certification requirements for individuals and firms engaged in lead-based paint activities including provisions for recognizing certifications accomplished under existing certification programs;

(d) Require the use of certified personnel in any lead-based paint hazard reduction activity;

(e) Be revised as necessary to comply with federal law and rules and to maintain eligibility for federal funding;

(f) Facilitate reciprocity and communication with other states having a lead-based paint certification program;

(g) Provide for decertification, deaccreditation, and financial assurance for a person certified or accredited by the department; and

(h) Be issued in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) This program shall equal, but not exceed, legislative authority under federal requirements as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R. Part 745 (1996), Subparts L and Q, and Title X of the housing and community development act of 1992 (P.L. 102-550).

(4) Any rules adopted by the department shall be consistent with federal laws, regulations, and requirements relating to lead-based paint activities specified by the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the housing and community development act of 1992 (P.L. 102-550), and rules adopted pursuant to chapter 70.105D RCW, to ensure consistency in regulatory action. The rules may not be more restrictive than corresponding federal and state regulations unless such stringency is specifically authorized by this chapter.

(5) The department may accept federal funds for the administration of the program. [2003 c 322 § 4.]

70.103.050 Rules—Report. (*Contingent expiration date.*) The department shall adopt rules to:

(1) Establish procedures and requirements for the accreditation of lead-based paint activities training programs including, but not limited to, the following:

- (a) Training curriculum;
- (b) Training hours;
- (c) Hands-on training;
- (d) Trainee competency and proficiency;
- (e) Training program quality control;
- (f) Procedures for the reaccreditation of training programs;
- (g) Procedures for the oversight of training programs; and
- (h) Procedures for the suspension, revocation, or modification of training program accreditations, or acceptance of training offered by an accredited training provider in another state or Indian tribe authorized by the environmental protection agency;

(2) Establish procedures for the purposes of certification, for the acceptance of training offered by an accredited training provider in a state or Indian tribe authorized by the environmental protection agency;

(3) Certify individuals involved in lead-based paint activities to ensure that certified individuals are trained by an accredited training program and possess appropriate educational or experience qualifications for certification;

(4) Establish procedures for recertification;

(5) Require the conduct of lead-based paint activities in accordance with work practice standards;

(6) Establish procedures for the suspension, revocation, or modification of certifications;

(7) Establish requirements for the administration of third-party certification exams;

(8) Use laboratories accredited under the environmental protection agency's national lead laboratory accreditation program;

(9) Establish work practice standards for the conduct of lead-based paint activities for:

- (a) Inspection for presence of lead-based paint;
- (b) Risk assessment; and
- (c) Abatement;

(10) Establish an enforcement response policy that shall include:

(a) Warning letters, notices of noncompliance, notices of violation, or the equivalent;

(b) Administrative or civil actions, including penalty authority, including accreditation or certification suspension, revocation, or modification; and

(c) Authority to apply criminal sanctions or other criminal authority using existing state laws as applicable.

The department shall prepare and submit a biennial report to the legislature regarding the program's status, its costs, and the number of persons certified by the program. [2003 c 322 § 5.]

70.103.060 Lead paint account. (*Contingent expiration date.*) The lead paint account is created in the state treasury. All receipts from RCW 70.103.030 shall be deposited into the account. Moneys in the account may be spent only

after appropriation. Expenditures from the account may be used only for the purposes of this chapter. [2003 c 322 § 6.]

70.103.070 Inspections. (*Contingent expiration date.*)

(1)(a) The director or the director's designee is authorized to inspect at reasonable times and, when feasible, with at least twenty-four hours prior notification:

(i) Premises or facilities where those engaged in training for lead-based paint activities conduct business; and

(ii) The business records of, and take samples at, the businesses accredited or certified under this chapter to conduct lead-based paint training or activities.

(b) Any accredited training program or any firm or individual certified under this chapter that denies access to the department for the purposes of (a) of this subsection is subject to deaccreditation or decertification under RCW 70.103.040.

(2) The director or the director's designee is authorized to inspect premises or facilities, with the consent of the owner or owner's agent, where violations may occur concerning lead-based paint activities, as defined under RCW 70.103.020, at reasonable times and, when feasible, with at least forty-eight hours prior notification of the inspection.

(3) Prior to receipt of federal lead-based paint abatement funding, all premise or facility owners shall be notified by any entity that receives and disburses the federal funds that an inspection may be conducted. If a premise or facility owner does not wish to have an inspection conducted, that owner is not eligible to receive lead-based paint abatement funding. [2003 c 322 § 7.]

70.103.080 Certification required to perform lead-based paint activities—Certificate revocation—Penalties. (*Contingent expiration date.*) (1) The department is designated as the official agency of this state for purposes of cooperating with, and implementing the state lead-based paint activities program under the jurisdiction of the United States environmental protection agency.

(2) No individual or firm can perform, offer, or claim to perform lead-based paint activities without certification from the department to conduct these activities.

(3) The department may deny, suspend, or revoke a certificate for failure to comply with the requirements of this chapter or any rule adopted under this chapter. No person whose certificate is revoked under this chapter shall be eligible to apply for a certificate for one year from the effective date of the final order of revocation. A certificate may be denied, suspended, or revoked on any of the following grounds:

(a) A risk assessor, inspector, contractor, project designer, or worker violates work practice standards established by the United States environmental protection agency or the United States department of housing and urban development governing work practices and procedures; or

(b) The certificate was obtained by error, misrepresentation, or fraud.

(4) Any person convicted of violating any of the provisions of this chapter is guilty of a misdemeanor. A conviction is an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this

chapter, regardless of whether imposition of sentence is deferred or the penalty is suspended, and shall be treated as a violation conviction for purposes of certification forfeiture under this chapter. Violations of this chapter include:

- (a) Failure to comply with any requirement of this chapter;
- (b) Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required;
- (c) Obtaining certification through fraud or misrepresentation;
- (d) Failure to obtain certification from the department and performing work requiring certification at a job site; or
- (e) Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification. [2003 c 322 § 8.]

70.103.090 Chapter contingent on federal action. (Contingent expiration date.) (1) The department's duties under chapter 322, Laws of 2003 are subject to authorization of the state program from the federal government within two years of July 27, 2003. Chapter 322, Laws of 2003 expires if the federal environmental protection agency does not authorize a state program within two years of July 27, 2003.

(2) The department's duties under chapter 322, Laws of 2003 are subject to the availability of sufficient funding from the federal government for this purpose. The director or his or her designee shall seek funding of the department's efforts under this chapter from the federal government. By October 15th of each year, the director shall determine if sufficient federal funding has been provided or guaranteed by the federal government. If the director determines sufficient funding has not been provided, the department shall cease efforts under this chapter due to the lack of federal funding. [2003 c 322 § 9.]

Chapter 70.105 RCW

HAZARDOUS WASTE MANAGEMENT

Sections

70.105.085 Violations—Criminal penalties. (*Effective July 1, 2004.*)

70.105.085 Violations—Criminal penalties. (Effective July 1, 2004.) (1) Any person who knowingly transports, treats, stores, handles, disposes of, or exports a hazardous substance in violation of this chapter is guilty of: (a) A class B felony punishable according to chapter 9A.20 RCW if the person knows at the time that the conduct constituting the violation places another person in imminent danger of death or serious bodily injury; or (b) a class C felony punishable according to chapter 9A.20 RCW if the person knows that the conduct constituting the violation places any property of another person or any natural resources owned by the state of Washington or any of its local governments in imminent danger of harm.

(2) As used in this section: (a) "Imminent danger" means that there is a substantial likelihood that harm will be experienced within a reasonable period of time should the danger not be eliminated; and (b) "knowingly" refers to an awareness of facts, not awareness of law. [2003 c 53 § 357; 1989 c 2 § 15 (Initiative Measure No. 97, approved November 8, 1988).]

[2003 RCW Supp—page 832]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Short title—Captions—Construction—Existing agreements—Effective date—Severability—1989 c 2: See RCW 70.105D.900 through 70.105D.921, respectively.

Chapter 70.105D RCW

HAZARDOUS WASTE CLEANUP—MODEL TOXICS CONTROL ACT

Sections

70.105D.070 Toxics control accounts.
70.105D.090 Remedial actions—Exemption from procedural requirements.

70.105D.070 Toxics control accounts. (1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the top two hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority: (i) Remedial actions; (ii) hazardous waste plans and programs under chapter 70.105 RCW; (iii) solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW; (iv) funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and (v) cleanup and disposal of hazardous substances from abandoned or derelict vessels that pose a threat to human health or the environment. For purposes of this subsection (3)(a)(v), "abandoned or derelict vessels" means vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel. Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW. During the 1999-2001 fiscal biennium, moneys in the account may also be used for the following activities: Conducting a study of whether dioxins occur in fertilizers, soil amendments, and soils; reviewing applications for registration of fertilizers; and conducting a study of plant uptake of metals. During the 2003-05 fiscal biennium, the legislature may transfer from the local toxics control account to the state toxics control account such amounts as specified in the omnibus operating budget bill for methamphetamine lab cleanup.

(b) Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water systems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. However, during the 1999-2001 fiscal biennium, funding may not be granted to entities engaged in lobbying activities, and applicants may not be awarded grants if their cumulative grant awards under this section exceed two hundred thousand dollars. No grant may

exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation.

(7) The department shall adopt rules for grant or loan issuance and performance. [2003 1st sp.s. c 25 § 933; 2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 § 923. Prior: 1998 c 346 § 905; 1998 c 81 § 2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Finding—2001 c 27: "The legislature finds that there is an increasing number of derelict vessels that have been abandoned in the waters along the shorelines of the state. These vessels pose hazards to navigation and threaten the environment with the potential release of hazardous materials. There is no current federal program that comprehensively addresses this problem, and the legislature recognizes that the state must assist in providing a solution to this increasing hazard." [2001 c 27 § 1.]

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Construction—Severability—Effective date—1998 c 346: See notes following RCW 50.24.014.

Local governments—Increased service—1998 c 81: "If this act mandates an increased level of service by local governments, the local government may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the legislature. The claims shall be subject to verification by the office of financial management." [1998 c 81 § 3.]

Findings—Intent—1997 c 406: See note following RCW 70.105D.020.

Finding—Effective date—1994 c 252: See notes following RCW 70.119A.020.

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

70.105D.090 Remedial actions—Exemption from procedural requirements. (1) A person conducting a remedial action at a facility under a consent decree, order, or agreed order, and the department when it conducts a remedial action, are exempt from the procedural requirements of chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW, and the procedural requirements of any laws requiring or authorizing local government permits or approvals for the remedial action. The department shall ensure compliance with the substantive provisions of chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW, and the substantive provisions of any laws requiring or authorizing local government permits or approvals. The department shall establish procedures for ensuring that such remedial actions comply with the substantive requirements adopted pursuant to such laws, and shall consult with the state agencies and local governments charged with implementing these laws. The procedures shall provide an opportunity for comment by the public and by the state agencies and local governments that would otherwise implement the laws referenced in this section. Nothing in this section is intended to prohibit implementing agencies from charging a fee to the person conducting the remedial

action to defray the costs of services rendered relating to the substantive requirements for the remedial action.

(2) An exemption in this section or in RCW 70.94.335, 70.95.270, 70.105.116, 77.55.030, 90.48.039, and 90.58.355 shall not apply if the department determines that the exemption would result in loss of approval from a federal agency necessary for the state to administer any federal law, including the federal resource conservation and recovery act, the federal clean water act, the federal clean air act, and the federal coastal zone management act. Such a determination by the department shall not affect the applicability of the exemptions to other statutes specified in this section. [2003 c 39 § 30; 1994 c 257 § 14.]

Severability—1994 c 257: See note following RCW 36.70A.270.

Chapter 70.106 RCW

POISON PREVENTION—LABELING AND PACKAGING

Sections

70.106.140 Penalties. (*Effective July 1, 2004.*)

70.106.140 Penalties. (*Effective July 1, 2004.*) (1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter or rules adopted under this chapter is guilty of a misdemeanor.

(2) A second or subsequent violation of the provisions of this chapter or rules adopted under this chapter is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 358; 1974 ex.s. c 49 § 16.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 70.108 RCW

OUTDOOR MUSIC FESTIVALS

Sections

70.108.130 Penalty. (*Effective July 1, 2004.*)

70.108.130 Penalty. (*Effective July 1, 2004.*) (1) Except as otherwise provided in this section, any person who willfully fails to comply with the rules, regulations, and conditions set forth in this chapter or who aids or abets such a violation or failure to comply is guilty of a gross misdemeanor.

(2)(a) Except as provided in (b) of this subsection, violation of such a rule, regulation, or condition relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(b) Violation of such a rule, regulation, or condition equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 is a misdemeanor. [2003 c 53 § 359; 1979 ex.s. c 136 § 104; 1971 ex.s. c 302 § 32.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

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Chapter 70.110 RCW

FLAMMABLE FABRICS— CHILDREN'S SLEEPWEAR

Sections

70.110.040 Compliance required. (*Effective July 1, 2004.*)
70.110.060 Repealed. (*Effective July 1, 2004.*)

70.110.040 Compliance required. (*Effective July 1, 2004.*) (1) It shall be unlawful to manufacture for sale, sell, or offer for sale any new and unused article of children's sleepwear which does not comply with the standards established in the Standard for the Flammability of Children's Sleepwear (DOC FF 3-71), 36 F.R. 14062 and the Flammable Fabrics Act, 15 U.S.C. 1191-1204.

(2) A violation of this section is a gross misdemeanor. [2003 c 53 § 360; 1973 1st ex.s. c 211 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

70.110.060 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 70.111 RCW

INFANT CRIB SAFETY ACT

Sections

70.111.030 Unsafe cribs—Prohibition—Definition—Penalty. (*Effective July 1, 2004.*)
70.111.050 Repealed. (*Effective July 1, 2004.*)

70.111.030 Unsafe cribs—Prohibition—Definition—Penalty. (*Effective July 1, 2004.*) (1) No commercial user may remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, on or after June 6, 1996, a full-size or nonfull-size crib that is unsafe for any infant using the crib.

(2) A crib is presumed to be unsafe pursuant to this chapter if it does not conform to all of the following:

(a) Part 1508 (commencing with Section 1508.1) of Title 16 of the Code of Federal Regulations;

(b) Part 1509 (commencing with Section 1509.1) of Title 16 of the Code of Federal Regulations;

(c) Part 1303 (commencing with Section 1303.1) of Title 16 of the Code of Federal Regulations;

(d) American Society for Testing Materials Voluntary Standards F966-90;

(e) American Society for Testing Materials Voluntary Standards F1169.88;

(f) Any regulations that are adopted in order to amend or supplement the regulations described in (a) through (e) of this subsection.

(3) Cribs that are unsafe or fail to perform as expected pursuant to subsection (2) of this section include, but are not limited to, cribs that have any of the following dangerous features or characteristics:

(a) Corner posts that extend more than one-sixteenth of an inch;

(b) Spaces between side slats more than two and three-eighths inches;

(c) Mattress support than can be easily dislodged from any point of the crib. A mattress segment can be easily dislodged if it cannot withstand at least a twenty-five pound upward force from underneath the crib;

(d) Cutout designs on the end panels;

(e) Rail height dimensions that do not conform to the following:

(i) The height of the rail and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position is at least nine inches;

(ii) The height of the rail and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position is at least twenty-six inches;

(f) Any screws, bolts, or hardware that are loose and not secured;

(g) Sharp edges, points, or rough surfaces, or any wood surfaces that are not smooth and free from splinters, splits, or cracks;

(h) Nonfull-size cribs with tears in mesh or fabric sides.

(4) On or after January 1, 1997, any commercial user who willfully and knowingly violates this section is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars. Hotels, motels, and similar transient lodging, child care facilities, and family child care homes are not subject to this section until January 1, 1999. [2003 c 53 § 361; 1996 c 158 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

70.111.050 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 70.119A RCW

PUBLIC WATER SYSTEMS—PENALTIES AND COMPLIANCE

Sections

- 70.119A.110 Operating permits—Application process—Phase-in of implementation—Satellite systems.
70.119A.180 Water use efficiency requirements—Rules.

70.119A.110 Operating permits—Application process—Phase-in of implementation—Satellite systems. (1) No person may operate a group A public water system unless the person first submits an application to the department and receives an operating permit as provided in this section. A new application must be submitted upon any change in ownership of the system. Any person operating a public water system on July 28, 1991, may continue to operate the system until the department takes final action, including any time necessary for a hearing under subsection (3) of this section, on a permit application submitted by the person operating the system under the rules adopted by the department to implement this section.

(2) The department may require that each application include the information that is reasonable and necessary to determine that the system complies with applicable standards and requirements of the federal safe drinking water act, state

law, and rules adopted by the department or by the state board of health.

(3) Following its review of the application, its supporting material, and any information received by the department in its investigation of the application, the department shall issue or deny the operating permit. The department shall act on initial permit applications as expeditiously as possible, and shall in all cases either grant or deny the application within one hundred twenty days of receipt of the application or of any supplemental information required to complete the application. The applicant for a permit shall be entitled to file an appeal in accordance with chapter 34.05 RCW if the department denies the initial or subsequent applications or imposes conditions or requirements upon the operator. Any operator of a public water system that requests a hearing may continue to operate the system until a decision is issued after the hearing.

(4) At the time of initial permit application or at the time of permit renewal the department may impose such permit conditions, requirements for system improvements, and compliance schedules as it determines are reasonable and necessary to ensure that the system will provide a safe and reliable water supply to its users.

(5) Operating permits shall be issued for a term of one year, and shall be renewed annually, unless the operator fails to apply for a new permit or the department finds good cause to deny the application for renewal.

(6) Each application shall be accompanied by an annual fee as follows:

(a) The annual fee for public water supply systems serving fifteen to forty-nine service connections shall be twenty-five dollars.

(b) The annual fee for public water supply systems serving fifty to three thousand three hundred thirty-three service connections shall be based on a uniform per service connection fee of one dollar and fifty cents per service connection.

(c) The annual fee for public water supply systems serving three thousand three hundred thirty-four to fifty-three thousand three hundred thirty-three service connections shall be based on a uniform per service connection fee of one dollar and fifty cents per service connection plus ten cents for each service connection in excess of three thousand three hundred thirty-three service connections.

(d) The annual fee for public water supply systems serving fifty-three thousand three hundred thirty-four or more service connections shall be ten thousand dollars.

(e) In addition to the fees under (a) through (d) of this subsection, the department may charge an additional one-time fee of five dollars for each service connection in a new water system.

(f) Until June 30, 2007, in addition to the fees under (a) through (e) of this subsection, the department may charge municipal water suppliers, as defined in RCW 90.03.015, an additional annual fee equivalent to twenty-five cents for each residential service connection for the purpose of funding the water conservation activities in RCW 70.119A.180.

(7) The department may phase-in the implementation for any group of systems provided the schedule for implementation is established by rule. Prior to implementing the operating permit requirement on water systems having less than five hundred service connections, the department shall form a

committee composed of persons operating these systems. The committee shall be composed of the department of health, two operators of water systems having under one hundred connections, two operators of water systems having between one hundred and two hundred service connections, two operators of water systems having between two hundred and three hundred service connections, two operators of water systems having between three hundred and four hundred service connections, two operators of water systems having between four hundred and five hundred service connections, and two county public health officials. The members shall be chosen from different geographic regions of the state. This committee shall develop draft rules to implement this section. The draft rules will then be subject to the rule-making procedures in accordance with chapter 34.05 RCW.

(8) The department shall notify existing public water systems of the requirements of RCW 70.119A.030, 70.119A.060, and this section at least one hundred twenty days prior to the date that an application for a permit is required pursuant to RCW 70.119A.030, 70.119A.060, and this section.

(9) The department shall issue one operating permit to any approved satellite system management agency. Operating permit fees for approved satellite system management agencies shall be one dollar per connection per year for the total number of connections under the management of the approved satellite agency. The department shall define by rule the meaning of the term "satellite system management agency." If a statutory definition of this term exists, then the department shall adopt by rule a definition consistent with the statutory definition.

(10) For purposes of this section, "group A public water system" and "system" mean those water systems with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections. [2003 1st sp.s. c 5 § 18; 1991 c 304 § 5.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.180 Water use efficiency requirements—Rules. (1) It is the intent of the legislature that the department establish water use efficiency requirements designed to ensure efficient use of water while maintaining water system financial viability, improving affordability of supplies, and enhancing system reliability.

(2) The requirements of this section shall apply to all municipal water suppliers and shall be tailored to be appropriate to system size, forecasted system demand, and system supply characteristics.

(3) For the purposes of this section:

(a) Water use efficiency includes conservation planning requirements, water distribution system leakage standards, and water conservation performance reporting requirements; and

(b) "Municipal water supplier" and "municipal water supply purposes" have the meanings provided by RCW 90.03.015.

(4) To accomplish the purposes of this section, the department shall adopt rules necessary to implement this section by December 31, 2005. The department shall:

(a) Develop conservation planning requirements that ensure municipal water suppliers are: (i) Implementing programs to integrate conservation with water system operation and management; and (ii) identifying how to appropriately fund and implement conservation activities. Requirements shall apply to the conservation element of water system plans and small water system management programs developed pursuant to chapter 43.20 RCW. In establishing the conservation planning requirements the department shall review the current department conservation planning guidelines and include those elements that are appropriate for rule. Conservation planning requirements shall include but not be limited to:

(A) Selection of cost-effective measures to achieve a system's water conservation objectives. Requirements shall allow the municipal water supplier to select and schedule implementation of the best methods for achieving its conservation objectives;

(B) Evaluation of the feasibility of adopting and implementing water delivery rate structures that encourage water conservation;

(C) Evaluation of each system's water distribution system leakage and, if necessary, identification of steps necessary for achieving water distribution system leakage standards developed under (b) of this subsection;

(D) Collection and reporting of water consumption and source production and/or water purchase data. Data collection and reporting requirements shall be sufficient to identify water use patterns among utility customer classes, where applicable, and evaluate the effectiveness of each system's conservation program. Requirements, including reporting frequency, shall be appropriate to system size and complexity. Reports shall be available to the public; and

(E) Establishment of minimum requirements for water demand forecast methodologies such that demand forecasts prepared by municipal water suppliers are sufficient for use in determining reasonably anticipated future water needs;

(b) Develop water distribution system leakage standards to ensure that municipal water suppliers are taking appropriate steps to reduce water system leakage rates or are maintaining their water distribution systems in a condition that results in leakage rates in compliance with the standards. Limits shall be developed in terms of percentage of total water produced and/or purchased and shall not be lower than ten percent. The department may consider alternatives to the percentage of total water supplied where alternatives provide a better evaluation of the water system's leakage performance. The department shall institute a graduated system of requirements based on levels of water system leakage. A municipal water supplier shall select one or more control methods appropriate for addressing leakage in its water system;

(c) Establish minimum requirements for water conservation performance reporting to assure that municipal water suppliers are regularly evaluating and reporting their water conservation performance. The objective of setting conservation goals is to enhance the efficient use of water by the

water system customers. Performance reporting shall include:

(i) Requirements that municipal water suppliers adopt and achieve water conservation goals. The elected governing board or governing body of the water system shall set water conservation goals for the system. In setting water conservation goals the water supplier may consider historic conservation performance and conservation investment, customer base demographics, regional climate variations, forecasted demand and system supply characteristics, system financial viability, system reliability, and affordability of water rates. Conservation goals shall be established by the municipal water supplier in an open public forum;

(ii) Requirements that the municipal water supplier adopt schedules for implementing conservation program elements and achieving conservation goals to ensure that progress is being made toward adopted conservation goals;

(iii) A reporting system for regular reviews of conservation performance against adopted goals. Performance reports shall be available to customers and the public. Requirements, including reporting frequency, shall be appropriate to system size and complexity;

(iv) Requirements that any system not meeting its water conservation goals shall develop a plan for modifying its conservation program to achieve its goals along with procedures for reporting performance to the department;

(v) If a municipal water supplier determines that further reductions in consumption are not reasonably achievable, it shall identify how current consumption levels will be maintained;

(d) Adopt rules that, to the maximum extent practical, utilize existing mechanisms and simplified procedures in order to minimize the cost and complexity of implementation and to avoid placing unreasonable financial burden on smaller municipal systems.

(5) The department shall establish an advisory committee to assist the department in developing rules for water use efficiency. The advisory committee shall include representatives from public water system customers, environmental interest groups, business interest groups, a representative cross-section of municipal water suppliers, a water utility conservation professional, tribal governments, the department of ecology, and any other members determined necessary by the department. The department may use the water supply advisory committee created pursuant to RCW 70.119A.160 augmented with additional participants as necessary to comply with this subsection to assist the department in developing rules.

(6) The department shall provide technical assistance upon request to municipal water suppliers and local governments regarding water conservation, which may include development of best management practices for water conservation programs, conservation landscape ordinances, conservation rate structures for public water systems, and general public education programs on water conservation.

(7) To ensure compliance with this section, the department shall establish a compliance process that incorporates a graduated approach employing the full range of compliance mechanisms available to the department.

(8) Prior to completion of rule making required in subsection (4) of this section, municipal water suppliers shall

continue to meet the existing conservation requirements of the department and shall continue to implement their current water conservation programs. [2003 1st sp.s. c 5 § 7.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

Chapter 70.122 RCW NATURAL DEATH ACT

Sections

70.122.090 Criminal conduct—Penalties. (*Effective July 1, 2004.*)

70.122.090 Criminal conduct—Penalties. (*Effective July 1, 2004.*) (1) Any person who willfully conceals, cancels, defaces, obliterates, or damages the directive of another without such declarer's consent is guilty of a gross misdemeanor.

(2) Any person who falsifies or forges the directive of another, or willfully conceals or withholds personal knowledge of a revocation as provided in RCW 70.122.040 with the intent to cause a withholding or withdrawal of life-sustaining treatment contrary to the wishes of the declarer, and thereby, because of any such act, directly causes life-sustaining treatment to be withheld or withdrawn and death to thereby be hastened, shall be subject to prosecution for murder in the first degree as defined in RCW 9A.32.030. [2003 c 53 § 362; 1992 c 98 § 9; 1979 c 112 § 9.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 70.127 RCW IN-HOME SERVICES AGENCIES

(Formerly: Home health, hospice, and home care agencies—Licensure)

Sections

70.127.010 Definitions.

70.127.020 Licenses required after July 1, 1990—Penalties. (*Effective July 1, 2004.*)

70.127.040 Persons, activities, or entities not subject to regulation under chapter.

70.127.120 Rules for recordkeeping, services, staff and volunteer policies, complaints.

70.127.170 Licenses—Denial, restriction, conditions, modification, suspension, revocation—Civil penalties.

70.127.210 Repealed. (*Effective July 1, 2004.*)

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

(1) "Administrator" means an individual responsible for managing the operation of an agency.

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

(3) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by in-home health and hospice agencies.

(4) "Family" means individuals who are important to, and designated by, the patient or client and who need not be relatives.

(5) "Home care agency" means a person administering or providing home care services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A home care agency that provides delegated

tasks of nursing under RCW 18.79.260(3)(e) is not considered a home health agency for the purposes of this chapter.

(6) "Home care services" means nonmedical services and assistance provided to ill, disabled, or vulnerable individuals that enable them to remain in their residences. Home care services include, but are not limited to: Personal care such as assistance with dressing, feeding, and personal hygiene to facilitate self-care; homemaker assistance with household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; respite care assistance and support provided to the family; or other nonmedical services or delegated tasks of nursing under RCW 18.79.260(3)(e).

(7) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(8) "Home health services" means services provided to ill, disabled, or vulnerable individuals. These services include but are not limited to nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

(9) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

(10) "Home medical supplies" or "equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

(11) "Hospice agency" means a person administering or providing hospice services directly or through a contract arrangement to individuals in places of temporary or permanent residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and a volunteer.

(12) "Hospice care center" means a homelike, noninstitutional facility where hospice services are provided, and that meets the requirements for operation under RCW 70.127.280.

(13) "Hospice services" means symptom and pain management provided to a terminally ill individual, and emotional, spiritual, and bereavement support for the individual and family in a place of temporary or permanent residence, and may include the provision of home health and home care services for the terminally ill individual.

(14) "In-home services agency" means a person licensed to administer or provide home health, home care, hospice services, or hospice care center services directly or through a contract arrangement to individuals in a place of temporary or permanent residence.

(15) "Person" means any individual, business, firm, partnership, corporation, company, association, joint stock association, public or private agency or organization, or the legal successor thereof that employs or contracts with two or more individuals.

(16) "Plan of care" means a written document based on assessment of individual needs that identifies services to meet these needs.

(17) "Quality improvement" means reviewing and evaluating appropriateness and effectiveness of services provided under this chapter.

(18) "Service area" means the geographic area in which the department has given prior approval to a licensee to provide home health, hospice, or home care services.

(19) "Survey" means an inspection conducted by the department to evaluate and monitor an agency's compliance with this chapter. [2003 c 140 § 7; 2000 c 175 § 1; 1999 c 190 § 1; 1993 c 42 § 1; 1991 c 3 § 373; 1988 c 245 § 2.]

Effective date—2003 c 140: See note following RCW 18.79.040.

Effective date—2000 c 175: "This act takes effect January 1, 2002." [2000 c 175 § 24.]

Severability—1993 c 42: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 42 § 14.]

Effective dates—1993 c 42: "(1) Sections 1 through 10 and 12 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1993.

(2) Section 11 of this act shall take effect January 1, 1994." [1993 c 42 § 15.]

70.127.020 Licenses required after July 1, 1990—Penalties. (Effective July 1, 2004.) (1) After July 1, 1990, a license is required for a person to advertise, operate, manage, conduct, open, or maintain an in-home services agency.

(2) An in-home services agency license is required for a nursing home, hospital, or other person that functions as a home health, hospice, hospice care center, or home care agency.

(3) Any person violating this section is guilty of a misdemeanor. Each day of a continuing violation is a separate violation.

(4) If any corporation conducts any activity for which a license is required by this chapter without the required license, it may be punished by forfeiture of its corporate charter.

(5) All fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be deposited in the department's local fee account. [2003 c 53 § 363; 2000 c 175 § 2; 1988 c 245 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.040 Persons, activities, or entities not subject to regulation under chapter. The following are not subject to regulation for the purposes of this chapter:

(1) A family member providing home health, hospice, or home care services;

(2) A person who provides only meal services in an individual's permanent or temporary residence;

(3) An individual providing home care through a direct agreement with a recipient of care in an individual's permanent or temporary residence;

(4) A person furnishing or delivering home medical supplies or equipment that does not involve the provision of services beyond those necessary to deliver, set up, and monitor the proper functioning of the equipment and educate the user on its proper use;

(5) A person who provides services through a contract with a licensed agency;

(6) An employee or volunteer of a licensed agency who provides services only as an employee or volunteer;

(7) Facilities and institutions, including but not limited to nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41 RCW, adult family homes under chapter 70.128 RCW, boarding homes under chapter 18.20 RCW, developmental disability residential programs under chapter 71A.12 RCW, other entities licensed under chapter 71.12 RCW, or other licensed facilities and institutions, only when providing services to persons residing within the facility or institution;

(8) Local and combined city-county health departments providing services under chapters 70.05 and 70.08 RCW;

(9) An individual providing care to ill, disabled, or vulnerable individuals through a contract with the department of social and health services;

(10) Nursing homes, hospitals, or other institutions, agencies, organizations, or persons that contract with licensed home health, hospice, or home care agencies for the delivery of services;

(11) In-home assessments of an ill, disabled, or vulnerable individual that does not result in regular ongoing care at home;

(12) Services conducted by and for the adherents of a church or religious denomination that rely upon spiritual means alone through prayer for healing in accordance with the tenets and practices of such church or religious denomination and the bona fide religious beliefs genuinely held by such adherents;

(13) A medicare-approved dialysis center operating a medicare-approved home dialysis program;

(14) A person providing case management services. For the purposes of this subsection, "case management" means the assessment, coordination, authorization, planning, training, and monitoring of home health, hospice, and home care, and does not include the direct provision of care to an individual;

(15) Pharmacies licensed under RCW 18.64.043 that deliver prescription drugs and durable medical equipment that does not involve the use of professional services beyond those authorized to be performed by licensed pharmacists pursuant to chapter 18.64 RCW and those necessary to set up and monitor the proper functioning of the equipment and educate the person on its proper use;

(16) A volunteer hospice complying with the requirements of RCW 70.127.050; and

(17) A person who provides home care services without compensation. [2003 c 275 § 3; 2003 c 140 § 8; 2000 c 175 § 4; 1993 c 42 § 2; 1988 c 245 § 5.]

Reviser's note: This section was amended by 2003 c 140 § 8 and by 2003 c 275 § 3, each without reference to the other. Both amendments are

incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 140: See note following RCW 18.79.040.

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.120 Rules for recordkeeping, services, staff and volunteer policies, complaints. The department shall adopt rules consistent with RCW 70.127.005 necessary to implement this chapter under chapter 34.05 RCW. In order to ensure safe and adequate care, the rules shall address at a minimum the following:

(1) Maintenance and preservation of all records relating directly to the care and treatment of individuals by licensees;

(2) Establishment and implementation of a procedure for the receipt, investigation, and disposition of complaints regarding services provided;

(3) Establishment and implementation of a plan for ongoing care of individuals and preservation of records if the licensee ceases operations;

(4) Supervision of services;

(5) Establishment and implementation of written policies regarding response to referrals and access to services;

(6) Establishment and implementation of written personnel policies, procedures and personnel records for paid staff that provide for prehire screening, minimum qualifications, regular performance evaluations, including observation in the home, participation in orientation and in-service training, and involvement in quality improvement activities. The department may not establish experience or other qualifications for agency personnel or contractors beyond that required by state law;

(7) Establishment and implementation of written policies and procedures for volunteers who have direct patient/client contact and that provide for background and health screening, orientation, and supervision;

(8) Establishment and implementation of written policies for obtaining regular reports on patient satisfaction;

(9) Establishment and implementation of a quality improvement process;

(10) Establishment and implementation of policies related to the delivery of care including:

(a) Plan of care for each individual served;

(b) Periodic review of the plan of care;

(c) Supervision of care and clinical consultation as necessary;

(d) Care consistent with the plan;

(e) Admission, transfer, and discharge from care; and

(f) For hospice services:

(i) Availability of twenty-four hour seven days a week hospice registered nurse consultation and in-home services as appropriate;

(ii) Interdisciplinary team communication as appropriate and necessary; and

(iii) The use and availability of volunteers to provide family support and respite care; and

(11) Establishment and implementation of policies related to agency implementation and oversight of nurse delegation as defined in RCW 18.79.260(3)(e). [2003 c 140 § 9; 2000 c 175 § 10; 1993 c 42 § 8; 1988 c 245 § 13.]

Effective date—2003 c 140: See note following RCW 18.79.040.

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.170 Licenses—Denial, restriction, conditions, modification, suspension, revocation—Civil penalties. Pursuant to chapter 34.05 RCW and RCW 70.127.180(3), the department may deny, restrict, condition, modify, suspend, or revoke a license under this chapter or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, or require a refund of any amounts billed to, and collected from, the consumer or third-party payor in any case in which it finds that the licensee, or any applicant, officer, director, partner, managing employee, or owner of ten percent or more of the applicant's or licensee's assets:

(1) Failed or refused to comply with the requirements of this chapter or the standards or rules adopted under this chapter;

(2) Was the holder of a license issued pursuant to this chapter that was revoked for cause and never reissued by the department, or that was suspended for cause and the terms of the suspension have not been fulfilled and the licensee has continued to operate;

(3) Has knowingly or with reason to know made a misrepresentation of, false statement of, or failed to disclose, a material fact to the department in an application for the license or any data attached thereto or in any record required by this chapter or matter under investigation by the department, or during a survey, or concerning information requested by the department;

(4) Refused to allow representatives of the department to inspect any book, record, or file required by this chapter to be maintained or any portion of the licensee's premises;

(5) Willfully prevented, interfered with, or attempted to impede in any way the work of any representative of the department and the lawful enforcement of any provision of this chapter. This includes but is not limited to: Willful misrepresentation of facts during a survey, investigation, or administrative proceeding or any other legal action; or use of threats or harassment against any patient, client, or witness, or use of financial inducements to any patient, client, or witness to prevent or attempt to prevent him or her from providing evidence during a survey or investigation, in an administrative proceeding, or any other legal action involving the department;

(6) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of this chapter or the rules adopted under this chapter;

(7) Failed to pay any civil monetary penalty assessed by the department pursuant to this chapter within ten days after the assessment becomes final;

(8) Used advertising that is false, fraudulent, or misleading;

(9) Has repeated incidents of personnel performing services beyond their authorized scope of practice;

(10) Misrepresented or was fraudulent in any aspect of the conduct of the licensee's business;

(11) Within the last five years, has been found in a civil or criminal proceeding to have committed any act that reasonably relates to the person's fitness to establish, maintain, or administer an agency or to provide care in the home of another;

(12) Was the holder of a license to provide care or treatment to ill, disabled, or vulnerable individuals that was denied, restricted, not renewed, surrendered, suspended, or revoked by a competent authority in any state, federal, or foreign jurisdiction. A certified copy of the order, stipulation, or agreement is conclusive evidence of the denial, restriction, nonrenewal, surrender, suspension, or revocation;

(13) Violated any state or federal statute, or administrative rule regulating the operation of the agency;

(14) Failed to comply with an order issued by the secretary or designee;

(15) Aided or abetted the unlicensed operation of an in-home services agency;

(16) Operated beyond the scope of the in-home services agency license;

(17) Failed to adequately supervise staff to the extent that the health or safety of a patient or client was at risk;

(18) Compromised the health or safety of a patient or client, including, but not limited to, the individual performing services beyond their authorized scope of practice;

(19) Continued to operate after license revocation, suspension, or expiration, or operating outside the parameters of a modified, conditioned, or restricted license;

(20) Failed or refused to comply with chapter 70.02 RCW;

(21) Abused, neglected, abandoned, or financially exploited a patient or client as these terms are defined in RCW 74.34.020;

(22) Misappropriated the property of an individual;

(23) Is unqualified or unable to operate or direct the operation of the agency according to this chapter and the rules adopted under this chapter;

(24) Obtained or attempted to obtain a license by fraudulent means or misrepresentation; or

(25) Failed to report abuse or neglect of a patient or client in violation of chapter 74.34 RCW. [2003 c 140 § 10; 2000 c 175 § 14; 1988 c 245 § 18.]

Effective date—2003 c 140: See note following RCW 18.79.040.

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.210 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 70.146 RCW

WATER POLLUTION CONTROL FACILITIES FINANCING

Sections

70.146.030	Water quality account—Progress report.
70.146.080	Determination of tax receipts in water quality account— Transfer of sufficient moneys from general revenues.

70.146.030 Water quality account—Progress report.

(1) The water quality account is hereby created in the state treasury. Moneys in the account may be used only in a man-

ner consistent with this chapter. Moneys deposited in the account shall be administered by the department of ecology and shall be subject to legislative appropriation. Moneys placed in the account shall include tax receipts as provided in RCW 82.24.027, 82.26.025, and 82.32.390, principal and interest from the repayment of any loans granted pursuant to this chapter, and any other moneys appropriated to the account by the legislature.

(2) The department may use or permit the use of any moneys in the account to make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other funds are made available on a cost-sharing basis, for water pollution control facilities and activities, or for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW 70.150.060, within the purposes of this chapter and for related administrative expenses. For the period July 1, 2003, to June 30, 2005, moneys in the account may be used to process applications received by the department that seek to make changes to or transfer existing water rights and for grants and technical assistance to public bodies for watershed planning under chapter 90.82 RCW. No more than three percent of the moneys deposited in the account may be used by the department to pay for the administration of the grant and loan program authorized by this chapter.

(3) Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the chairs of the senate committee on ways and means and the house of representatives committee on appropriations. The first report is due June 30, 1996, and the report for each succeeding biennium is due December 31 of the odd-numbered year. The report shall consist of a list of each recipient, project description, and amount of the grant, loan, or both. [2003 1st sp.s. c 25 § 934; 2002 c 371 § 921; 2001 2nd sp.s. c 7 § 922; 1996 c 37 § 2; 1995 2nd sp.s. c 18 § 921; 1991 sp.s. c 13 § 61. Prior: 1987 c 505 § 64; 1987 c 436 § 6; 1986 c 3 § 3.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

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

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.080 Determination of tax receipts in water quality account—Transfer of sufficient moneys from general revenues. Within thirty days after June 30, 1987, and within thirty days after each succeeding fiscal year thereafter, the state treasurer shall determine the tax receipts deposited into the water quality account for the preceding fiscal year. If the tax receipts deposited into the account in each of the fiscal years 1988 and 1989 are less than forty million dollars, the state treasurer shall transfer sufficient moneys from general

state revenues into the water quality account to bring the total receipts in each fiscal year up to forty million dollars.

For the biennium ending June 30, 1991, if the tax receipts deposited into the water quality account and the earnings on investment of balances credited to the account are less than ninety million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to ninety million dollars. The determination and transfer shall be made by July 31, 1991.

For fiscal year 1992 and for fiscal years 1995 and 1996 and thereafter, if the tax receipts deposited into the water quality account for each fiscal year are less than forty-five million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to forty-five million dollars. However, during the 2003-05 fiscal biennium, the legislature may specify the transfer of a different amount in the operating budget bill. Determinations and transfers shall be made by July 31 for the preceding fiscal year. [2003 1st sp.s. c 25 § 935; 1994 sp.s. c 6 § 902; 1993 sp.s. c 24 § 924; 1991 sp.s. c 16 § 923; 1986 c 3 § 11.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—1994 sp.s. c 6: See notes following RCW 28A.310.020.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.165.070.

Severability—Effective date—1991 sp.s. c 16: See notes following RCW 9.46.100.

Effective dates—1986 c 3: See note following RCW 82.24.027.

Chapter 70.155 RCW

TOBACCO—ACCESS TO MINORS

Sections

70.155.010	Definitions.
70.155.105	Delivery sale of cigarettes—Requirements, unlawful practices—Penalties—Enforcement.

70.155.010 Definitions. The definitions set forth in RCW 82.24.010 shall apply to RCW 70.155.020 through 70.155.130. In addition, for the purposes of this chapter, unless otherwise required by the context:

(1) "Board" means the Washington state liquor control board.

(2) "Delivery sale" means any sale of cigarettes to a consumer in the state where either: (a) The purchaser submits an order for a sale by means of a telephonic or other method of voice transmission, mail delivery, any other delivery service, or the internet or other on-line service; or (b) the cigarettes are delivered by use of mail delivery or any other delivery service. A sale of cigarettes shall be a delivery sale regardless of whether the seller is located within or without the state. A sale of cigarettes not for personal consumption to a person who is a wholesaler licensed pursuant to chapter 82.24 RCW or a retailer pursuant to chapter 82.24 RCW is not a delivery sale.

(3) "Delivery service" means any private carrier engaged in the commercial delivery of letters, packages, or other containers that requires the recipient of that letter, package, or container to sign to accept delivery.

(4) "Minor" refers to an individual who is less than eighteen years old.

(5) "Public place" means a public street, sidewalk, or park, or any area open to the public in a publicly owned and operated building.

(6) "Sample" means a tobacco product distributed to members of the general public at no cost or at nominal cost for product promotion purposes.

(7) "Sampler" means a person engaged in the business of sampling other than a retailer.

(8) "Sampling" means the distribution of samples to members of the general public in a public place.

(9) "Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

(10) "Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

(11) "Tobacco product" means a product that contains tobacco and is intended for human consumption. [2003 c 113 § 1; 1993 c 507 § 2.]

70.155.105 Delivery sale of cigarettes—Requirements, unlawful practices—Penalties—Enforcement. (1) It is unlawful for a person who mails, ships, or otherwise delivers cigarettes to fail to:

(a) Verify the age of the receiver of the cigarettes upon delivery; and

(b) Obtain in writing, before the first delivery sale of cigarettes, verification of the receiver's address and that the receiver of the cigarettes is not a minor. The statement must also confirm that the purchaser understands: (i) That signing another person's name to the certification is a violation of RCW 9A.60.040(1)(a); (ii) that the sale of cigarettes to a minor is a violation of RCW 26.28.080; (iii) that the purchase of cigarettes by minors is a violation of RCW 70.155.080; and (iv) that he or she has the option to receive mailings from a tobacco company about tobacco products.

(2) It is unlawful for a person to mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless before the first delivery sale to the consumer that person:

(a) Either verifies the information contained in the certification provided by the prospective consumer in subsection (1) of this section against a commercially available data base, or obtains a photocopy of an officially issued identification containing the bearer's age, signature, and photograph. The only forms of identification that are acceptable as proof of age for the purchase for tobacco products are: (i) A liquor control authority card of identification issued by a state of the United States or a province of Canada, (ii) a driver's license, instruction permit, or identification card issued by a state of the United States or a province of Canada, (iii) a United States military identification card, (iv) a passport, or (v) a merchant marine identification card issued by the United States coast guard;

(b) Provides to the prospective consumer through electronic mail or other means a notice that meets the requirements of subsection (3) of this section; and

(c) In the case of an order for cigarettes pursuant to an advertisement on the internet, receives payment for the delivery sale from the prospective consumer by a credit card or

debit card, or by check that has been issued in the prospective consumer's name.

(3) The notice required under subsection (2)(b) of this section must include:

(a) A prominent and clearly legible statement that cigarette sales to minors are illegal;

(b) A prominent and clearly legible statement that consists of one of the warnings set forth in section 4(a)(1) of the federal cigarette labeling and advertising act (15 U.S.C. Sec. 1333(a)(1)) rotated on a quarterly basis;

(c) A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with subsection (1) of this section; and

(d) A prominent and clearly legible statement that cigarette sales are subject to tax pursuant to chapters 82.24 and 82.12 RCW, with an explanation of how the tax has been or is to be paid with respect to a delivery sale.

(4) It is unlawful for a person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale to fail to:

(a) Include as part of the bill of lading, or other shipping documents, a clear and conspicuous statement that states: "Cigarettes: Washington Law Prohibits Shipping to Individuals Under 18, and Requires the Payment of all Applicable Taxes";

(b) Contract only with private carriers who employ delivery agents who will verify the receiver of the cigarettes is not a minor upon delivery. The only forms of identification that are acceptable as proof of age for the purchase for tobacco products are: (i) A liquor control authority card of identification issued by a state of the United States or a province of Canada, (ii) a driver's license, instruction permit, or identification card issued by a state of the United States or a province of Canada, (iii) a United States military identification card, (iv) a passport, or (v) a merchant marine identification card issued by the United States coast guard;

(c) Provide to the delivery service retained for the delivery sale evidence of full compliance with this section.

(5)(a) Before making delivery sales or mailings, shipping, or otherwise delivering cigarettes to a Washington address in connection with any sales, any person who mails, ships, or otherwise delivers cigarettes shall file with the board a statement setting forth the person's name, trade name, and the address of the person's principal place of business and any other place of business.

(b) Any person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale shall within fifteen days after the first of each month file with the board a report of all delivery sales made by the person within this state for the preceding month. The report shall show the name and address of the consumer to whom the cigarettes were sold, the kind and quality, and the date of delivery thereof.

(6)(a) Any person other than a delivery service who violates any of the provisions of this section is guilty of a class C felony punishable by up to five years in prison and a fine of ten thousand dollars, and payment of the cost of investigation and prosecution, including attorneys' fees.

(b) Any person other than a delivery service who commits a second or subsequent violation of this section is [guilty

of] a class B felony punishable by up to ten years in prison and a fine of twenty thousand dollars, and payment of the cost of investigation and prosecution, including attorneys' fees.

(c) Any delivery service that violates any provision of this section shall be guilty of a gross misdemeanor punishable by up to one year in jail and a fine of five thousand dollars.

(7) Any person that fails to collect or remit to the department of revenue any tax required under chapter 82.24 RCW in connection with a delivery sale shall be assessed, in addition to any other penalty, a penalty of five times the retail value of the cigarettes involved.

(8) For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board or any of its agents may inspect the books, documents, and records of any person who makes delivery sales or mailings, or ships or otherwise delivers cigarettes or retains another person to make delivery sales or mailings, or to ship or otherwise deliver cigarettes insofar as such books, documents, and/or records pertain to the financial transaction involved. If such a person neglects or refuses to produce and submit for inspection any book, record, or document as required by this section when requested to do so by the board or its agent, then the board or the attorney general may seek an order in superior court compelling such production of books, records, or documents. [2003 c 113 § 2.]

Chapter 70.157 RCW

NATIONAL UNIFORM TOBACCO SETTLEMENT— NONPARTICIPATING TOBACCO PRODUCT MANUFACTURERS

Sections

70.157.020 Requirements. (*Contingent expiration date.*)
70.157.030 Contingent expiration date—Court action.

70.157.020 Requirements. (*Contingent expiration date.*) Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after May 18, 1999, shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b)(1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)—

1999: \$.0094241 per unit sold after May 18, 1999;
2000: \$.0104712 per unit sold;
for each of 2001 and 2002: \$.0136125 per unit sold;
for each of 2003 through 2006: \$.0167539 per unit sold;
for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances—

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by

the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold, had it been a Participating Manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall—

(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. The violator shall also pay the State's costs and attorney's fees incurred during a successful prosecution under this paragraph (3). [2003 c 342 § 1; 1999 c 393 § 3.]

Captions not law—Effective date—1999 c 393: See notes following RCW 70.157.005.

70.157.030 Contingent expiration date—Court action. If chapter 342, Laws of 2003 is held by a court of competent jurisdiction to be unconstitutional, then RCW

70.157.020(b)(2)(B) shall be repealed in its entirety. If RCW 70.157.020(b)(2) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then chapter 342, Laws of 2003 shall be repealed, and RCW 70.157.020(b)(2)(B) be restored as if no amendments had been made. Neither any holding of unconstitutionality nor the repeal of RCW 70.157.020(b)(2)(B) shall affect, impair, or invalidate any other portion of RCW 70.157.020 or the application of that section to any other person or circumstance, and the remaining portions of RCW 70.157.020 shall at all times continue in full force and effect. [2003 c 342 § 2.]

Chapter 70.158 RCW

TOBACCO PRODUCT MANUFACTURERS

Sections

70.158.010	Findings.
70.158.020	Definitions.
70.158.030	Tobacco product manufacturers—Certification—Attorney general to publish directory—Violations.
70.158.040	Nonresident, nonparticipating manufacturers—Agent for service of process.
70.158.050	Reports, records—Confidentiality, disclosures, voluntary waivers—Escrow payments.
70.158.060	Penalties—Application of consumer protection act.
70.158.070	Attorney general's directory decision to be final agency action—Due dates for reports, certifications, directory—Rules—Costs—Penalties.
70.158.900	Conflict of law—Severability—2003 c 25.
70.158.901	Effective date—2003 c 25.

70.158.010 Findings. The legislature finds that violations of RCW 70.157.020 threaten the integrity of the tobacco master settlement agreement, the fiscal soundness of the state, and the public health. The legislature finds the enacting procedural enhancements will help prevent violations and aid the enforcement of RCW 70.157.020 and thereby safeguard the master settlement agreement, the fiscal soundness of the state, and the public health. The provisions of chapter 25, Laws of 2003 are not intended to and shall not be interpreted to amend chapter 70.157 RCW. [2003 c 25 § 1.]

70.158.020 Definitions. The following definitions apply to this chapter unless the context clearly requires otherwise.

(1) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s," and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(2) "Board" means the liquor control board.

(3) "Cigarette" has the same meaning as in RCW 70.157.010(d).

(4) "Director" means the director of the department of revenue except as otherwise noted.

(5) "Directory" means the directory to be created and published on a web site by the attorney general pursuant to RCW 70.158.030(2).

(6) "Distributor" has the same meaning as in RCW 82.26.010(3), except that for purposes of this chapter, no person is a distributor if that person does not deal with cigarettes as defined in this section.

(7) "Master settlement agreement" has the same meaning as in RCW 70.157.010(e).

(8) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(9) "Participating manufacturer" has the meaning given that term in section II(jj) of the master settlement agreement.

(10) "Qualified escrow fund" has the same meaning as in RCW 70.157.010(f).

(11) "Stamp" means "stamp" as defined in RCW 82.24.010(7) or as referred to in RCW 43.06.455(4).

(12) "Tobacco product manufacturer" has the same meaning as in RCW 70.157.010(i).

(13) "Units sold" has the same meaning as in RCW 70.157.010(j).

(14) "Wholesaler" has the same meaning as in RCW 82.24.010. [2003 c 25 § 2.]

70.158.030 Tobacco product manufacturers—Certification—Attorney general to publish directory—Violations. (1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a wholesaler, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the attorney general a certification to the attorney general, no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, the tobacco product manufacturer is either a participating manufacturer; or is in full compliance with RCW 70.157.020(b)(1), including all payments required by that section or chapter 25, Laws of 2003.

(a) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(b) A nonparticipating manufacturer shall include in its certification: (i) A list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year; (ii) a list of all of its brand families that have been sold in the state at anytime during the current calendar year; (iii) indicating, by an asterisk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification; and (iv) identifying by name and address any other manufacturer of brand families in the preceding or current calendar year. The nonparticipating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(c) In the case of a nonparticipating manufacturer, the certification shall further certify:

(i) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice as required by RCW 70.158.040;

(ii) That the nonparticipating manufacturer: (A) Has established and continues to maintain a qualified escrow fund; and (B) has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(iii) That the nonparticipating manufacturer is in full compliance with RCW 70.157.020(b)(1) and this chapter, and any rules adopted pursuant thereto; and

(iv)(A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established a qualified escrow fund required pursuant to RCW 70.157.020(b)(1) and all rules adopted thereunder; (B) the account number of the qualified escrow fund and any sub-account number for the state of Washington; (C) the amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing; and (D) the amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to RCW 70.157.020(b)(1) and all rules adopted thereunder.

(d) A tobacco product manufacturer may not include a brand family in its certification unless: (i) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement; and (ii) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of RCW 70.157.020(b)(1). Nothing in this section limits or otherwise affects the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of RCW 70.157.020.

(e) A tobacco product manufacturer shall maintain all invoices and documentation of sales and other information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

(2) Not later than November 1, 2003, the attorney general shall develop and publish on its web site a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of this section and all brand families that are listed in these certifications, except as noted below:

(a) The attorney general shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the attorney general determines is not in compliance with subsection (1)(b) and (c) of this section, unless the attorney general has determined that the violation has been cured to the satisfaction of the attorney general.

(b) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the

attorney general concludes, in the case of a nonparticipating manufacturer, that: (i) Any escrow payment required pursuant to RCW 70.157.020(b)(1) for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or (ii) any outstanding final judgment, including interest, for a violation of RCW 70.157.020(b)(1) that has not been fully satisfied for the brand family or manufacturer.

(c) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter. The attorney general shall transmit, by e-mail or other practicable means to each wholesaler or distributor, notice of any addition to or removal from the directory of any tobacco product manufacturer or brand family. Unless otherwise provided by agreement between the wholesaler or distributor and a tobacco product manufacturer, the wholesaler or distributor shall be entitled to a refund from a tobacco product manufacturer for any money paid by the wholesaler or distributor to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still held by the wholesaler or distributor on the date of notice by the attorney general of the removal from the directory of that tobacco product manufacturer or the brand family of the cigarettes. The attorney general shall not restore to the directory the tobacco product manufacturer or the brand family until the tobacco product manufacturer has paid the wholesaler or distributor any refund due.

(d) Every wholesaler and distributor shall provide and update as necessary an electronic mail address to the attorney general for the purpose of receiving any notifications as may be required by this chapter.

(e) A tobacco product manufacturer included in the directory may request that a new brand family be certified and added to the directory. Within forty-five business days of receiving the request, the attorney general will respond by either: (i) Certifying the new brand family; or (ii) denying the request. However, in cases where the attorney general determines that it needs clarification as to whether the requestor is actually the tobacco product manufacturer, the attorney general may take more time as needed to clarify the request, to locate and assemble information or documents needed to process the request, and to notify persons or agencies affected by the request.

(f) The web site will state that chapter 25, Laws of 2003 applies only to cigarettes including, pursuant to the definition of "cigarettes" in chapter 25, Laws of 2003, roll-your-own tobacco.

(3) It is unlawful for any person (a) to affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory, or to pay or cause to be paid the tobacco products tax on any package or container; or (b) to sell, offer, or possess for sale in this state or import for sale in this state, any cigarettes of a tobacco product manufacturer or brand family not included in the directory. [2003 c 25 § 3.]

70.158.040 Nonresident, nonparticipating manufacturers—Agent for service of process. (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this chapter and RCW 70.157.020(b)(1), may be served in any manner authorized by law. The service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to the satisfaction of the attorney general.

(2) The nonparticipating manufacturer shall provide notice to the attorney general thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the attorney general of the termination within five calendar days and include proof to the satisfaction of the attorney general of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose cigarettes are sold in this state, who has not appointed and engaged an agent as required in this section, shall be deemed to have appointed the secretary of state as the agent and may be proceeded against in courts of this state by service of process upon the secretary of state. However, the appointment of the secretary of state as agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory. [2003 c 25 § 4.]

70.158.050 Reports, records—Confidentiality, disclosures, voluntary waivers—Escrow payments. (1) In addition to the reporting requirements under *RCW 70.157.010(j) and the rules adopted thereunder, not later than twenty-five calendar days after the end of each calendar month, and more frequently if directed by the director, each wholesaler and distributor shall submit information the director requires to facilitate compliance with this chapter, including, but not limited to, a list by brand family of the total number of cigarettes, or, in the case of roll-your-own, the equivalent stick count for which the wholesaler or distributor affixed stamps during the previous calendar month or otherwise paid the tax due for the cigarettes. Each wholesaler and distributor shall maintain and make available to the director, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general or the director for a period of five years.

(2) Information or records required to be furnished to the department, the board, or the attorney general are confidential and shall not be disclosed. However, the director and the board are authorized to disclose to the attorney general any

information received under this chapter and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this chapter. The director, the board, and the attorney general may share with each other the information received under this chapter, and may share information with other federal, state, or local agencies, including without limitation the board, only for purposes of enforcement of this chapter, RCW 70.157.020, or corresponding laws of other states. If a tobacco product manufacturer that is required to establish a qualified escrow fund under RCW 70.157.020 disputes the attorney general's determination of what that manufacturer needs to place into escrow, and the attorney general determines that the dispute can likely be resolved by disclosing reports from the relevant distributors and wholesalers indicating the sales or purchases of the tobacco manufacturer's products, then the attorney general shall request voluntary waivers of confidentiality so that the reports may be disclosed to the tobacco product manufacturer to help resolve the dispute. If the waivers are provided, then the director and the attorney general are authorized to disclose the waived confidential information collected on the sales or purchases of cigarettes to the tobacco product manufacturer. However, before the attorney general or the director discloses the waived confidential information, the tobacco product manufacturer must provide to the attorney general all records relating to its sales or purchases of cigarettes in dispute. The information provided to a tobacco product manufacturer pursuant to this subsection (2) shall be limited to brands or products of that manufacturer only, may be used only for the limited purpose of determining the appropriate escrow deposit, and may not be disclosed by the tobacco product manufacturer.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof, from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with RCW 70.157.020(b)(1), of the amount of money in the fund, exclusive of interest, the amount and date of each deposit to the fund, and the amount and date of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to RCW 70.158.030, this section, and chapters 82.24 and 82.26 RCW, the director, the board, or the attorney general may require a wholesaler, distributor, or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the attorney general to determine whether a tobacco product manufacturer is in compliance with this chapter. If the director, the board, or the attorney general makes a request for information pursuant to this subsection (4), the tobacco product manufacturer, distributor, or wholesaler shall comply promptly.

(5) A nonparticipating manufacturer that either: (a) Has not previously made escrow payments to the state of Washington pursuant to RCW 70.157.020; or (b) has not actually made any escrow payments for more than one year, shall make the required escrow deposits in quarterly installments during the first year in which the sales covered by the deposits are made or in the first year in which the payments are made. The director or the attorney general may require pro-

duction of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit. [2003 c 25 § 5.]

***Reviser's note:** For rules and reporting requirements adopted pursuant to RCW 70.157.010, see WAC 458-20-264.

70.158.060 Penalties—Application of consumer protection act. (1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a wholesaler has violated RCW 70.158.030(3) or any rule adopted pursuant to this chapter, the director or the board may revoke or suspend the license of the wholesaler in the manner provided by chapter 82.24 or 82.32 RCW. Each stamp affixed and each sale or offer to sell cigarettes in violation of RCW 70.158.030(3) shall constitute a separate violation. For each violation of this chapter, the director or the board may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of RCW 70.158.030(3) or any rules adopted pursuant thereto. The penalty shall be imposed in the manner provided by chapter 82.24 RCW.

(2) The attorney general may seek an injunction in superior court to restrain a threatened or actual violation of RCW 70.158.030(3) or 70.158.050 (1) or (4) by a person and to compel the person to comply with these sections. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney fees.

(3) It is unlawful for a person to: (a) Sell or distribute cigarettes or (b) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes, that the person knows or should know are intended for distribution or sale in the state in violation of RCW 70.158.030(3). A violation of this subsection (3) is a gross misdemeanor.

(4) Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for violation of this chapter shall lie solely with the attorney general. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive. [2003 c 25 § 6.]

70.158.070 Attorney general's directory decision to be final agency action—Due dates for reports, certifications, directory—Rules—Costs—Penalties. (1) A determination of the attorney general not to include or to remove from the directory a brand family or tobacco product manufacturer shall be final agency action for purposes of review under RCW 34.05.570(4).

(2) No person shall be issued a license or granted a renewal of a license to act as a wholesaler unless the person has certified in writing under penalty of perjury, that the person will comply fully with this section.

(3) The first reports of wholesalers and distributors are due August 25, 2003. The certifications by a tobacco product manufacturer described in RCW 70.158.030(1) are due September 15, 2003. The directory described in RCW

70.158.030(2) shall be published or made available by November 1, 2003.

(4) The attorney general, the board, and the director may adopt rules as necessary to effect the administration of this chapter.

(5) In any action brought by the state to enforce this chapter, the state is entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

(6) If a court determines that a person has violated this chapter, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the general fund. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state. [2003 c 25 § 7.]

70.158.900 Conflict of law—Severability—2003 c 25.

If a court of competent jurisdiction finds that the provisions of chapter 25, Laws of 2003 and chapter 70.157 RCW conflict and cannot be harmonized, then the provisions of chapter 70.157 RCW shall control. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of chapter 25, Laws of 2003 causes chapter 70.157 RCW no longer to constitute a qualifying or model statute, as those terms are defined in the master settlement agreement, then that portion of chapter 25, Laws of 2003 shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of chapter 25, Laws of 2003 is for any reason held to be invalid, unlawful, or unconstitutional, the decision shall not affect the validity of the remaining portions of chapter 25, Laws of 2003 or any part thereof. [2003 c 25 § 8.]

70.158.901 Effective date—2003 c 25. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003. [2003 c 25 § 13.]

Chapter 70.210 RCW

INVESTING IN INNOVATION GRANTS PROGRAM

Sections

70.210.010	Intent.
70.210.020	Definitions.
70.210.030	Assessments.
70.210.040	Grant award criteria.
70.210.050	Peer review committee—Support of research commercialization opportunities—Grant awards, priority, eligibility.
70.210.060	Performance benchmarks, review, report.
70.210.070	Administration.

70.210.010 Intent. It is the intent of the legislature to promote growth in the technology sectors of our state's economy and to particularly focus support on the creation and commercialization of intellectual property in the technology, energy, and telecommunications industries. [2003 c 403 § 1.]

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

(1) "Center" means the Washington technology center established under RCW 28B.20.283 through 28B.20.295.

(2) "Board" means the board of directors for the center. [2003 c 403 § 2.]

70.210.030 Assessments. (1) The investing in innovation grants program is established.

(2) The center shall periodically make strategic assessments of the types of state investments in research and technology in this state that would likely create jobs and business opportunities and produce the most beneficial long-term improvements to the lives and health of the citizens of the state. The assessments shall be available to the public and shall be used to guide decisions on awarding grants under this chapter. [2003 c 403 § 4.]

70.210.040 Grant award criteria. The board shall:

(1) Develop criteria for the awarding of grants to qualifying universities, institutions, businesses, or individuals;

(2) Make decisions regarding distribution of grant funds and make grant awards; and

(3) In making grant awards, seek to provide a balance between research grant awards and commercialization grant awards. [2003 c 403 § 5.]

70.210.050 Peer review committee—Support of research commercialization opportunities—Grant awards, priority, eligibility. (1) The board may accept grant proposals and establish a competitive process for the awarding of grants.

(2) The board shall establish a peer review committee to include board members, scientists, engineers, and individuals with specific recognized expertise. The peer review committee shall provide to the board an independent peer review of all proposals determined to be competitive for a grant award that are submitted to the board.

(3) In the awarding of grants, priority shall be given to proposals that leverage additional private and public funding resources.

(4) Up to fifty percent of available funds from the investing in innovation account may be used to support commercialization opportunities for research in Washington state through an organization with commercialization expertise such as the Spokane intercollegiate research and technology institute.

(5) The center may not be a direct recipient of grant awards under chapter 403, Laws of 2003. [2003 c 403 § 6.]

70.210.060 Performance benchmarks, review, report. The board shall establish performance benchmarks against which the program will be evaluated. The grants program shall be reviewed periodically by the board. The board shall report annually to the appropriate standing committees of the legislature on grants awarded and as appropriate on program reviews conducted by the board. [2003 c 403 § 7.]

70.210.070 Administration. (1) The center shall administer the investing in innovation grants program.

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(2) Not more than one percent of the available funds from the *investing in innovation account may be used for administrative costs of the program. [2003 c 403 § 8.]

*Reviser's note: The section creating the investing in innovation account, 2003 c 403 § 3, was vetoed by the governor.

Title 71

MENTAL ILLNESS

Chapters

71.09 Sexually violent predators.

71.24 Community mental health services act.

71.32 Mental health advance directives.

71.34 Mental health services for minors.

71.36 Coordination of children's mental health services.

Chapter 71.09 RCW

SEXUALLY VIOLENT PREDATORS

Sections

71.09.020 Definitions.

71.09.135 McNeil Island—Escape planning, response.

71.09.250 Transition facility—Siting.

71.09.270 Repealed.

71.09.275 Transition facility—Transportation of residents.

71.09.290 Other transition facilities—Siting policy guidelines.

71.09.300 Transition facilities—Staffing.

71.09.342 Transition facilities—Siting—Local regulations preempted, when—Consideration of public safety measures.

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

(1) "Department" means the department of social and health services.

(2) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

(3) "Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

(4) "Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

(5) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

(6) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092.

(7) "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(8) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity

which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(9) "Predatory" means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists.

(10) "Recent overt act" means any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act.

(11) "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, public and private youth camps, and others identified by the department following the hearings on a potential site required in RCW 71.09.315. For purposes of this chapter, "school bus stops" does not include bus stops established primarily for public transit.

(12) "Secretary" means the secretary of social and health services or the secretary's designee.

(13) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096.

(14) "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250(1)(a)(i) and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

(15) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second

degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

(16) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(17) "Total confinement facility" means a secure facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a total confinement facility by the secretary. [2003 c 216 § 2; 2003 c 50 § 1; 2002 c 68 § 4; 2002 c 58 § 2; 2001 2nd sp.s. c 12 § 102; 2001 c 286 § 4; 1995 c 216 § 1; 1992 c 145 § 17; 1990 1st ex.s. c 12 § 2; 1990 c 3 § 1002.]

Reviser's note: This section was amended by 2003 c 50 § 1 and by 2003 c 216 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2003 c 216: See notes following RCW 71.09.300.

Application—2003 c 50: "This act applies prospectively only and not retroactively and does not apply to development regulations adopted or amended prior to April 17, 2003." [2003 c 50 § 3.]

Effective date—2003 c 50: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2003]." [2003 c 50 § 4.]

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

Effective date—2002 c 58: See note following RCW 71.09.085.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

Effective date—1990 1st ex.s. c 12: See note following RCW 13.40.020.

71.09.135 McNeil Island—Escape planning, response. The emergency response team for McNeil Island shall plan, coordinate, and respond in the event of an escape from the special commitment center or the secure community transition facility. [2003 c 216 § 6.]

Severability—Effective date—2003 c 216: See notes following RCW 71.09.300.

71.09.250 Transition facility—Siting. (1)(a) The secretary is authorized to site, construct, occupy, and operate (i) a secure community transition facility on McNeil Island for persons authorized to petition for a less restrictive alternative under RCW 71.09.090(1) and who are conditionally released; and (ii) a special commitment center on McNeil Island with up to four hundred four beds as a total confinement facility under this chapter, subject to appropriated funding for those purposes. The secure community transition facility shall be

authorized for the number of beds needed to ensure compliance with the orders of the superior courts under this chapter and the federal district court for the western district of Washington. The total number of beds in the secure community transition facility shall be limited to twenty-four, consisting of up to fifteen transitional beds and up to nine pretransitional beds. The residents occupying the transitional beds shall be the only residents eligible for transitional services occurring in Pierce county. In no event shall more than fifteen residents of the secure community transition facility be participating in off-island transitional, educational, or employment activity at the same time in Pierce county. The department shall provide the Pierce county sheriff, or his or her designee, with a list of the fifteen residents so designated, along with their photographs and physical descriptions, and the list shall be immediately updated whenever a residential change occurs. The Pierce county sheriff, or his or her designee, shall be provided an opportunity to confirm the residential status of each resident leaving McNeil Island.

(b) For purposes of this subsection, "transitional beds" means beds only for residents who are judged by a qualified expert to be suitable to leave the island for treatment, education, and employment.

(2)(a) The secretary is authorized to site, either within the secure community transition facility established pursuant to subsection (1)(a)(i) of this section, or within the special commitment center, up to nine pretransitional beds.

(b) Residents assigned to pretransitional beds shall not be permitted to leave McNeil Island for education, employment, treatment, or community activities in Pierce county.

(c) For purposes of this subsection, "pretransitional beds" means beds for residents whose progress toward a less secure residential environment and transition into more complete community involvement is projected to take substantially longer than a typical resident of the special commitment center.

(3) Notwithstanding RCW 36.70A.103 or any other law, this statute preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the secretary to site, construct, occupy, and operate a secure community transition facility on McNeil Island and a total confinement facility on McNeil Island.

(4) To the greatest extent possible, until June 30, 2003, persons who were not civilly committed from the county in which the secure community transition facility established pursuant to subsection (1) of this section is located may not be conditionally released to a setting in that same county less restrictive than that facility.

(5) As of June 26, 2001, the state shall immediately cease any efforts in effect on such date to site secure community transition facilities, other than the facility authorized by subsection (1) of this section, and shall instead site such facilities in accordance with the provisions of this section.

(6) The department must:

(a) Identify the minimum and maximum number of secure community transition facility beds in addition to the facility established under subsection (1) of this section that may be necessary for the period of May 2004 through May 2007 and provide notice of these numbers to all counties by August 31, 2001; and

(b) Develop and publish policy guidelines for the siting and operation of secure community transition facilities.

(7)(a) The total number of secure community transition facility beds that may be required to be sited in a county between June 26, 2001, and June 30, 2008, may be no greater than the total number of persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made on April 1, 2001. The total number of secure community transition facility beds required to be sited in each county between July 1, 2008, and June 30, 2015, may be no greater than the total number of persons civilly committed from that county or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made as of July 1, 2008.

(b) Counties and cities that provide secure community transition facility beds above the maximum number that they could be required to site under this subsection are eligible for a bonus grant under the incentive provisions in RCW 71.09.255. The county where the special commitment center is located shall receive this bonus grant for the number of beds in the facility established in subsection (1) of this section in excess of the maximum number established by this subsection.

(c) No secure community transition facilities in addition to the one established in subsection (1) of this section may be required to be sited in the county where the special commitment center is located until after June 30, 2008, provided however, that the county and its cities may elect to site additional secure community transition facilities and shall be eligible under the incentive provisions of RCW 71.09.255 for any additional facilities meeting the requirements of that section.

(8) In identifying potential sites within a county for the location of a secure community transition facility, the department shall work with and assist local governments to provide for the equitable distribution of such facilities. In coordinating and deciding upon the siting of secure community transition facilities, great weight shall be given by the county and cities within the county to:

(a) The number and location of existing residential facility beds operated by the department of corrections or the mental health division of the department of social and health services in each jurisdiction in the county; and

(b) The number of registered sex offenders classified as level II or level III and the number of sex offenders registered as homeless residing in each jurisdiction in the county.

(9)(a) "Equitable distribution" means siting or locating secure community transition facilities in a manner that will not cause a disproportionate grouping of similar facilities either in any one county, or in any one jurisdiction or community within a county, as relevant; and

(b) "Jurisdiction" means a city, town, or geographic area of a county in which distinct political or judicial authority may be exercised. [2003 c 216 § 3; 2001 2nd sp.s. c 12 § 201.]

Severability—Effective date—2003 c 216: See notes following RCW 71.09.300.

Intent—2001 2nd sp.s. c 12: "The legislature intends the following omnibus bill to address the management of sex offenders in the civil commit-

ment and criminal justice systems for purposes of public health, safety, and welfare. Provisions address siting of and continued operation of facilities for persons civilly committed under chapter 71.09 RCW and sentencing of persons who have committed sex offenses. Other provisions address the need for sex offender treatment providers with specific credentials. Additional provisions address the continued operation or authorized expansion of criminal justice facilities at McNeil Island, because these facilities are impacted by the civil facilities on McNeil Island for persons committed under chapter 71.09 RCW." [2001 2nd sp.s. c 12 § 101.]

Severability—2001 2nd sp.s. c 12: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 2nd sp.s. c 12 § 504.]

Effective dates—2001 2nd sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2001], except for sections 301 through 363, 501, and 503 of this act which take effect September 1, 2001." [2001 2nd sp.s. c 12 § 505.]

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

71.09.275 Transition facility—Transportation of residents. (1) If the department does not provide a separate vessel for transporting residents of the secure community transition facility established in RCW 71.09.250(1) between McNeil Island and the mainland, the department shall:

(a) Separate residents from minors and vulnerable adults, except vulnerable adults who have been found to be sexually violent predators.

(b) Not transport residents during times when children are normally coming to and from the mainland for school.

(2) The department shall designate a separate waiting area at the points of debarkation, and residents shall be required to remain in this area while awaiting transportation.

(3) The department shall provide law enforcement agencies in the counties and cities in which residents of the secure community transition facility established pursuant to RCW 71.09.250(1)(a)(i) regularly participate in employment, education, or social services, or through which these persons are regularly transported, with a copy of the court's order of conditional release with respect to these persons. [2003 c 216 § 4; 2001 2nd sp.s. c 12 § 211.]

Severability—Effective date—2003 c 216: See notes following RCW 71.09.300.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.290 Other transition facilities—Siting policy guidelines. The secretary shall establish policy guidelines for the siting of secure community transition facilities, other than the secure community transition facility established pursuant to RCW 71.09.250(1)(a)(i), which shall include at least the following minimum requirements:

(1) The following criteria must be considered prior to any real property being listed for consideration for the location of or use as a secure community transition facility:

(a) The proximity and response time criteria established under RCW 71.09.285;

(b) The site or building is available for lease for the anticipated use period or for purchase;

(c) Security monitoring services and appropriate back-up systems are available and reliable;

(d) Appropriate mental health and sex offender treatment providers must be available within a reasonable commute; and

(e) Appropriate permitting for a secure community transition facility must be possible under the zoning code of the local jurisdiction.

(2) For sites which meet the criteria of subsection (1) of this section, the department shall analyze and compare the criteria in subsections (3) through (5) of this section using the method established in RCW 71.09.285.

(3) Public safety and security criteria shall include at least the following:

(a) Whether limited visibility between the facility and adjacent properties can be achieved prior to placement of any person;

(b) The distance from, and number of, risk potential activities and facilities, as measured using the policies adopted under RCW 71.09.285;

(c) The existence of or ability to establish barriers between the site and the risk potential facilities and activities;

(d) Suitability of the buildings to be used for the secure community transition facility with regard to existing or feasibly modified features; and

(e) The availability of electronic monitoring that allows a resident's location to be determined with specificity.

(4) Site characteristics criteria shall include at least the following:

(a) Reasonableness of rental, lease, or sale terms including length and renewability of a lease or rental agreement;

(b) Traffic and access patterns associated with the real property;

(c) Feasibility of complying with zoning requirements within the necessary time frame; and

(d) A contractor or contractors are available to install, monitor, and repair the necessary security and alarm systems.

(5) Program characteristics criteria shall include at least the following:

(a) Reasonable proximity to available medical, mental health, sex offender, and chemical dependency treatment providers and facilities;

(b) Suitability of the location for programming, staffing, and support considerations;

(c) Proximity to employment, educational, vocational, and other treatment plan components.

(6) For purposes of this section "available" or "availability" of qualified treatment providers includes provider qualifications and willingness to provide services, average commute time, and cost of services. [2003 c 216 § 5; 2001 2nd sp.s. c 12 § 214.]

Severability—Effective date—2003 c 216: See notes following RCW 71.09.300.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.300 Transition facilities—Staffing. Secure community transition facilities shall meet the following minimum staffing requirements:

(1)(a) At any time the census of a facility that accepts its first resident before July 1, 2003, is six or fewer residents, the facility shall maintain a minimum staffing ratio of one staff per three residents during normal waking hours and one

awake staff per four residents during normal sleeping hours. In no case shall the staffing ratio permit less than two staff per housing unit.

(b) At any time the census of a facility that accepts its first resident on or after July 1, 2003, is six or fewer residents, the facility shall maintain a minimum staffing ratio of one staff per resident during normal waking hours and two awake staff per three residents during normal sleeping hours. In no case shall the staffing ratio permit less than two staff per housing unit.

(2) At any time the census of a facility is six or fewer residents, all staff shall be classified as residential rehabilitation counselor II or have a classification that indicates an equivalent or higher level of skill, experience, and training.

(3) Before being assigned to a facility, all staff shall have training in sex offender issues, self-defense, and crisis de-escalation skills in addition to departmental orientation and, as appropriate, management training. All staff with resident treatment or care duties must participate in ongoing in-service training.

(4) All staff must pass a departmental background check and the check is not subject to the limitations in chapter 9.96A RCW. A person who has been convicted of a felony, or any sex offense, may not be employed at the secure community transition facility or be approved as an escort for a resident of the facility. [2003 c 216 § 1; 2001 2nd sp.s. c 12 § 216.]

Severability—2003 c 216: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 216 § 8.]

Effective date—2003 c 216: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 216 § 9.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.342 Transition facilities—Siting—Local regulations preempted, when—Consideration of public safety measures. (1) After October 1, 2002, notwithstanding RCW 36.70A.103 or any other law, this section preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the department to site, construct, renovate, occupy, and operate secure community transition facilities within the borders of the following:

(a) Any county that had five or more persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause has been made, on April 1, 2001, if the department determines that the county has not met the requirements of RCW 36.70A.200 with respect to secure community transition facilities. This subsection does not apply to the county in which the secure community transition facility authorized under RCW 71.09.250(1) is located; and

(b) Any city located within a county listed in (a) of this subsection that the department determines has not met the requirements of RCW 36.70A.200 with respect to secure community transition facilities.

(2) The department's determination under subsection (1)(a) or (b) of this section is final and is not subject to appeal under chapter 34.05 or 36.70A RCW.

(3) When siting a facility in a county or city that has been preempted under this section, the department shall consider the policy guidelines established under RCW 71.09.285 and 71.09.290 and shall hold the hearings required in RCW 71.09.315.

(4) Nothing in this section prohibits the department from:

(a) Siting a secure community transition facility in a city or county that has complied with the requirements of RCW 36.70A.200 with respect to secure community transition facilities, including a city that is located within a county that has been preempted. If the department sites a secure community transition facility in such a city or county, the department shall use the process established by the city or county for siting such facilities; or

(b) Consulting with a city or county that has been preempted under this section regarding the siting of a secure community transition facility.

(5)(a) A preempted city or county may propose public safety measures specific to any finalist site to the department. The measures must be consistent with the location of the facility at that finalist site. The proposal must be made in writing by the date of:

(i) The second hearing under RCW 71.09.315(2)(a) when there are three finalist sites; or

(ii) The first hearing under RCW 71.09.315(2)(b) when there is only one site under consideration.

(b) The department shall respond to the city or county in writing within fifteen business days of receiving the proposed measures. The response shall address all proposed measures.

(c) If the city or county finds that the department's response is inadequate, the city or county may notify the department in writing within fifteen business days of the specific items which it finds inadequate. If the city or county does not notify the department of a finding that the response is inadequate within fifteen business days, the department's response shall be final.

(d) If the city or county notifies the department that it finds the response inadequate and the department does not revise its response to the satisfaction of the city or county within seven business days, the city or county may petition the governor to designate a person with law enforcement expertise to review the response under RCW 34.05.479.

(e) The governor's designee shall hear a petition filed under this subsection and shall make a determination within thirty days of hearing the petition. The governor's designee shall consider the department's response, and the effectiveness and cost of the proposed measures, in relation to the purposes of this chapter. The determination by the governor's designee shall be final and may not be the basis for any cause of action in civil court.

(f) The city or county shall bear the cost of the petition to the governor's designee. If the city or county prevails on all issues, the department shall reimburse the city or county costs incurred, as provided under chapter 34.05 RCW.

(g) Neither the department's consideration and response to public safety conditions proposed by a city or county nor the decision of the governor's designee shall affect the pre-

emption under this section or the department's authority to site, construct, renovate, occupy, and operate the secure community transition facility at that finalist site or at any finalist site.

(6) Until June 30, 2009, the secretary shall site, construct, occupy, and operate a secure community transition facility sited under this section in an environmentally responsible manner that is consistent with the substantive objectives of chapter 43.21C RCW, and shall consult with the department of ecology as appropriate in carrying out the planning, construction, and operations of the facility. The secretary shall make a threshold determination of whether a secure community transition facility sited under this section would have a probable significant, adverse environmental impact. If the secretary determines that the secure community transition facility has such an impact, the secretary shall prepare an environmental impact statement that meets the requirements of RCW 43.21C.030 and 43.21C.031 and the rules promulgated by the department of ecology relating to such statements. Nothing in this subsection shall be the basis for any civil cause of action or administrative appeal.

(7) In no case may a secure community transition facility be sited adjacent to, immediately across a street or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a site is listed for consideration unless the site that the department has chosen in a particular county or city was identified pursuant to a process for siting secure community transition facilities adopted by that county or city in compliance with RCW 36.70A.200. "Within the line of sight" means that it is possible to reasonably visually distinguish and recognize individuals.

(8) This section does not apply to the secure community transition facility established pursuant to RCW 71.09.250(1). [2003 c 50 § 2; 2002 c 68 § 9.]

Application—Effective date—2003 c 50: See notes following RCW 71.09.020.

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

"All other laws" defined: RCW 71.09.2501.

Chapter 71.24 RCW

COMMUNITY MENTAL HEALTH SERVICES ACT

Sections

71.24.820 Repealed.
71.24.830 Repealed.

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

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

Chapter 71.32 RCW

MENTAL HEALTH ADVANCE DIRECTIVES

Sections

71.32.010 Legislative declaration—Findings.
71.32.020 Definitions.
71.32.030 Construction of definitions.
71.32.040 Adult presumed to have capacity.
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71.32.060 Execution of directive—Elements—Effective date—Expiration.
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71.32.140 Refusal of admission to inpatient treatment—Effect of directive.
71.32.150 Compliance with directive—Conditions for noncompliance.
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71.32.170 Providers—Immunity from liability—Conditions.
71.32.180 Multiple directives, agents—Effect—Disclosure of court orders.
71.32.190 Preexisting, foreign directives—Validity.
71.32.200 Fraud, duress, undue influence—Appointment of guardian.
71.32.210 Execution of directive not evidence of mental disorder or lack of capacity.
71.32.220 Requiring directive prohibited.
71.32.230 Coercion, threats prohibited.
71.32.240 Other authority not limited.
71.32.250 Long-term care facility residents—Readmission after inpatient mental health treatment—Evaluation, report to legislature.
71.32.260 Form.
71.32.900 Severability—2003 c 283.
71.32.901 Part headings not law—2003 c 283.

71.32.010 Legislative declaration—Findings. (1) The legislature declares that an individual with capacity has the ability to control decisions relating to his or her own mental health care. The legislature finds that:

(a) Some mental illnesses cause individuals to fluctuate between capacity and incapacity;

(b) During periods when an individual's capacity is unclear, the individual may be unable to access needed treatment because the individual may be unable to give informed consent;

(c) Early treatment may prevent an individual from becoming so ill that involuntary treatment is necessary; and

(d) Mentally ill individuals need some method of expressing their instructions and preferences for treatment and providing advance consent to or refusal of treatment.

The legislature recognizes that a mental health advance directive can be an essential tool for an individual to express his or her choices at a time when the effects of mental illness have not deprived him or her of the power to express his or her instructions or preferences.

(2) The legislature further finds that:

(a) A mental health advance directive must provide the individual with a full range of choices;

(b) Mentally ill individuals have varying perspectives on whether they want to be able to revoke a directive during periods of incapacity;

(c) For a mental health advance directive to be an effective tool, individuals must be able to choose how they want their directives treated during periods of incapacity; and

(d) There must be clear standards so that treatment providers can readily discern an individual's treatment choices.

Consequently, the legislature affirms that, pursuant to other provisions of law, a validly executed mental health advance directive is to be respected by agents, guardians, and other surrogate decision makers, health care providers, professional persons, and health care facilities. [2003 c 283 § 1.]

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

(1) "Adult" means any individual who has attained the age of majority or is an emancipated minor.

(2) "Agent" has the same meaning as an attorney-in-fact or agent as provided in chapter 11.94 RCW.

(3) "Capacity" means that an adult has not been found to be incapacitated pursuant to this chapter or RCW 11.88.010(1)(e).

(4) "Court" means a superior court under chapter 2.08 RCW.

(5) "Health care facility" means a hospital, as defined in RCW 70.41.020; an institution, as defined in RCW 71.12.455; a state hospital, as defined in RCW 72.23.010; a nursing home, as defined in RCW 18.51.010; or a clinic that is part of a community mental health service delivery system, as defined in RCW 71.24.025.

(6) "Health care provider" means an osteopathic physician or osteopathic physician's assistant licensed under chapter 18.57 or 18.57A RCW, a physician or physician's assistant licensed under chapter 18.71 or 18.71A RCW, or an advanced registered nurse practitioner licensed under RCW 18.79.050.

(7) "Incapacitated" means an adult who: (a) Is unable to understand the nature, character, and anticipated results of proposed treatment or alternatives; understand the recognized serious possible risks, complications, and anticipated benefits in treatments and alternatives, including nontreatment; or communicate his or her understanding or treatment decisions; or (b) has been found to be incompetent pursuant to RCW 11.88.010(1)(e).

(8) "Informed consent" means consent that is given after the person: (a) Is provided with a description of the nature, character, and anticipated results of proposed treatments and alternatives, and the recognized serious possible risks, complications, and anticipated benefits in the treatments and alternatives, including nontreatment, in language that the person can reasonably be expected to understand; or (b) elects not to be given the information included in (a) of this subsection.

(9) "Long-term care facility" has the same meaning as defined in RCW 43.190.020.

(10) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(11) "Mental health advance directive" or "directive" means a written document in which the principal makes a declaration of instructions or preferences or appoints an agent to make decisions on behalf of the principal regarding the principal's mental health treatment, or both, and that is consistent with the provisions of this chapter.

(12) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of chapter 71.05 RCW.

(13) "Principal" means an adult who has executed a mental health advance directive.

(14) "Professional person" means a mental health professional and shall also mean a physician, registered nurse, and

such others as may be defined by rules adopted by the secretary pursuant to the provisions of chapter 71.05 RCW. [2003 c 283 § 2.]

71.32.030 Construction of definitions. (1) The definition of informed consent is to be construed to be consistent with that term as it is used in chapter 7.70 RCW.

(2) The definitions of mental disorder, mental health professional, and professional person are to be construed to be consistent with those terms as they are defined in RCW 71.05.020. [2003 c 283 § 3.]

71.32.040 Adult presumed to have capacity. For the purposes of this chapter, an adult is presumed to have capacity. [2003 c 283 § 4.]

71.32.050 Execution of directive—Scope. (1) An adult with capacity may execute a mental health advance directive.

(2) A directive executed in accordance with this chapter is presumed to be valid. The inability to honor one or more provisions of a directive does not affect the validity of the remaining provisions.

(3) A directive may include any provision relating to mental health treatment or the care of the principal or the principal's personal affairs. Without limitation, a directive may include:

(a) The principal's preferences and instructions for mental health treatment;

(b) Consent to specific types of mental health treatment;

(c) Refusal to consent to specific types of mental health treatment;

(d) Consent to admission to and retention in a facility for mental health treatment for up to fourteen days;

(e) Descriptions of situations that may cause the principal to experience a mental health crisis;

(f) Suggested alternative responses that may supplement or be in lieu of direct mental health treatment, such as treatment approaches from other providers;

(g) Appointment of an agent pursuant to chapter 11.94 RCW to make mental health treatment decisions on the principal's behalf, including authorizing the agent to provide consent on the principal's behalf to voluntary admission to inpatient mental health treatment; and

(h) The principal's nomination of a guardian or limited guardian as provided in RCW 11.94.010 for consideration by the court if guardianship proceedings are commenced.

(4) A directive may be combined with or be independent of a nomination of a guardian or other durable power of attorney under chapter 11.94 RCW, so long as the processes for each are executed in accordance with its own statutes. [2003 c 283 § 5.]

71.32.060 Execution of directive—Elements—Effective date—Expiration. (1) A directive shall:

(a) Be in writing;

(b) Contain language that clearly indicates that the principal intends to create a directive;

(c) Be dated and signed by the principal or at the principal's direction in the principal's presence if the principal is unable to sign;

(d) Designate whether the principal wishes to be able to revoke the directive during any period of incapacity or wishes to be unable to revoke the directive during any period of incapacity; and

(e) Be witnessed in writing by at least two adults, each of whom shall declare that he or she personally knows the principal, was present when the principal dated and signed the directive, and that the principal did not appear to be incapacitated or acting under fraud, undue influence, or duress.

(2) A directive that includes the appointment of an agent under chapter 11.94 RCW shall contain the words "This power of attorney shall not be affected by the incapacity of the principal," or "This power of attorney shall become effective upon the incapacity of the principal," or similar words showing the principal's intent that the authority conferred shall be exercisable notwithstanding the principal's incapacity.

(3) A directive is valid upon execution, but all or part of the directive may take effect at a later time as designated by the principal in the directive.

(4) A directive may:

(a) Be revoked, in whole or in part, pursuant to the provisions of RCW 71.32.080; or

(b) Expire under its own terms. [2003 c 283 § 6.]

71.32.070 Prohibited elements. A directive may not:

(1) Create an entitlement to mental health or medical treatment or supersede a determination of medical necessity;

(2) Obligate any health care provider, professional person, or health care facility to pay the costs associated with the treatment requested;

(3) Obligate any health care provider, professional person, or health care facility to be responsible for the nontreatment personal care of the principal or the principal's personal affairs outside the scope of services the facility normally provides;

(4) Replace or supersede the provisions of any will or testamentary document or supersede the provisions of intestate succession;

(5) Be revoked by an incapacitated principal unless that principal selected the option to permit revocation while incapacitated at the time his or her directive was executed; or

(6) Be used as the authority for inpatient admission for more than fourteen days in any twenty-one day period. [2003 c 283 § 7.]

71.32.080 Revocation—Waiver. (1)(a) A principal with capacity may, by written statement by the principal or at the principal's direction in the principal's presence, revoke a directive in whole or in part.

(b) An incapacitated principal may revoke a directive only if he or she elected at the time of executing the directive to be able to revoke when incapacitated.

(2) The revocation need not follow any specific form so long as it is written and the intent of the principal can be discerned.

(3) The principal shall provide a copy of his or her written statement of revocation to his or her agent, if any, and to

each health care provider, professional person, or health care facility that received a copy of the directive from the principal.

(4) The written statement of revocation is effective:

(a) As to a health care provider, professional person, or health care facility, upon receipt. The professional person, health care provider, or health care facility, or persons acting under their direction shall make the statement of revocation part of the principal's medical record; and

(b) As to the principal's agent, upon receipt. The principal's agent shall notify the principal's health care provider, professional person, or health care facility of the revocation and provide them with a copy of the written statement of revocation.

(5) A directive also may:

(a) Be revoked, in whole or in part, expressly or to the extent of any inconsistency, by a subsequent directive; or

(b) Be superseded or revoked by a court order, including any order entered in a criminal matter. A directive may be superseded by a court order regardless of whether the order contains an explicit reference to the directive. To the extent a directive is not in conflict with a court order, the directive remains effective, subject to the provisions of RCW 71.32.150. A directive shall not be interpreted in a manner that interferes with: (i) Incarceration or detention by the department of corrections, in a city or county jail, or by the department of social and health services; or (ii) treatment of a principal who is subject to involuntary treatment pursuant to chapter 10.77, 70.96A, 71.05, 71.09, or 71.34 RCW.

(6) A directive that would have otherwise expired but is effective because the principal is incapacitated remains effective until the principal is no longer incapacitated unless the principal has elected to be able to revoke while incapacitated and has revoked the directive.

(7) When a principal with capacity consents to treatment that differs from, or refuses treatment consented to in, the provisions of his or her directive, the consent or refusal constitutes a waiver of that provision and does not constitute a revocation of the provision or directive unless the principal also revokes the directive or provision. [2003 c 283 § 8.]

71.32.090 Witnesses. A witness may not be any of the following:

(1) A person designated to make health care decisions on the principal's behalf;

(2) A health care provider or professional person directly involved with the provision of care to the principal at the time the directive is executed;

(3) An owner, operator, employee, or relative of an owner or operator of a health care facility or long-term care facility in which the principal is a patient or resident;

(4) A person who is related by blood, marriage, or adoption to the person or with whom the principal has a dating relationship, as defined in RCW 26.50.010;

(5) A person who is declared to be an incapacitated person; or

(6) A person who would benefit financially if the principal making the directive undergoes mental health treatment. [2003 c 283 § 9.]

71.32.100 Appointment of agent. (1) If a directive authorizes the appointment of an agent, the provisions of chapter 11.94 RCW and RCW 7.70.065 shall apply unless otherwise stated in this chapter.

(2) The principal who appoints an agent must notify the agent in writing of the appointment.

(3) An agent must act in good faith.

(4) An agent may make decisions on behalf of the principal. Unless the principal has revoked the directive, the decisions must be consistent with the instructions and preferences the principal has expressed in the directive, or if not expressed, as otherwise known to the agent. If the principal's instructions or preferences are not known, the agent shall make a decision he or she determines is in the best interest of the principal.

(5) Except to the extent the right is limited by the appointment or any federal or state law, the agent has the same right as the principal to receive, review, and authorize the use and disclosure of the principal's health care information when the agent is acting on behalf of the principal and to the extent required for the agent to carry out his or her duties. This subsection shall be construed to be consistent with chapters 70.02, 70.24, 70.96A, 71.05, and 71.34 RCW, and with federal law regarding health care information.

(6) Unless otherwise provided in the appointment and agreed to in writing by the agent, the agent is not, as a result of acting in the capacity of agent, personally liable for the cost of treatment provided to the principal.

(7) An agent may resign or withdraw at any time by giving written notice to the principal. The agent must also give written notice to any health care provider, professional person, or health care facility providing treatment to the principal. The resignation or withdrawal is effective upon receipt unless otherwise specified in the resignation or withdrawal.

(8) If the directive gives the agent authority to act while the principal has capacity, the decisions of the principal supersede those of the agent at any time the principal has capacity.

(9) Unless otherwise provided in the durable power of attorney, the principal may revoke the agent's appointment as provided under other state law. [2003 c 283 § 10.]

71.32.110 Determination of capacity. (1) For the purposes of this chapter, a principal, agent, professional person, or health care provider may seek a determination whether the principal is incapacitated or has regained capacity.

(2)(a) For the purposes of this chapter, no adult may be declared an incapacitated person except by:

(i) A court, if the request is made by the principal or the principal's agent;

(ii) One mental health professional and one health care provider; or

(iii) Two health care providers.

(b) One of the persons making the determination under (a)(ii) or (iii) of this subsection must be a psychiatrist, psychologist, or a psychiatric advanced registered nurse practitioner.

(3) When a professional person or health care provider requests a capacity determination, he or she shall promptly inform the principal that:

(a) A request for capacity determination has been made; and

(b) The principal may request that the determination be made by a court.

(4) At least one mental health professional or health care provider must personally examine the principal prior to making a capacity determination.

(5)(a) When a court makes a determination whether a principal has capacity, the court shall, at a minimum, be informed by the testimony of one mental health professional familiar with the principal and shall, except for good cause, give the principal an opportunity to appear in court prior to the court making its determination.

(b) To the extent that local court rules permit, any party or witness may testify telephonically.

(6) When a court has made a determination regarding a principal's capacity and there is a subsequent change in the principal's condition, subsequent determinations whether the principal is incapacitated may be made in accordance with any of the provisions of subsection (2) of this section. [2003 c 283 § 11.]

71.32.120 Action to contest directive. A principal may bring an action to contest the validity of his or her directive. If an action under this section is commenced while an action to determine the principal's capacity is pending, the court shall consolidate the actions and decide the issues simultaneously. [2003 c 283 § 12.]

71.32.130 Determination of capacity—Reevaluations of capacity. (1) An initial determination of capacity must be completed within forty-eight hours of a request made by a person authorized in RCW 71.32.110. During the period between the request for an initial determination of the principal's capacity and completion of that determination, the principal may not be treated unless he or she consents at the time or treatment is otherwise authorized by state or federal law.

(2)(a)(i) When an incapacitated principal is admitted to inpatient treatment pursuant to the provisions of his or her directive, his or her capacity must be reevaluated within seventy-two hours or when there has been a change in the principal's condition that indicates that he or she appears to have regained capacity, whichever occurs first.

(ii) When an incapacitated principal has been admitted to and remains in inpatient treatment for more than seventy-two hours pursuant to the provisions of his or her directive, the principal's capacity must be reevaluated when there has been a change in his or her condition that indicates that he or she appears to have regained capacity.

(iii) When a principal who is being treated on an inpatient basis and has been determined to be incapacitated requests, or his or her agent requests, a redetermination of the principal's capacity the redetermination must be made within seventy-two hours.

(b) When a principal who has been determined to be incapacitated is being treated on an outpatient basis and there is a request for a redetermination of his or her capacity, the redetermination must be made within five days of the first request following a determination.

(3)(a) When a principal who has appointed an agent for mental health treatment decisions requests a determination or

redetermination of capacity, the agent must make reasonable efforts to obtain the determination or redetermination.

(b) When a principal who does not have an agent for mental health treatment decisions is being treated in an inpatient facility and requests a determination or redetermination of capacity, the mental health professional or health care provider must complete the determination or, if the principal is seeking a determination from a court, must make reasonable efforts to notify the person authorized to make decisions for the principal under RCW 7.70.065 of the principal's request.

(c) When a principal who does not have an agent for mental health treatment decisions is being treated on an outpatient basis, the person requesting a capacity determination must arrange for the determination.

(4) If no determination has been made within the time frames established in subsection (1) or (2) of this section, the principal shall be considered to have capacity.

(5) When an incapacitated principal is being treated pursuant to his or her directive, a request for a redetermination of capacity does not prevent treatment. [2003 c 283 § 13.]

71.32.140 Refusal of admission to inpatient treatment—Effect of directive. (1) A principal who:

(a) Chose not to be able to revoke his or her directive during any period of incapacity;

(b) Consented to voluntary admission to inpatient mental health treatment, or authorized an agent to consent on the principal's behalf; and

(c) At the time of admission to inpatient treatment, refuses to be admitted, may only be admitted into inpatient mental health treatment under subsection (2) of this section.

(2) A principal may only be admitted to inpatient mental health treatment under his or her directive if, prior to admission, a physician member of the treating facility's professional staff:

(a) Evaluates the principal's mental condition, including a review of reasonably available psychiatric and psychological history, diagnosis, and treatment needs, and determines, in conjunction with another health care provider or mental health professional, that the principal is incapacitated;

(b) Obtains the informed consent of the agent, if any, designated in the directive;

(c) Makes a written determination that the principal needs an inpatient evaluation or is in need of inpatient treatment and that the evaluation or treatment cannot be accomplished in a less restrictive setting; and

(d) Documents in the principal's medical record a summary of the physician's findings and recommendations for treatment or evaluation.

(3) In the event the admitting physician is not a psychiatrist, the principal shall receive a complete psychological assessment by a mental health professional within twenty-four hours of admission to determine the continued need for inpatient evaluation or treatment.

(4)(a) If it is determined that the principal has capacity, then the principal may only be admitted to, or remain in, inpatient treatment if he or she consents at the time or is detained under the involuntary treatment provisions of chapter 70.96A, 71.05, or 71.34 RCW.

(b) If a principal who is determined by two health care providers or one mental health professional and one health care provider to be incapacitated continues to refuse inpatient treatment, the principal may immediately seek injunctive relief from the facility.

(5) If, at the end of the period of time that the principal or the principal's agent, if any, has consented to voluntary inpatient treatment, but no more than fourteen days after admission, the principal has not regained capacity or has regained capacity but refuses to consent to remain for additional treatment, the principal must be released during reasonable daylight hours, unless detained under chapter 70.96A, 71.05, or 71.34 RCW.

(6)(a) Except as provided in (b) of this subsection, any principal who is voluntarily admitted to inpatient mental health treatment under this chapter shall have all the rights provided to individuals who are voluntarily admitted to inpatient treatment under chapter 71.05, 71.34, or 72.23 RCW.

(b) Notwithstanding RCW 71.05.050 regarding consent to inpatient treatment for a specified length of time, the choices an incapacitated principal expressed in his or her directive shall control, provided, however, that a principal who takes action demonstrating a desire to be discharged, in addition to making statements requesting to be discharged, shall be discharged, and no principal shall be restrained in any way in order to prevent his or her discharge.

(7) Consent to inpatient admission in a directive is effective only while the professional person, health care provider, and health care facility are in substantial compliance with the material provisions of the directive related to inpatient treatment. [2003 c 283 § 14.]

71.32.150 Compliance with directive—Conditions for noncompliance. (1) Upon receiving a directive, a health care provider, professional person, or health care facility providing treatment to the principal, or persons acting under the direction of the health care provider, professional person, or health care facility, shall make the directive a part of the principal's medical record and shall be deemed to have actual knowledge of the directive's contents.

(2) When acting under authority of a directive, a health care provider, professional person, or health care facility shall act in accordance with the provisions of the directive to the fullest extent possible, unless in the determination of the health care provider, professional person, or health care facility:

(a) Compliance with the provision would violate the accepted standard of care established in RCW 7.70.040;

(b) The requested treatment is not available;

(c) Compliance with the provision would violate applicable law; or

(d) It is an emergency situation and compliance would endanger any person's life or health.

(3)(a) In the case of a principal committed or detained under the involuntary treatment provisions of chapter 10.77, 70.96A, 71.05, 71.09, or 71.34 RCW, those provisions of a principal's directive that, in the determination of the health care provider, professional person, or health care facility, are inconsistent with the purpose of the commitment or with any order of the court relating to the commitment are invalid during the commitment.

(b) Remaining provisions of a principal's directive are advisory while the principal is committed or detained.

The treatment provider is encouraged to follow the remaining provisions of the directive, except as provided in (a) of this subsection or subsection (2) of this section.

(4) In the case of a principal who is incarcerated or committed in a state or local correctional facility, provisions of the principal's directive that are inconsistent with reasonable penological objectives or administrative hearings regarding involuntary medication are invalid during the period of incarceration or commitment. In addition, treatment may be given despite refusal of the principal or the provisions of the directive: (a) For any reason under subsection (2) of this section; or (b) if, without the benefit of the specific treatment measure, there is a significant possibility that the person will harm self or others before an improvement of the person's condition occurs.

(5)(a) If the health care provider, professional person, or health care facility is, at the time of receiving the directive, unable or unwilling to comply with any part or parts of the directive for any reason, the health care provider, professional person, or health care facility shall promptly notify the principal and, if applicable, his or her agent and shall document the reason in the principal's medical record.

(b) If the health care provider, professional person, or health care facility is acting under authority of a directive and is unable to comply with any part or parts of the directive for the reasons listed in subsection (2) or (3) of this section, the health care provider, professional person, or health care facility shall promptly notify the principal and if applicable, his or her agent, and shall document the reason in the principal's medical record.

(6) In the event that one or more parts of the directive are not followed because of one or more of the reasons set forth in subsection (2) or (4) of this section, all other parts of the directive shall be followed.

(7) If no provider-patient relationship has previously been established, nothing in this chapter requires the establishment of a provider-patient relationship. [2003 c 283 § 15.]

71.32.160 Electroconvulsive therapy. Where a principal consents in a directive to electroconvulsive therapy, the health care provider, professional person, or health care facility, or persons acting under the direction of the health care provider, professional person, or health care facility, shall document the therapy and the reason it was used in the principal's medical record. [2003 c 283 § 16.]

71.32.170 Providers—Immunity from liability—Conditions. (1) For the purposes of this section, "provider" means a private or public agency, government entity, health care provider, professional person, health care facility, or person acting under the direction of a health care provider or professional person, health care facility, or long-term care facility.

(2) A provider is not subject to civil liability or sanctions for unprofessional conduct under the uniform disciplinary act, chapter 18.130 RCW, when in good faith and without negligence:

(a) The provider provides treatment to a principal in the absence of actual knowledge of the existence of a directive, or provides treatment pursuant to a directive in the absence of actual knowledge of the revocation of the directive;

(b) A health care provider or mental health professional determines that the principal is or is not incapacitated for the purpose of deciding whether to proceed according to a directive, and acts upon that determination;

(c) The provider administers or does not administer mental health treatment according to the principal's directive in good faith reliance upon the validity of the directive and the directive is subsequently found to be invalid;

(d) The provider does not provide treatment according to the directive for one of the reasons authorized under RCW 71.32.150; or

(e) The provider provides treatment according to the principal's directive. [2003 c 283 § 17.]

71.32.180 Multiple directives, agents—Effect—Disclosure of court orders. (1) Where an incapacitated principal has executed more than one valid directive and has not revoked any of the directives:

(a) The directive most recently created shall be treated as the principal's mental health treatment preferences and instructions as to any inconsistent or conflicting provisions, unless provided otherwise in either document.

(b) Where a directive executed under this chapter is inconsistent with a directive executed under any other chapter, the most recently created directive controls as to the inconsistent provisions.

(2) Where an incapacitated principal has appointed more than one agent under chapter 11.94 RCW with authority to make mental health treatment decisions, RCW 11.94.010 controls.

(3) The treatment provider shall inquire of a principal whether the principal is subject to any court orders that would affect the implementation of his or her directive. [2003 c 283 § 18.]

71.32.190 Preexisting, foreign directives—Validity. (1) Directives validly executed before July 27, 2003, shall be given full force and effect until revoked, superseded, or expired.

(2) A directive validly executed in another political jurisdiction is valid to the extent permitted by Washington state law. [2003 c 283 § 19.]

71.32.200 Fraud, duress, undue influence—Appointment of guardian. Any person with reasonable cause to believe that a directive has been created or revoked under circumstances amounting to fraud, duress, or undue influence may petition the court for appointment of a guardian for the person or to review the actions of the agent or person alleged to be involved in improper conduct under RCW 11.94.090 or 74.34.110. [2003 c 283 § 20.]

71.32.210 Execution of directive not evidence of mental disorder or lack of capacity. The fact that a person has executed a directive does not constitute an indication of men-

tal disorder or that the person is not capable of providing informed consent. [2003 c 283 § 21.]

71.32.220 Requiring directive prohibited. A person shall not be required to execute or to refrain from executing a directive, nor shall the existence of a directive be used as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of admission to or discharge from a health care facility or long-term care facility. [2003 c 283 § 22.]

71.32.230 Coercion, threats prohibited. No person or health care facility may use or threaten abuse, neglect, financial exploitation, or abandonment of the principal, as those terms are defined in RCW 74.34.020, to carry out the directive. [2003 c 283 § 23.]

71.32.240 Other authority not limited. A directive does not limit any authority otherwise provided in Title 10, 70, or 71 RCW, or any other applicable state or federal laws to detain a person, take a person into custody, or to admit, retain, or treat a person in a health care facility. [2003 c 283 § 24.]

71.32.250 Long-term care facility residents—Readmission after inpatient mental health treatment—Evaluation, report to legislature. (1) If a principal who is a resident of a long-term care facility is admitted to inpatient mental health treatment pursuant to his or her directive, the principal shall be allowed to be readmitted to the same long-term care facility as if his or her inpatient admission had been for a physical condition on the same basis that the principal

would be readmitted under state or federal statute or rule when:

(a) The treating facility's professional staff determine that inpatient mental health treatment is no longer medically necessary for the resident. The determination shall be made in writing by a psychiatrist or by a mental health professional and a physician; or

(b) The person's consent to admission in his or her directive has expired.

(2)(a) If the long-term care facility does not have a bed available at the time of discharge, the treating facility may discharge the resident, in consultation with the resident and agent if any, and in accordance with a medically appropriate discharge plan, to another long-term care facility.

(b) This section shall apply to inpatient mental health treatment admission of long-term care facility residents, regardless of whether the admission is directly from a facility, hospital emergency room, or other location.

(c) This section does not restrict the right of the resident to an earlier release from the inpatient treatment facility. This section does not restrict the right of a long-term care facility to initiate transfer or discharge of a resident who is readmitted pursuant to this section, provided that the facility has complied with the laws governing the transfer or discharge of a resident.

(3) The joint legislative audit and review committee shall conduct an evaluation of the operation and impact of this section. The committee shall report its findings to the appropriate committees of the legislature by December 1, 2004. [2003 c 283 § 25.]

71.32.260 Form. The directive shall be in substantially the following form:

Mental Health Advance Directive

NOTICE TO PERSONS CREATING A MENTAL HEALTH ADVANCE DIRECTIVE

This is an important legal document. It creates an advance directive for mental health treatment. Before signing this document you should know these important facts:

- (1) This document is called an advance directive and allows you to make decisions in advance about your mental health treatment, including medications, short-term admission to inpatient treatment and electroconvulsive therapy.

YOU DO NOT HAVE TO FILL OUT OR SIGN THIS FORM. IF YOU DO NOT SIGN THIS FORM, IT WILL NOT TAKE EFFECT.

If you choose to complete and sign this document, you may still decide to leave some items blank.

- (2) You have the right to appoint a person as your agent to make treatment decisions for you. You must notify your agent that you have appointed him or her as an agent. The person you appoint has a duty to act consistently with your wishes made known by you. If your agent does not know what your wishes are, he or she has a duty to act in your best interest. Your agent has the right to withdraw from the appointment at any time.
- (3) The instructions you include with this advance directive and the authority you give your agent to act will only become effective under the conditions you select in this document. You may choose to limit this directive and your agent's authority to times when you are incapacitated or to times when you are exhibiting symptoms or behavior that you specify. You may also make this directive effective immediately. No matter when you choose to make this directive effective, your treatment providers must still seek your informed consent at all times that you have capacity to give informed consent.
- (4) You have the right to revoke this document in writing at any time you have capacity.

YOU MAY NOT REVOKE THIS DIRECTIVE WHEN YOU HAVE BEEN FOUND TO BE INCAPACITATED UNLESS YOU HAVE SPECIFICALLY STATED IN THIS DIRECTIVE THAT YOU WANT IT TO BE REVOCABLE WHEN YOU ARE INCAPACITATED.

- (5) This directive will stay in effect until you revoke it unless you specify an expiration date. If you specify an expiration date and you are incapacitated at the time it expires, it will remain in effect until you have capacity to make treatment decisions again unless you chose to be able to revoke it while you are incapacitated and you revoke the directive.
- (6) You cannot use your advance directive to consent to civil commitment. The procedures that apply to your advance directive are different than those provided for in the Involuntary Treatment Act. Involuntary treatment is a different process.
- (7) If there is anything in this directive that you do not understand, you should ask a lawyer to explain it to you.
- (8) You should be aware that there are some circumstances where your provider may not have to follow your directive.
- (9) You should discuss any treatment decisions in your directive with your provider.
- (10) You may ask the court to rule on the validity of your directive.

**PART I.
STATEMENT OF INTENT TO CREATE A
MENTAL HEALTH ADVANCE DIRECTIVE**

I, being a person with capacity, willfully and voluntarily execute this mental health advance directive so that my choices regarding my mental health care will be carried out in circumstances when I am unable to express my instructions and preferences regarding my mental health care. If a guardian is appointed by a court to make mental health decisions for me, I intend this document to take precedence over all other means of ascertaining my intent.

The fact that I may have left blanks in this directive does not affect its validity in any way. I intend that all completed sections be followed. If I have not expressed a choice, my agent should make the decision that he or she determines is in my best interest. I intend this directive to take precedence over any other directives I have previously executed, to the extent that they are inconsistent with this document, or unless I expressly state otherwise in either document.

I understand that I may revoke this directive in whole or in part if I am a person with capacity. I understand that I cannot revoke this directive if a court, two health care providers, or one mental health professional and one health care provider find that I am an incapacitated person, unless, when I executed this directive, I chose to be able to revoke this directive while incapacitated.

I understand that, except as otherwise provided in law, revocation must be in writing. I understand that nothing in this directive, or in my refusal of treatment to which I consent in this directive, authorizes any health care provider, professional person, health care facility, or agent appointed in this directive to use or threaten to use abuse, neglect, financial exploitation, or abandonment to carry out my directive.

I understand that there are some circumstances where my provider may not have to follow my directive.

**PART II.
WHEN THIS DIRECTIVE IS EFFECTIVE**

YOU MUST COMPLETE THIS PART FOR YOUR DIRECTIVE TO BE VALID.

I intend that this directive become effective (*YOU MUST CHOOSE ONLY ONE*):

- Immediately upon my signing of this directive.
- If I become incapacitated.
- When the following circumstances, symptoms, or behaviors occur:
-
-

**PART III.
DURATION OF THIS DIRECTIVE**

YOU MUST COMPLETE THIS PART FOR YOUR DIRECTIVE TO BE VALID.

I want this directive to (*YOU MUST CHOOSE ONLY ONE*):

- Remain valid and in effect for an indefinite period of time.
- Automatically expire years from the date it was created.

**PART IV.
WHEN I MAY REVOKE THIS DIRECTIVE**

YOU MUST COMPLETE THIS PART FOR THIS DIRECTIVE TO BE VALID.

I intend that I be able to revoke this directive (*YOU MUST CHOOSE ONLY ONE*):

- Only when I have capacity.

I understand that choosing this option means I may only revoke this directive if I have capacity. I further understand that if I choose this option and become incapacitated while this directive is in effect, I may receive treatment that I specify in this directive, even if I object at the time.

..... Even if I am incapacitated.

I understand that choosing this option means that I may revoke this directive even if I am incapacitated. I further understand that if I choose this option and revoke this directive while I am incapacitated I may not receive treatment that I specify in this directive, even if I want the treatment.

PART V.

PREFERENCES AND INSTRUCTIONS ABOUT TREATMENT, FACILITIES, AND PHYSICIANS

A. Preferences and Instructions About Physician(s) to be Involved in My Treatment

I would like the physician(s) named below to be involved in my treatment decisions:

Dr. Contact information:

Dr. Contact information:

I do not wish to be treated by Dr.

B. Preferences and Instructions About Other Providers

I am receiving other treatment or care from providers who I feel have an impact on my mental health care. I would like the following treatment provider(s) to be contacted when this directive is effective:

Name Profession Contact information.

Name Profession Contact information.

C. Preferences and Instructions About Medications for Psychiatric Treatment *(initial and complete all that apply)*

..... I consent, and authorize my agent (if appointed) to consent, to the following medications:

..... I do not consent, and I do not authorize my agent (if appointed) to consent, to the administration of the following medications:

..... I am willing to take the medications excluded above if my only reason for excluding them is the side effects which include. and these side effects can be eliminated by dosage adjustment or other means

..... I am willing to try any other medication the hospital doctor recommends

..... I am willing to try any other medications my outpatient doctor recommends

..... I do not want to try any other medications.

Medication Allergies

I have allergies to, or severe side effects from, the following:

Other Medication Preferences or Instructions

..... I have the following other preferences or instructions about medications.

D. Preferences and Instructions About Hospitalization and Alternatives

(initial all that apply and, if desired, rank "1" for first choice, "2" for second choice, and so on)

..... In the event my psychiatric condition is serious enough to require 24-hour care and I have no physical conditions that require immediate access to emergency medical care, I prefer to receive this care in programs/facilities designed as alternatives to psychiatric hospitalizations.

..... I would also like the interventions below to be tried before hospitalization is considered:

..... Calling someone or having someone call me when needed.

Name: Telephone:

..... Staying overnight with someone

Name: Telephone:

..... Having a mental health service provider come to see me

..... Going to a crisis triage center or emergency room

..... Staying overnight at a crisis respite (temporary) bed

..... Seeing a service provider for help with psychiatric medications

..... Other, specify:

Authority to Consent to Inpatient Treatment

I consent, and authorize my agent (if appointed) to consent, to voluntary admission to inpatient mental health treatment for . . . days *(not to exceed 14 days)*

(Sign one):

..... If deemed appropriate by my agent (if appointed) and treating physician

.....
(Signature)

or

..... Under the following circumstances (specify symptoms, behaviors, or circumstances that indicate the need for hospitalization)

.....
(Signature)

..... I do **not** consent, or authorize my agent (if appointed) to consent, to inpatient treatment

.....
(Signature)

Hospital Preferences and Instructions

If hospitalization is required, I prefer the following hospitals:

I do not consent to be admitted to the following hospitals:

E. Preferences and Instructions About Preemergency

I would like the interventions below to be tried before use of seclusion or restraint is considered (initial all that apply):

- "Talk me down" one-on-one
- More medication
- Time out/privacy
- Show of authority/force
- Shift my attention to something else
- Set firm limits on my behavior
- Help me to discuss/vent feelings
- Decrease stimulation
- Offer to have neutral person settle dispute
- Other, specify

F. Preferences and Instructions About Seclusion, Restraint, and Emergency Medications

If it is determined that I am engaging in behavior that requires seclusion, physical restraint, and/or emergency use of medication, I prefer these interventions in the order I have chosen (choose "1" for first choice, "2" for second choice, and so on):

- Seclusion
- Seclusion and physical restraint (combined)
- Medication by injection
- Medication in pill or liquid form

In the event that my attending physician decides to use medication in response to an emergency situation after due consideration of my preferences and instructions for emergency treatments stated above, I expect the choice of medication to reflect any preferences and instructions I have expressed in Part III C of this form. The preferences and instructions I express in this section regarding medication in emergency situations do not constitute consent to use of the medication for nonemergency treatment.

G. Preferences and Instructions About Electroconvulsive Therapy (ECT or Shock Therapy)

My wishes regarding electroconvulsive therapy are (sign one):

..... I do not consent, nor authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy

.....
(Signature)

..... I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy

.....
(Signature)

..... I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy, but only under the following conditions:

.....

.....
(Signature)

H. Preferences and Instructions About Who is Permitted to Visit

If I have been admitted to a mental health treatment facility, the following people are not permitted to visit me there:

Name:

Name:

Name:

I understand that persons not listed above may be permitted to visit me.

I. Additional Instructions About My Mental Health Care

Other instructions about my mental health care:

.....

In case of emergency, please contact:

Name: Address:

Work telephone: Home telephone:

Physician: Address:

Telephone:

The following may help me to avoid a hospitalization:

.....

I generally react to being hospitalized as follows:

.....

Staff of the hospital or crisis unit can help me by doing the following:

.....

.....

J. Refusal of Treatment

I do not consent to any mental health treatment.

.....
(Signature)

PART VI.

DURABLE POWER OF ATTORNEY (APPOINTMENT OF MY AGENT)

(Fill out this part only if you wish to appoint an agent or nominate a guardian.)

I authorize an agent to make mental health treatment decisions on my behalf. The authority granted to my agent includes the right to consent, refuse consent, or withdraw consent to any mental health care, treatment, service, or procedure, consistent with any instructions and/or limitations I have set forth in this directive. I intend that those decisions should be made in accordance with my expressed wishes as set forth in this document. If I have not expressed a choice in this document **and my agent does not otherwise know my wishes**, I authorize my agent to make the decision that my agent determines is in my best interest. This agency shall not be affected by my incapacity. Unless I state otherwise in this durable power of attorney, I may revoke it unless prohibited by other state law.

A. Designation of an Agent

I appoint the following person as my agent to make mental health treatment decisions for me as authorized in this document and request that this person be notified immediately when this directive becomes effective:

Name: Address:

Work telephone: Home telephone:

Relationship:

B. Designation of Alternate Agent

If the person named above is unavailable, unable, or refuses to serve as my agent, or I revoke that person's authority to serve as my agent, I hereby appoint the following person as my alternate agent and request that this person be notified immediately when this directive becomes effective or when my original agent is no longer my agent:

Name: Address:

Work telephone: Home telephone:

Relationship:

C. When My Spouse is My Agent (initial if desired)

..... If my spouse is my agent, that person shall remain my agent even if we become legally separated or our marriage is dissolved, unless there is a court order to the contrary or I have remarried.

D. Limitations on My Agent's Authority

I do not grant my agent the authority to consent on my behalf to the following:

.....
.....

E. Limitations on My Ability to Revoke this Durable Power of Attorney

I choose to limit my ability to revoke this durable power of attorney as follows:

.....
.....

F. Preference as to Court-Appointed Guardian

In the event a court appoints a guardian who will make decisions regarding my mental health treatment, I **nominate** the following person **as my guardian**:

Name: Address:
Work telephone: Home telephone:
Relationship:

The appointment of a guardian of my estate or my person or any other decision maker shall not give the guardian or decision maker the power to revoke, suspend, or terminate this directive or the powers of my agent, except as authorized by law.

.....
(Signature required if nomination is made)

**PART VII.
OTHER DOCUMENTS**

(Initial all that apply)

I have executed the following documents that include the power to make decisions regarding health care services for myself:

- Health care power of attorney (chapter 11.94 RCW)
- "Living will" (Health care directive; chapter 70.122 RCW)

..... I have appointed more than one agent. I understand that the most recently appointed agent controls except as stated below:

.....

**PART VIII.
NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS**

(Fill out this part only if you wish to provide nontreatment instructions.)

I understand the preferences and instructions in this part are **NOT** the responsibility of my treatment provider and that no treatment provider is required to act on them.

A. Who Should Be Notified

I desire my agent to notify the following individuals as soon as possible when this directive becomes effective:

Name: Address:
Day telephone: Evening telephone:
Name: Address:
Day telephone: Evening telephone:

B. Preferences or Instructions About Personal Affairs

I have the following preferences or instructions about my personal affairs (e.g., care of dependents, pets, household) if I am admitted to a mental health treatment facility:

.....
.....

C. Additional Preferences and Instructions:

.....
.....
.....

**PART IX.
SIGNATURE**

By signing here, I indicate that I understand the purpose and effect of this document and that I am giving my informed consent to the treatments and/or admission to which I have consented or authorized my agent to consent in this directive. I intend that my consent in this directive be construed as being consistent with the elements of informed consent under chapter 7.70 RCW.

Signature: Date:
Printed Name:

This directive was signed and declared by the "Principal," to be his or her directive, in our presence who, at his or her request, have signed our names below as witnesses. We declare that, at the time of the creation of this instrument, the Principal is personally known to us, and, according to our best knowledge and belief, has capacity at this time and does not appear to be acting under duress, undue influence, or fraud. We further declare that none of us is:

- (A) A person designated to make medical decisions on the principal's behalf;
- (B) A health care provider or professional person directly involved with the provision of care to the principal at the time the directive is executed;
- (C) An owner, operator, employee, or relative of an owner or operator of a health care facility or long-term care facility in which the principal is a patient or resident;
- (D) A person who is related by blood, marriage, or adoption to the person, or with whom the principal has a dating relationship as defined in RCW 26.50.010;
- (E) An incapacitated person;
- (F) A person who would benefit financially if the principal undergoes mental health treatment; or
- (G) A minor.

Witness 1: Signature: Date:
Printed Name:

..... Telephone: Address:

Witness 2: Signature: Date:
Printed Name:

..... Telephone: Address:

**PART X.
RECORD OF DIRECTIVE**

I have given a copy of this directive to the following persons:
.....

**DO NOT FILL OUT PART XI UNLESS YOU INTEND TO REVOKE
THIS DIRECTIVE IN PART OR IN WHOLE**

**PART XI.
REVOCAION OF THIS DIRECTIVE**

(Initial any that apply):

..... I am revoking the following part(s) of this directive (specify):
.....

..... I am revoking all of this directive.

By signing here, I indicate that I understand the purpose and effect of my revocation and that no person is bound by any revoked provision(s). I intend this revocation to be interpreted as if I had never completed the revoked provision(s).

Signature: Date:
Printed Name:

**DO NOT SIGN THIS PART UNLESS YOU INTEND TO REVOKE THIS
DIRECTIVE IN PART OR IN WHOLE**

[2003 c 283 § 26.]

71.32.900 Severability—2003 c 283. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [2003 c 283 § 35.]

71.32.901 Part headings not law—2003 c 283. Part headings used in this act are not any part of the law. [2003 c 283 § 38.]

Chapter 71.34 RCW

MENTAL HEALTH SERVICES FOR MINORS

Sections

- 71.34.046 Minor voluntarily admitted may give notice to leave at any time.
- 71.34.056 Parent-initiated treatment—Notice to parents of available treatment options.

71.34.046 Minor voluntarily admitted may give notice to leave at any time. (1) Any minor thirteen years or older voluntarily admitted to an evaluation and treatment facility under RCW 71.34.042 may give notice of intent to leave at any time. The notice need not follow any specific form so long as it is written and the intent of the minor can be discerned.

(2) The staff member receiving the notice shall date it immediately, record its existence in the minor's clinical record, and send copies of it to the minor's attorney, if any, the county-designated mental health professional, and the parent.

(3) The professional person shall discharge the minor, thirteen years or older, from the facility by the second judicial day following receipt of the minor's notice of intent to leave. [2003 c 106 § 1; 1998 c 296 § 16.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

71.34.056 Parent-initiated treatment—Notice to parents of available treatment options. (1) The evaluation and treatment facility is required to promptly provide written and verbal notice of all statutorily available treatment options contained in this chapter to every parent or guardian of a minor child when the parent or guardian seeks to have his or her minor child treated at an evaluation and treatment facility.

(2) The notice must contain the following information:

(a) All current statutorily available treatment options including but not limited to those provided in this chapter; and

(b) The procedures to be followed to utilize the treatment options described in this chapter.

(3) The department shall produce, and make available, the written notification that must include, at a minimum, the information contained in subsection (2) of this section. [2003 c 107 § 1.]

Chapter 71.36 RCW

COORDINATION OF CHILDREN'S MENTAL HEALTH SERVICES

Sections

- 71.36.020 Plan for early periodic screening, diagnosis, and treatment services.
- 71.36.040 Issue identification, data collection, plan revision—Coordination with other state agencies.
- 71.36.050 Report on implementation status. (*Expires June 30, 2006.*)

71.36.020 Plan for early periodic screening, diagnosis, and treatment services. The department, in consultation with the office of financial management, shall develop a plan and criteria for the use of early periodic screening, diagnosis, and treatment services related to mental health that includes at least the following components:

(1) Criteria for screening and assessment of mental illness and emotional disturbance;

(2) Criteria for determining the appropriate level of medically necessary services a child receives, including but not limited to development of a multidisciplinary plan of care when appropriate, and prior authorization for receipt of mental health services;

(3) Qualifications for children's mental health providers;

(4) Other cost control mechanisms, such as managed care arrangements and prospective or capitated payments for mental health services; and

(5) Mechanisms to ensure that federal medicaid matching funds are obtained for services, to the greatest extent practicable.

In developing the plan, the department shall provide an opportunity for comment by the major child-serving systems and regional support networks. The plan shall be submitted to appropriate committees of the legislature on or before December 1, 2003. [2003 c 281 § 4; 1991 c 326 § 13.]

Legislative support affirmed—2003 c 281: See note following RCW 71.36.040.

71.36.040 Issue identification, data collection, plan revision—Coordination with other state agencies. (1) The legislature supports recommendations made in the August 2002 study of the public mental health system for children conducted by the joint legislative audit and review committee.

(2) The department shall, within available funds:

(a) Identify internal business operation issues that limit the agency's ability to meet legislative intent to coordinate existing categorical children's mental health programs and funding;

(b) Collect reliable mental health cost, service, and outcome data specific to children. This information must be used to identify best practices and methods of improving fiscal management;

(c) Revise the early periodic screening diagnosis and treatment plan to reflect the mental health system structure in place on July 27, 2003, and thereafter revise the plan as necessary to conform to subsequent changes in the structure.

(3) The department and the office of the superintendent of public instruction shall jointly identify school districts where mental health and education systems coordinate services and resources to provide public mental health care for children. The department and the office of the superintendent of public instruction shall work together to share information about these approaches with other school districts, regional support networks, and state agencies. [2003 c 281 § 2.]

Legislative support affirmed—2003 c 281: "The legislature affirms its support for: Improving field-level cross-program collaboration and efficiency; collecting reliable mental health cost, service, and outcome data specific to children; revising the early periodic screening diagnosis and treatment plan to reflect the current mental health system structure; and identifying and promulgating the approaches used in school districts where mental health and education systems coordinate services and resources to provide public mental health care for children." [2003 c 281 § 1.]

71.36.050 Report on implementation status. (*Expires June 30, 2006.*) (1) In addition to any follow-up requirements recommended by the joint legislative audit and review committee, the department of social and health services shall

submit a report to the governor and the legislature on the status of the implementation of the recommendations provided in RCW 71.36.040(2) (a) through (c) and, in coordination with the office of the superintendent of public instruction, on RCW 71.36.040(3). An initial implementation status report must be submitted to the governor and appropriate policy and fiscal committees of the legislature by June 1, 2004. A final report shall be provided no later than June 1, 2006.

(2) This section expires June 30, 2006. [2003 c 281 § 3.]

Legislative support affirmed—2003 c 281: See note following RCW 71.36.040.

Title 72

STATE INSTITUTIONS

Chapters

72.09 Department of corrections.

72.11 Offenders' responsibility for legal financial obligations.

72.23 Public and private facilities for mentally ill.

72.63 Prison work programs—Fish and game.

Chapter 72.09 RCW

DEPARTMENT OF CORRECTIONS

Sections

72.09.111 Inmate wages—Deductions—Availability of savings—Recovery of cost of incarceration—Employment goals.

72.09.480 Inmate funds subject to deductions—Definitions—Exceptions—Child support collection actions.

72.09.111 Inmate wages—Deductions—Availability of savings—Recovery of cost of incarceration—Employment goals. (1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work programs. The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level, as defined in RCW 72.09.015.

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Fifteen percent to the department to contribute to the cost of incarceration;

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(v) Fifteen percent for any child support owed under a support order.

(c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award.

(d) The formula shall include the following minimum deductions from class III gratuities:

(i) Five percent for the purpose of crime victims' compensation; and

(ii) Fifteen percent for any child support owed under a support order.

(e) The formula shall include the following minimum deduction from class IV gross gratuities:

(i) Five percent to the department to contribute to the cost of incarceration; and

(ii) Fifteen percent for any child support owed under a support order.

(2) Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under subsection (1)(a)(ii), (b)(ii), or (c)(ii).

(3) The department personal inmate savings account, together with any accrued interest, shall only be available to an inmate at the time of his or her release from confinement, unless the secretary determines that an emergency exists for the inmate, at which time the funds can be made available to the inmate in an amount determined by the secretary. The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

(4) In the event that the offender worker's wages, gratuity, or workers' compensation benefit is subject to garnishment for support enforcement, the crime victims' compensation, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(5) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

(6) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(7) The expansion of inmate employment in class I and class II correctional industries shall be implemented according to the following schedule:

(a) Not later than June 30, 1995, the secretary shall achieve a net increase of at least two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;

(b) Not later than June 30, 1996, the secretary shall achieve a net increase of at least four hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;

(c) Not later than June 30, 1997, the secretary shall achieve a net increase of at least six hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;

(d) Not later than June 30, 1998, the secretary shall achieve a net increase of at least nine hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;

(e) Not later than June 30, 1999, the secretary shall achieve a net increase of at least one thousand two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;

(f) Not later than June 30, 2000, the secretary shall achieve a net increase of at least one thousand five hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994.

(8) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(9) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW. [2003 c 379 § 25; 2003 c 271 § 2; 2002 c 126 § 2; 1999 c 325 § 2; 1994 sp.s. c 7 § 534; 1993 sp.s. c 20 § 2.]

Reviser's note: This section was amended by 2003 c 271 § 2 and by 2003 c 379 § 25, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Effective date—1994 sp.s. c 7 § 534: "Section 534 of this act shall take effect June 30, 1994." [1994 sp.s. c 7 § 536.]

[2003 RCW Supp—page 868]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1993 sp.s. c 20 § 2: "Section 2 of this act shall take effect June 30, 1994." [1993 sp.s. c 20 § 10.]

Severability—1993 sp.s. c 20: See note following RCW 43.19.534.

72.09.480 Inmate funds subject to deductions—Definitions—Exceptions—Child support collection actions.

(1) Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(c) "Program" means any series of courses or classes necessary to achieve a proficiency standard, certificate, or postsecondary degree.

(2) When an inmate, except as provided in subsection (7) of this section, receives any funds in addition to his or her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to the following deductions and the priorities established in chapter 72.11 RCW:

(a) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(b) Ten percent to a department personal inmate savings account;

(c) Twenty percent to the department to contribute to the cost of incarceration;

(d) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(e) Fifteen percent for any child support owed under a support order.

(3) When an inmate, except as provided in subsection (7) of this section, receives any funds from a settlement or award resulting from a legal action, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

(4) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer.

(5) The deductions required under subsection (2) of this section shall not apply to funds received by the department on behalf of an offender for payment of one fee-based education or vocational program that is associated with an inmate's work program or a placement decision made by the department under RCW 72.09.460 to prepare an inmate for work upon release.

An inmate may, prior to the completion of the fee-based education or vocational program authorized under this sub-

section, apply to a person designated by the secretary for permission to make a change in his or her program. The secretary, or his or her designee, may approve the application based solely on the following criteria: (a) The inmate has been transferred to another institution by the department for reasons unrelated to education or a change to a higher security classification and the offender's current program is unavailable in the offender's new placement; (b) the inmate entered an academic program as an undeclared major and wishes to declare a major. No inmate may apply for more than one change to his or her major and receive the exemption from deductions specified in this subsection; (c) the educational or vocational institution is terminating the inmate's current program; or (d) the offender's training or education has demonstrated that the current program is not the appropriate program to assist the offender to achieve a placement decision made by the department under RCW 72.09.460 to prepare the inmate for work upon release.

(6) The deductions required under subsection (2) of this section shall not apply to any money received by the department, on behalf of an inmate, from family or other outside sources for the payment of postage expenses. Money received under this subsection may only be used for the payment of postage expenses and may not be transferred to any other account or purpose. Money that remains unused in the inmate's postage fund at the time of release shall be subject to the deductions outlined in subsection (2) of this section.

(7) When an inmate sentenced to life imprisonment without possibility of release or parole, or to death under chapter 10.95 RCW, receives any funds in addition to his or her gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to: Deductions of five percent to the public safety and education account for the purpose of crime victims' compensation, twenty percent to the department to contribute to the cost of incarceration, and fifteen percent to child support payments.

(8) When an inmate sentenced to life imprisonment without possibility of release or parole, or to death under chapter 10.95 RCW, receives any funds from a settlement or award resulting from a legal action in addition to his or her gratuities, the additional funds shall be subject to: Deductions of five percent to the public safety and education account for the purpose of crime victims' compensation and twenty percent to the department to contribute to the cost of incarceration.

(9) The interest earned on an inmate savings account created as a result of the *plan in section 4, chapter 325, Laws of 1999 shall be exempt from the mandatory deductions under this section and RCW 72.09.111.

(10) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW including, but not limited to, the collection of moneys received by the inmate from settlements or awards resulting from legal action. [2003 c 271 § 3; 1999 c 325 § 1; 1998 c 261 § 2; 1997 c 165 § 1; 1995 1st sp.s. c 19 § 8.]

***Reviser's note:** 1999 c 325 § 4 requires the secretary of corrections to prepare and submit a plan to the governor and legislature by December 1, 1999.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Chapter 72.11 RCW

OFFENDERS' RESPONSIBILITY FOR LEGAL FINANCIAL OBLIGATIONS

Sections

72.11.040 Cost of supervision fund.

72.11.040 Cost of supervision fund. The cost of supervision fund is created in the custody of the state treasurer. All receipts from assessments made under RCW 9.94A.780 and 72.04A.120 shall be deposited into the fund. Expenditures from the fund may be used only to support the collection of legal financial obligations. During the 2003-2005 biennium, funds from the account may also be used for costs associated with the department's supervision of the offenders in the community. Only the secretary of the department of corrections or the secretary's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [2003 1st sp.s. c 25 § 936; 2001 2nd sp.s. c 7 § 919; 2000 2nd sp.s. c 1 § 914; 1999 c 309 § 921; 1989 c 252 § 26.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Chapter 72.23 RCW

PUBLIC AND PRIVATE FACILITIES FOR MENTALLY ILL

Sections

72.23.170 Escape of patient—Penalty for assisting. (*Effective July 1, 2004.*)

72.23.300 Bringing narcotics, intoxicating liquors, weapons, etc., into institution or its grounds prohibited—Penalty. (*Effective July 1, 2004.*)

72.23.450 Repealed.

72.23.170 Escape of patient—Penalty for assisting. (*Effective July 1, 2004.*) Any person who procures the escape of any patient of any state hospital for the mentally ill, or institutions for psychopaths to which such patient has been lawfully committed, or who advises, connives at, aids, or assists in such escape or conceals any such escape, is guilty of a class C felony and shall be punished by imprisonment in a state correctional institution for a term of not more than five years or by a fine of not more than five hundred dollars or by both imprisonment and fine. [2003 c 53 § 364; 1959 c 28 § 72.23.170. Prior: 1957 c 225 § 1, part; 1949 c 198 § 20, part; Rem. Supp. 1949 § 6953-20, part. Formerly RCW 71.12.620, part.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

72.23.300 Bringing narcotics, intoxicating liquors, weapons, etc., into institution or its grounds prohibited—

Penalty. (*Effective July 1, 2004.*) Any person not authorized by law so to do, who brings into any state institution for the care and treatment of mental illness or within the grounds thereof, any opium, morphine, cocaine or other narcotic, or any intoxicating liquor of any kind whatever, except for medicinal or mechanical purposes, or any firearms, weapons, or explosives of any kind is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 365; 1959 c 28 § 72.23.300. Prior: 1949 c 198 § 52; Rem. Supp. 1949 § 6932-52. Formerly RCW 71.12.630.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Uniform controlled substances act: Chapter 69.50 RCW.

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

Chapter 72.63 RCW

PRISON WORK PROGRAMS—FISH AND GAME

Sections

72.63.040 Available funds to support costs of implementation.

72.63.040 Available funds to support costs of implementation. The costs of implementation of the projects prescribed by this chapter shall be supported to the extent that funds are available under the provisions of chapter 77.100 RCW, and from correctional industries funds. [2003 c 39 § 31; 1989 c 185 § 13; 1985 c 286 § 4.]

Title 73

VETERANS AND VETERANS' AFFAIRS

Chapters

73.04 General provisions.

Chapter 73.04 RCW

GENERAL PROVISIONS

Sections

73.04.160 Veterans' history awareness month—Commemoration of contributions of veterans.

73.04.160 Veterans' history awareness month—Commemoration of contributions of veterans. The legislature declares that:

(1) November of each year will be known as veterans' history awareness month;

(2) The week in November in which veterans' day occurs is designated as a time for people of this state to celebrate the contributions to the state by veterans; and

(3) Educational institutions, public entities, and private organizations are encouraged to designate time for appropriate activities in commemoration of the contributions of America's veterans. [2003 c 161 § 1.]

[2003 RCW Supp—page 870]

Title 74

PUBLIC ASSISTANCE

Chapters

- 74.04 General provisions—Administration.**
- 74.08 Eligibility generally—Standards of assistance.**
- 74.08A Washington WorkFirst temporary assistance for needy families.**
- 74.09 Medical care.**
- 74.13 Child welfare services.**
- 74.14A Children and family services.**
- 74.14C Family preservation services.**
- 74.18 Department of services for the blind.**
- 74.34 Abuse of vulnerable adults.**
- 74.46 Nursing facility medicaid payment system.**

Chapter 74.04 RCW

GENERAL PROVISIONS—ADMINISTRATION

Sections

- 74.04.005 Definitions—Eligibility.
- 74.04.00511 Limitations on "resource" and "income."
- 74.04.300 Recovery of payments improperly received—Lien—Recipient reporting requirements.

74.04.005 Definitions—Eligibility. For the purposes of this title, unless the context indicates otherwise, the following definitions shall apply:

(1) "Public assistance" or "assistance"—Public aid to persons in need thereof for any cause, including services, medical care, assistance grants, disbursing orders, work relief, general assistance and federal-aid assistance.

(2) "Department"—The department of social and health services.

(3) "County or local office"—The administrative office for one or more counties or designated service areas.

(4) "Director" or "secretary" means the secretary of social and health services.

(5) "Federal-aid assistance"—The specific categories of assistance for which provision is made in any federal law existing or hereafter passed by which payments are made from the federal government to the state in aid or in respect to payment by the state for public assistance rendered to any category of needy persons for which provision for federal funds or aid may from time to time be made, or a federally administered needs-based program.

(6)(a) "General assistance"—Aid to persons in need who:

(i) Are not eligible to receive federal-aid assistance, other than food stamps or food stamp benefits transferred electronically and medical assistance; however, an individual who refuses or fails to cooperate in obtaining federal-aid assistance, without good cause, is not eligible for general assistance;

(ii) Meet one of the following conditions:

(A) Pregnant: PROVIDED, That need is based on the current income and resource requirements of the federal temporary assistance for needy families program; or

(B) Subject to chapter 165, Laws of 1992, incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ninety days as determined by the department.

(C) Persons who are unemployable due to alcohol or drug addiction are not eligible for general assistance. Persons receiving general assistance on July 26, 1987, or becoming eligible for such assistance thereafter, due to an alcohol or drug-related incapacity, shall be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. Alcoholic and drug addicted clients who are receiving general assistance on July 26, 1987, may remain on general assistance if they otherwise retain their eligibility until they are assessed for services under chapter 74.50 RCW. Subsection (6)(a)(ii)(B) of this section shall not be construed to prohibit the department from granting general assistance benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the general assistance program;

(iii) Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law; and

(iv) Have furnished the department their social security account number. If the social security account number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of assistance, and the social security number shall be provided to the department upon receipt.

(b) Notwithstanding the provisions of subsection (6)(a)(i), (ii), and (c) of this section, general assistance shall be provided to the following recipients of federal-aid assistance:

(i) Recipients of supplemental security income whose need, as defined in this section, is not met by such supplemental security income grant because of separation from a spouse; or

(ii) To the extent authorized by the legislature in the biennial appropriations act, to recipients of temporary assistance for needy families whose needs are not being met because of a temporary reduction in monthly income below the entitled benefit payment level caused by loss or reduction of wages or unemployment compensation benefits or some other unforeseen circumstances. The amount of general assistance authorized shall not exceed the difference between the entitled benefit payment level and the amount of income actually received.

(c) General assistance shall be provided only to persons who are not members of assistance units receiving federal aid assistance, except as provided in subsection (6)(a)(ii)(A) and (b) of this section, and will accept available services which can reasonably be expected to enable the person to work or reduce the need for assistance unless there is good cause to refuse. Failure to accept such services shall result in termination until the person agrees to cooperate in accepting such services and subject to the following maximum periods of ineligibility after reapplication:

(i) First failure: One week;

(ii) Second failure within six months: One month;

(iii) Third and subsequent failure within one year: Two months.

(d) Persons found eligible for general assistance based on incapacity from gainful employment may, if otherwise eli-

gible, receive general assistance pending application for federal supplemental security income benefits. Any general assistance that is subsequently duplicated by the person's receipt of supplemental security income for the same period shall be considered a debt due the state and shall by operation of law be subject to recovery through all available legal remedies.

(e) The department shall adopt by rule medical criteria for general assistance eligibility to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information.

(f) The process implementing the medical criteria shall involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.

(g) Recipients of general assistance based upon a finding of incapacity from gainful employment who remain otherwise eligible shall have their benefits discontinued unless the recipient demonstrates no material improvement in their medical or mental condition. The department may discontinue benefits when there was specific error in the prior determination that found the recipient eligible by reason of incapacitation. Recipients of general assistance based upon pregnancy who relinquish their child for adoption, remain otherwise eligible, and are not eligible to receive benefits under the federal temporary assistance for needy families program shall not have their benefits terminated until the end of the month in which the period of six weeks following the birth of the recipient's child falls. Recipients of the federal temporary assistance for needy families program who lose their eligibility solely because of the birth and relinquishment of the qualifying child may receive general assistance through the end of the month in which the period of six weeks following the birth of the child falls.

(h) No person may be considered an eligible individual for general assistance with respect to any month if during that month the person:

(i) Is fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or

(ii) Is violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction.

(7) "Applicant"—Any person who has made a request, or on behalf of whom a request has been made, to any county or local office for assistance.

(8) "Recipient"—Any person receiving assistance and in addition those dependents whose needs are included in the recipient's assistance.

(9) "Standards of assistance"—The level of income required by an applicant or recipient to maintain a level of living specified by the department.

(10) "Resource"—Any asset, tangible or intangible, owned by or available to the applicant at the time of application, which can be applied toward meeting the applicant's need, either directly or by conversion into money or its equivalent. The department may by rule designate resources that an applicant may retain and not be ineligible for public assis-

tance because of such resources. Exempt resources shall include, but are not limited to:

(a) A home that an applicant, recipient, or their dependents is living in, including the surrounding property;

(b) Household furnishings and personal effects;

(c) A motor vehicle, other than a motor home, used and useful having an equity value not to exceed five thousand dollars;

(d) A motor vehicle necessary to transport a physically disabled household member. This exclusion is limited to one vehicle per physically disabled person;

(e) All other resources, including any excess of values exempted, not to exceed one thousand dollars or other limit as set by the department, to be consistent with limitations on resources and exemptions necessary for federal aid assistance. The department shall also allow recipients of temporary assistance for needy families to exempt savings accounts with combined balances of up to an additional three thousand dollars;

(f) Applicants for or recipients of general assistance shall have their eligibility based on resource limitations consistent with the temporary assistance for needy families program rules adopted by the department; and

(g) If an applicant for or recipient of public assistance possesses property and belongings in excess of the ceiling value, such value shall be used in determining the need of the applicant or recipient, except that: (i) The department may exempt resources or income when the income and resources are determined necessary to the applicant's or recipient's restoration to independence, to decrease the need for public assistance, or to aid in rehabilitating the applicant or recipient or a dependent of the applicant or recipient; and (ii) the department may provide grant assistance for a period not to exceed nine months from the date the agreement is signed pursuant to this section to persons who are otherwise ineligible because of excess real property owned by such persons when they are making a good faith effort to dispose of that property: PROVIDED, That:

(A) The applicant or recipient signs an agreement to repay the lesser of the amount of aid received or the net proceeds of such sale;

(B) If the owner of the excess property ceases to make good faith efforts to sell the property, the entire amount of assistance may become an overpayment and a debt due the state and may be recovered pursuant to RCW 43.20B.630;

(C) Applicants and recipients are advised of their right to a fair hearing and afforded the opportunity to challenge a decision that good faith efforts to sell have ceased, prior to assessment of an overpayment under this section; and

(D) At the time assistance is authorized, the department files a lien without a sum certain on the specific property.

(11) "Income"—(a) All appreciable gains in real or personal property (cash or kind) or other assets, which are received by or become available for use and enjoyment by an applicant or recipient during the month of application or after applying for or receiving public assistance. The department may by rule and regulation exempt income received by an applicant for or recipient of public assistance which can be used by him or her to decrease his or her need for public assistance or to aid in rehabilitating him or her or his or her dependents, but such exemption shall not, unless otherwise

provided in this title, exceed the exemptions of resources granted under this chapter to an applicant for public assistance. In addition, for cash assistance the department may disregard income pursuant to RCW 74.08A.230 and 74.12.350.

(b) If, under applicable federal requirements, the state has the option of considering property in the form of lump sum compensatory awards or related settlements received by an applicant or recipient as income or as a resource, the department shall consider such property to be a resource.

(12) "Need"—The difference between the applicant's or recipient's standards of assistance for himself or herself and the dependent members of his or her family, as measured by the standards of the department, and value of all nonexempt resources and nonexempt income received by or available to the applicant or recipient and the dependent members of his or her family.

(13) For purposes of determining eligibility for public assistance and participation levels in the cost of medical care, the department shall exempt restitution payments made to people of Japanese and Aleut ancestry pursuant to the Civil Liberties Act of 1988 and the Aleutian and Pribilof Island Restitution Act passed by congress, P.L. 100-383, including all income and resources derived therefrom.

(14) In the construction of words and phrases used in this title, the singular number shall include the plural, the masculine gender shall include both the feminine and neuter genders and the present tense shall include the past and future tenses, unless the context thereof shall clearly indicate to the contrary. [2003 1st sp.s. c 10 § 1; 2000 c 218 § 1. Prior: 1998 c 80 § 1; 1998 c 79 § 6; prior: 1997 c 59 § 10; 1997 c 58 § 309; prior: 1992 c 165 § 1; 1992 c 136 § 1; 1991 sp.s. c 10 § 1; 1991 c 126 § 1; 1990 c 285 § 2; 1989 1st ex.s. c 9 § 816; prior: 1987 c 406 § 9; 1987 c 75 § 31; 1985 c 335 § 2; 1983 1st ex.s. c 41 § 36; 1981 2nd ex.s. c 10 § 5; 1981 1st ex.s. c 6 § 1; prior: 1981 c 8 § 1; prior: 1980 c 174 § 1; 1980 c 84 § 1; 1979 c 141 § 294; 1969 ex.s. c 173 § 1; 1965 ex.s. c 2 § 1; 1963 c 228 § 1; 1961 c 235 § 1; 1959 c 26 § 74.04.005; prior: (i) 1947 c 289 § 1; 1939 c 216 § 1; Rem. Supp. 1947 § 10007-101a. (ii) 1957 c 63 § 1; 1953 c 174 § 17; 1951 c 122 § 1; 1951 c 1 § 3 (Initiative Measure No. 178, approved November 7, 1950); 1949 c 6 § 3; Rem. Supp. 1949 § 9998-33c.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability—1991 sp.s. c 10: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 sp.s. c 10 § 2.]

Effective date—1991 sp.s. c 10: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 10 § 3.]

Findings—Purpose—1990 c 285: "(1) The legislature finds that each year less than five percent of pregnant teens relinquish their babies for adoption in Washington state. Nationally, fewer than eight percent of pregnant teens relinquish their babies for adoption.

(2) The legislature further finds that barriers such as lack of information about adoption, inability to voluntarily enter into adoption agreements, and current state public assistance policies act as disincentives to adoption.

(3) It is the purpose of this act to support adoption as an option for

women with unintended pregnancies by removing barriers that act as disincentives to adoption." [1990 c 285 § 1.]

Severability—1990 c 285: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 285 § 10.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

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

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Effective date—1981 1st ex.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 1st ex.s. c 6 § 31.]

Severability—1981 1st ex.s. c 6: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 1st ex.s. c 6 § 30.]

Consolidated standards of need: RCW 74.04.770.

74.04.00511 Limitations on "resource" and "income." For purposes of RCW 74.04.005 (10) and (11), "resource" and "income" do not include educational assistance awarded under *the gaining independence for students with dependents program as defined in chapter 19, Laws of 2003 for recipients of temporary assistance for needy families. [2003 c 19 § 8.]

***Reviser's note:** The gaining independence for students with dependents program is codified in chapter 28B.133 RCW.

Finding—Intent—Short title—Captions not law—2003 c 19: See RCW 28B.133.005, 28B.133.900, and 28B.133.901.

74.04.300 Recovery of payments improperly received—Lien—Recipient reporting requirements. If a recipient receives public assistance and/or food stamps or food stamp benefits transferred electronically for which the recipient is not eligible, or receives public assistance and/or food stamps or food stamp benefits transferred electronically in an amount greater than that for which the recipient is eligible, the portion of the payment to which the recipient is not entitled shall be a debt due the state recoverable under RCW 43.20B.030 and 43.20B.620 through 43.20B.645. It shall be the duty of recipients of cash benefits to notify the department of changes to earned income as defined in RCW 74.04.005(11). It shall be the duty of recipients of cash benefits to notify the department of changes to liquid resources as defined in RCW 74.04.005(10) that would result in ineligibility for cash benefits. It shall be the duty of recipients of food benefits to report changes in income that result in ineligibility for food benefits. All recipients shall report changes required in this section by the tenth of the month following the month in which the change occurs. The department shall make a determination of eligibility within ten days from the date it receives the reported change from the recipient. The department shall adopt rules consistent with federal law and regulations for additional reporting requirements. The department shall advise applicants for assistance that failure to report as required, failure to reveal resources or income, and false statements will result in recovery by the state of any overpayment and may result in criminal prosecution. [2003 c 208 § 1; 1998 c 79 § 7; 1987 c 75 § 32; 1982 c 201 § 16; 1980 c 84 § 2; 1979 c 141 § 306; 1973 1st ex.s. c 49 § 1; 1969 ex.s.

c 173 § 18; 1959 c 26 § 74.04.300. Prior: 1957 c 63 § 3; 1953 c 174 § 35; 1939 c 216 § 27; RRS § 10007-127a.]

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

Chapter 74.08 RCW

ELIGIBILITY GENERALLY—STANDARDS OF ASSISTANCE

Sections

- 74.08.055 Verification of applications—Penalty. (*Effective July 1, 2004.*)
- 74.08.100 Age and residency verification—Felony. (*Effective July 1, 2004.*)
- 74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties. (*Effective July 1, 2004.*)

74.08.055 Verification of applications—Penalty. (*Effective July 1, 2004.*) (1) Each applicant for or recipient of public assistance shall make an application for assistance which shall contain or be verified by a written declaration that it is made under the penalties of perjury. The secretary, by rule and regulation, may require that any other forms filled out by applicants or recipients of public assistance shall contain or be verified by a written declaration that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each applicant shall be so informed at the time of the signing.

(2) Any applicant for or recipient of public assistance who willfully makes and subscribes any application, statement or other paper which contains or is verified by a written declaration that it is made under the penalties of perjury and which he or she does not believe to be true and correct as to every material matter is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 366; 1979 c 141 § 323; 1959 c 26 § 74.08.055. Prior: 1953 c 174 § 27.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

74.08.100 Age and residency verification—Felony. (*Effective July 1, 2004.*) Proof of age and length of residence in the state of any applicant may be established as provided by the rules and regulations of the department: PROVIDED, That if an applicant is unable to establish proof of age or length of residence in the state by any other method he or she may make a statement under oath of his or her age on the date of application or the length of his or her residence in the state, before any judge of the superior court, any judge of the court of appeals, or any justice of the supreme court of the state of Washington, and such statement shall constitute sufficient proof of age of applicant or of length of residence in the state: PROVIDED HOWEVER, That any applicant who willfully makes a false statement as to his or her age or length of residence in the state under oath before a judge of the superior court, a judge of the court of appeals, or a justice of the supreme court, as provided above, shall be guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 367; 1971 c 81 § 137; 1959 c 26 § 74.08.100. Prior: 1949 c 6 § 11; Rem. Supp. 1949 § 9998-33k.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties. (*Effective July 1, 2004.*) (1) Any person who by means of a willfully false statement, or representation, or impersonation, or a willful failure to reveal any material fact, condition, or circumstance affecting eligibility or need for assistance, including medical care, surplus commodities, and food stamps or food stamp benefits transferred electronically, as required by law, or a willful failure to promptly notify the county office in writing as required by law or any change in status in respect to resources, or income, or need, or family composition, money contribution and other support, from whatever source derived, including unemployment insurance, or any other change in circumstances affecting the person's eligibility or need for assistance, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain any public assistance to which the person is not entitled or greater public assistance than that to which he or she is justly entitled is guilty of theft in the first degree under RCW 9A.56.030 and upon conviction thereof shall be punished by imprisonment in a state correctional facility for not more than fifteen years.

(2) Any person who by means of a willfully false statement or representation or by impersonation or other fraudulent device aids or abets in buying, selling, or in any other way disposing of the real property of a recipient of public assistance without the consent of the secretary is guilty of a gross misdemeanor and upon conviction thereof shall be punished by imprisonment for not more than one year in the county jail or a fine of not to exceed one thousand dollars or by both. [2003 c 53 § 368; 1998 c 79 § 16; 1997 c 58 § 303; 1992 c 7 § 59; 1979 c 141 § 329; 1965 ex.s. c 34 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Chapter 74.08A RCW

WASHINGTON WORKFIRST TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Sections

- 74.08A.260 Work activity—Referral—Individual responsibility plan—Refusal to work.
74.08A.275 Employability screening.
74.08A.285 Job search instruction and assistance.

74.08A.260 Work activity—Referral—Individual responsibility plan—Refusal to work. (1) Each recipient shall be assessed after determination of program eligibility and before referral to job search. Assessments shall be based upon factors that are critical to obtaining employment, including but not limited to education, availability of child care, history of family violence, history of substance abuse, and other factors that affect the ability to obtain employment. Assessments may be performed by the department or by a contracted entity. The assessment shall be based on a uniform, consistent, transferable format that will be accepted by all agencies and organizations serving the recipient. Based on the assessment, an individual responsibility plan shall be prepared that: (a) Sets forth an employment goal and a plan

for moving the recipient immediately into employment; (b) contains the obligation of the recipient to become and remain employed; (c) moves the recipient into whatever employment the recipient is capable of handling as quickly as possible; and (d) describes the services available to the recipient to enable the recipient to obtain and keep employment.

(2) Recipients who are not engaged in work and work activities, and do not qualify for a good cause exemption under RCW 74.08A.270, shall engage in self-directed service as provided in RCW 74.08A.330.

(3) If a recipient refuses to engage in work and work activities required by the department, the family's grant shall be reduced by the recipient's share, and may, if the department determines it appropriate, be terminated.

(4) The department may waive the penalties required under subsection (3) of this section, subject to a finding that the recipient refused to engage in work for good cause provided in RCW 74.08A.270.

(5) In implementing this section, the department shall assign the highest priority to the most employable clients, including adults in two-parent families and parents in single-parent families that include older preschool or school-age children to be engaged in work activities.

(6) In consultation with the recipient, the department or contractor shall place the recipient into a work activity that is available in the local area where the recipient resides. [2003 c 383 § 1; 1997 c 58 § 313.]

74.08A.275 Employability screening. Each recipient approved to receive temporary assistance for needy families shall be subject to an employability screening under RCW 74.08A.260 after determination of program eligibility and before referral to job search. If the employability screening determines the recipient is not employable, or meets the criteria specified in RCW 74.08A.270 for a good cause exemption to work requirements, the department shall defer the job search requirement under RCW 74.08A.285. [2003 c 383 § 2; 1999 c 340 § 1.]

74.08A.285 Job search instruction and assistance. The WorkFirst program operated by the department to meet the federal work requirements specified in P.L. 104-193 shall contain a job search component. The component shall consist of instruction on how to secure a job and assisted job search activities to locate and retain employment. Nonexempt recipients of temporary assistance for needy families shall participate in an initial job search for no more than twelve consecutive weeks. Each recipient shall receive a work skills assessment upon referral to the job search program. The work skills assessment shall include but not be limited to education, employment history, employment strengths, and job skills. The recipient's ability to obtain employment will be reviewed periodically thereafter and, if it is clear at any time that further participation in a job search will not be productive, the department shall assess the recipient pursuant to RCW 74.08A.260. The department shall refer recipients unable to find employment through the initial job search period to work activities that will develop their skills or knowledge to make them more employable, including additional job search and job readiness assistance. [2003 c 383 § 3; 1998 c 89 § 1.]

Chapter 74.09 RCW

MEDICAL CARE

Sections

74.09.055	Copayment, deductible, coinsurance, cost-sharing requirements authorized.
74.09.310	Repealed.
74.09.320	Repealed.
74.09.520	Medical assistance—Care and services included—Funding limitations.
74.09.575	Medical assistance for institutionalized persons—Treatment of resources.
74.09.650	Prescription drug assistance program.
74.09.660	Prescription drug education for seniors—Grant qualifications.
74.09.757	Repealed.

74.09.055 Copayment, deductible, coinsurance, cost-sharing requirements authorized. The department is authorized to establish copayment, deductible, coinsurance, or other cost-sharing requirements for recipients of any medical programs defined in RCW 74.09.010. [2003 1st sp.s. c 14 § 1; 1993 c 492 § 231; 1982 c 201 § 19.]

Effective date—2003 1st sp.s. c 14: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 1st sp.s. c 14 § 2.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

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

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

74.09.520 Medical assistance—Care and services included—Funding limitations. (1) The term "medical assistance" may include the following care and services: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and x-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a child by a school district in a manner consistent with the requirements of this chapter. For the purposes of this section, the department may not cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services.

(2) The department shall amend the state plan for medical assistance under Title XIX of the federal social security act to include personal care services, as defined in 42 C.F.R. 440.170(f), in the categorically needy program.

(3) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care for clients requiring health-related consultation for assessment and service planning may be reviewed by a nurse.

(c) The department shall determine by rule which clients have a health-related assessment or service planning need requiring registered nurse consultation or review. This definition may include clients that meet indicators or protocols for review, consultation, or visit.

(4) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(5) Effective July 1, 1989, the department shall offer hospice services in accordance with available funds.

(6) For Title XIX personal care services administered by aging and adult services administration of the department, the department shall contract with area agencies on aging:

(a) To provide case management services to individuals receiving Title XIX personal care services in their own home; and

(b) To reassess and reauthorize Title XIX personal care services or other home and community services as defined in RCW 74.39A.009 in home or in other settings for individuals consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive Title XIX personal care services or other home and community services as defined in RCW 74.39A.009; and

(ii) Who, at the time of reassessment and reauthorization, are receiving such services in their own home.

(7) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract to provide these services, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found. [2003 c 279 § 1; 1998 c 245 § 145; 1995 1st sp.s. c 18 § 39; 1994 c 21 § 4. Prior: 1993 c 149 § 10; 1993 c 57 § 1; 1991 sp.s. c 8 § 9; prior: 1991 c 233 § 1; 1991 c 119 § 1; prior: 1990 c 33 § 594; 1990 c 25 § 1; prior: 1989 c 427 § 10; 1989 c 400 § 3; 1985 c 5 § 3; 1982 1st ex.s. c 19 § 4; 1981 1st ex.s. c 6 § 21; 1981 c 8 § 20; 1979 c 141 § 344; 1969 ex.s. c 173 § 11; 1967 ex.s. c 30 § 5.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Conflict with federal requirements—Effective date—1994 c 21: See notes following RCW 43.20B.080.

Conflict with federal requirements—Severability—Effective dates—1993 c 149: See notes following RCW 74.09.5241.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability—1989 c 427: See RCW 74.39.900.

Intent—1989 c 400: See note following RCW 28A.150.390.

Effective date—1982 1st ex.s. c 19: See note following RCW 74.09.035.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

Legislative confirmation of effect of 1994 c 21: RCW 43.20B.090.

74.09.575 Medical assistance for institutionalized persons—Treatment of resources. (1) The department shall promulgate rules consistent with the treatment of resources provisions of section 1924 of the social security act entitled "Treatment of Income and Resources for Certain Institutionalized Spouses," in determining the allocation of resources between the institutionalized and community spouse.

(2) In the interest of supporting the community spouse the department shall allow the maximum resource allowance amount permissible under the social security act for the community spouse for persons institutionalized before August 1, 2003.

(3) For persons institutionalized on or after August 1, 2003, the department, in the interest of supporting the community spouse, shall allow up to a maximum of forty thousand dollars in resources for the community spouse. For the fiscal biennium beginning July 1, 2005, and each fiscal biennium thereafter, the maximum resource allowance amount for the community spouse shall be adjusted for economic trends and conditions by increasing the amount allowable by the consumer price index as published by the federal bureau of labor statistics. However, in no case shall the amount allowable exceed the maximum resource allowance permissible under the social security act. [2003 1st sp.s. c 28 § 1; 1989 c 87 § 5.]

Effective date—2003 1st sp.s. c 28: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 1st sp.s. c 28 § 2.]

Effective dates—1989 c 87: See note following RCW 11.94.050.

Captions not law—1989 c 87: See note following RCW 74.09.565.

74.09.650 Prescription drug assistance program. (1) To the extent funds are appropriated specifically for this purpose, and subject to any conditions placed on appropriations made for this purpose, the department shall design a medicaid prescription drug assistance program. Neither the benefits of, nor eligibility for, the program is considered to be an entitlement.

(2) The department shall request any federal waiver necessary to implement this program. Consistent with federal waiver conditions, the department may charge enrollment fees, premiums, or point-of-service cost-sharing to program enrollees.

(3) Eligibility for this program is limited to persons:

(a) Who are eligible for medicare or age sixty-five and older;

(b) Whose family income does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services;

(c) Who lack insurance that provides prescription drug coverage; and

(d) Who are not otherwise eligible under Title XIX of the federal social security act.

(4) The department shall use a cost-effective prescription drug benefit design. Consistent with federal waiver conditions, this benefit design may be different than the benefit design offered under the medical assistance program. The benefit design may include a deductible benefit that provides coverage when enrollees incur higher prescription drug costs as defined by the department. The department also may offer more than one benefit design.

(5) The department shall limit enrollment of persons who qualify for the program so as to prevent an overexpenditure of appropriations for this program or to assure necessary compliance with federal waiver budget neutrality requirements. The department may not reduce existing medical assistance program eligibility or benefits to assure compliance with federal waiver budget neutrality requirements.

(6) Premiums paid by medicaid enrollees not in the medicaid prescription drug assistance program may not be used to finance the medicaid prescription drug assistance program.

(7) This program will be terminated within twelve months after implementation of a prescription drug benefit under Title XVIII of the federal social security act.

(8) The department shall provide recommendations to the appropriate committees of the senate and house of representatives by November 15, 2003, on financing options available to support the medicaid prescription drug assistance program. In recommending financing options, the department shall explore every opportunity to maximize federal funding to support the program. [2003 1st sp.s. c 29 § 2.]

Finding—Intent—2003 1st sp.s. c 29: "The legislature finds that prescription drugs are an effective and important part of efforts to maintain and improve the health of Washington state residents. However, their increased cost and utilization is straining the resources of many state health care programs, and is particularly hard on low-income elderly people who lack insurance coverage for such drugs. Furthermore, inappropriate use of prescription drugs can result in unnecessary expenditures and lead to serious health consequences. It is therefore the intent of the legislature to support the establishment by the state of an evidence-based prescription drug program that identifies preferred drugs, develop programs to provide prescription drugs at an affordable price to those in need, and increase public awareness regarding their safe and cost-effective use." [2003 1st sp.s. c 29 § 1.]

Severability—2003 1st sp.s. c 29: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 29 § 14.]

Conflict with federal requirements—2003 1st sp.s. c 29: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2003 1st sp.s. c 29 § 15.]

Effective date—2003 1st sp.s. c 29: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2003]." [2003 1st sp.s. c 29 § 16.]

74.09.660 Prescription drug education for seniors—Grant qualifications. Each of the state's area agencies on aging shall implement a program intended to inform and train persons sixty-five years of age and older in the safe and appropriate use of prescription and nonprescription medications. To further this purpose, the department shall award development grants averaging up to twenty-five thousand dollars to each of the agencies upon a showing that:

(1) The agency has the ability to effectively administer such a program, including an understanding of the relevant issues and appropriate outreach and follow-up;

(2) The agency can bring resources to the program in addition to those funded by the grant; and

(3) The program will be a collaborative effort between the agency and other health care programs and providers in the location to be served, including doctors, pharmacists, and long-term care providers. [2003 1st sp.s. c 29 § 8.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

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

Chapter 74.13 RCW

CHILD WELFARE SERVICES

Sections

74.13.017	Accreditation—Completion date.
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74.13.017 Accreditation—Completion date. The department shall undertake the process of accreditation with the goal of completion by July 2006. [2003 c 207 § 8; 2001 c 265 § 2.]

74.13.036 Implementation of chapters 13.32A and 13.34 RCW—Report to legislature. (1) The department of social and health services shall oversee implementation of chapter 13.34 RCW and chapter 13.32A RCW. The oversight shall be comprised of working with affected parts of the criminal justice and child care systems as well as with local government, legislative, and executive authorities to effectively carry out these chapters. The department shall work with all such entities to ensure that chapters 13.32A and 13.34 RCW are implemented in a uniform manner throughout the state.

(2) The department shall develop a plan and procedures, in cooperation with the statewide advisory committee, to insure the full implementation of the provisions of chapter 13.32A RCW. Such plan and procedures shall include but are not limited to:

(a) Procedures defining and delineating the role of the department and juvenile court with regard to the execution of the child in need of services placement process;

(b) Procedures for designating department staff responsible for family reconciliation services;

(c) Procedures assuring enforcement of contempt proceedings in accordance with RCW 13.32A.170 and 13.32A.250; and

(d) Procedures for the continued education of all individuals in the criminal juvenile justice and child care systems who are affected by chapter 13.32A RCW, as well as members of the legislative and executive branches of government.

There shall be uniform application of the procedures developed by the department and juvenile court personnel, to the extent practicable. Local and regional differences shall be taken into consideration in the development of procedures required under this subsection.

(3) In addition to its other oversight duties, the department shall:

(a) Identify and evaluate resource needs in each region of the state;

(b) Disseminate information collected as part of the oversight process to affected groups and the general public;

(c) Educate affected entities within the juvenile justice and child care systems, local government, and the legislative branch regarding the implementation of chapters 13.32A and 13.34 RCW;

(d) Review complaints concerning the services, policies, and procedures of those entities charged with implementing chapters 13.32A and 13.34 RCW; and

(e) Report any violations and misunderstandings regarding the implementation of chapters 13.32A and 13.34 RCW.

(4) The department shall provide an annual report to the legislature not later than December 1 of each year only when it has declined to accept custody of a child from a law enforcement agency or it has received a report of a child being released without placement. The report shall indicate the number of times it has declined to accept custody of a child from a law enforcement agency under chapter 13.32A RCW and the number of times it has received a report of a child being released without placement under RCW 13.32A.060(1)(c). The report shall include the dates, places, and reasons the department declined to accept custody and the dates and places children are released without placement. [2003 c 207 § 2; 1996 c 133 § 37; 1995 c 312 § 65; 1989 c 175 § 147; 1987 c 505 § 70; 1985 c 257 § 11; 1981 c 298 § 18; 1979 c 155 § 82.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

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

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.13.550 Child placement—Policy of educational continuity. It is the policy of the state of Washington that, whenever practical and in the best interest of the child, children placed into foster care shall remain enrolled in the schools they were attending at the time they entered foster care. [2003 c 112 § 2.]

Findings—Intent—2003 c 112: "The legislature finds that the educational attainment of children in foster care is significantly lower than that of children not in foster care. The legislature finds that many factors influence educational outcomes for children in foster care, including the disruption of the educational process because of repeatedly changing schools.

The legislature recognizes the importance of educational stability for foster children, and encourages the ongoing efforts of the department of social and health services and the office of the superintendent of public instruction to improve educational attainment of children in foster care. It is the intent of the legislature that efforts continue such as the recruitment of foster homes in school districts with high rates of foster care placements, the development and dissemination of informational materials regarding the challenges faced by children in foster care, and the expansion to other school districts of best practices identified in pilot projects." [2003 c 112 § 1.]

74.13.560 Educational continuity—Protocol development. The administrative regions of the department shall develop protocols with the respective school districts in their regions specifying specific strategies for communication, coordination, and collaboration regarding the status and progress of foster children placed in the region, in order to maximize the educational continuity and achievement for foster children. The protocols shall include methods to assure effective sharing of information consistent with RCW 28A.225.330. [2003 c 112 § 3.]

Findings—Intent—2003 c 112: See note following RCW 74.13.550.

74.13.570 Oversight committee—Duties. (1) The department shall establish an oversight committee composed of staff from the children's administration of the department, the office of the superintendent of public instruction, and advocacy agencies to develop strategies for maintaining foster children in the schools they were attending at the time they entered foster care.

(2) The duties of the oversight committee shall include, but are not limited to:

(a) Developing strategies for school-based recruitment of foster homes;

(b) Monitoring the progress of current pilot projects that assist foster children to continue attending the schools they were attending at the time they entered foster care;

(c) Overseeing the expansion of the number of pilot projects;

(d) Promoting the use of best practices, throughout the state, demonstrated by the pilot projects and other programs relating to maintaining foster children in the schools they were attending at the time they entered foster care; and

(e) Informing the legislature of the status of efforts to maintain foster children in the schools they were attending at the time they entered foster care. [2003 c 112 § 4.]

Findings—Intent—2003 c 112: See note following RCW 74.13.550.

74.13.580 Educational stability during shelter care hearing—Protocol development. The department shall work with the administrative office of the courts to develop protocols to ensure that educational stability is addressed during the shelter care hearing. [2003 c 112 § 5.]

[2003 RCW Supp—page 878]

Findings—Intent—2003 c 112: See note following RCW 74.13.550.

74.13.590 Tasks to be performed based on available resources. The department shall perform the tasks provided in RCW 74.13.550 through 74.13.580 based on available resources. [2003 c 112 § 6.]

Findings—Intent—2003 c 112: See note following RCW 74.13.550.

74.13.600 Kinship caregivers—Definition—Placement of children with kin a priority—Strategies. (1) For the purposes of this section, "kin" means persons eighteen years of age or older to whom the child is related by blood, adoption, or marriage, including marriages that have been dissolved, and means: (a) Any person denoted by the prefix "grand" or "great"; (b) sibling, whether full, half, or step; (c) uncle or aunt; (d) nephew or niece; or (e) first cousin.

(2) The department shall plan, design, and implement strategies to prioritize the placement of children with willing and able kin when out-of-home placement is required.

These strategies must include at least the following:

(a) Development of standardized, statewide procedures to be used when searching for kin of children prior to out-of-home placement. The procedures must include a requirement that documentation be maintained in the child's case record that identifies kin, and documentation that identifies the assessment criteria and procedures that were followed during all kin searches. The procedures must be used when a child is placed in out-of-home care under authority of chapter 13.34 RCW, when a petition is filed under RCW 13.32A.140, or when a child is placed under a voluntary placement agreement. To assist with implementation of the procedures, the department shall request that the juvenile court require parents to disclose to the department all contact information for available and appropriate kin within two weeks of an entered order. For placements under signed voluntary agreements, the department shall encourage the parents to disclose to the department all contact information for available and appropriate kin within two weeks of the date the parent signs the voluntary placement agreement.

(b) Development of procedures for conducting active outreach efforts to identify and locate kin during all searches. The procedures must include at least the following elements:

(i) Reasonable efforts to interview known kin, friends, teachers, and other identified community members who may have knowledge of the child's kin, within sixty days of the child entering out-of-home care;

(ii) Increased use of those procedures determined by research to be the most effective methods of promoting reunification efforts, permanency planning, and placement decisions;

(iii) Contacts with kin identified through outreach efforts and interviews under this subsection as part of permanency planning activities and change of placement discussions;

(iv) Establishment of a process for ongoing contact with kin who express interest in being considered as a placement resource for the child; and

(v) A requirement that when the decision is made to not place the child with any kin, the department provides documentation as part of the child's individual service and safety plan that clearly identifies the rationale for the decision and

corrective action or actions the kin must take to be considered as a viable placement option.

(3) Nothing in this section shall be construed to create an entitlement to services or to create judicial authority to order the provision of services to any person or family if the services are unavailable or unsuitable or the child or family is not eligible for such services. [2003 c 284 § 1.]

74.13.610 Kinship caregivers—Grant proposal—Pilot projects. (*Expires January 1, 2007.*) (1) The department of social and health services shall collaborate with one or more nonprofit community-based agencies to develop a grant proposal for submission to potential funding sources, including governmental entities and private foundations, to establish a minimum of two pilot projects to assist kinship caregivers with understanding and navigating the system of services for children in out-of-home care. The proposal must seek to establish at least one project in eastern Washington and one project in western Washington, each project to be managed by a participating community-based agency.

(2) The kinship care navigators funded through the proposal shall be responsible for at least the following:

(a) Understanding the various state agency systems serving kinship caregivers;

(b) Working in partnership with local community service providers;

(c) Tracking trends, concerns, and other factors related to kinship caregivers; and

(d) Assisting in establishing stable, respectful relationships between kinship caregivers and department staff.

(3) Implementation of the kinship care navigator pilot projects is contingent upon receipt of nonstate or private funding for that purpose.

(4) For the purposes of this section, "kinship" has the same meaning as "kin" given in RCW 74.13.600(1).

(5) This section expires January 1, 2007. [2003 c 284 § 2.]

74.13.620 Kinship care oversight committee—Duties—Report. (*Expires January 1, 2005.*) (1) Within existing resources, the department shall establish an oversight committee to monitor, guide, and report on kinship care recommendations and implementation activities. The committee shall:

(a) Draft a kinship care definition that is restricted to persons related by blood or marriage, including marriages that have been dissolved, or for a minor defined as an "Indian child" under the federal Indian child welfare act (25 U.S.C. Sec. 1901 et seq.), the definition of "extended family member" under the federal Indian child welfare act, and a set of principles. If the committee concludes that one or more program[s] or service[s] would be more efficiently and effectively delivered under a different definition of kin, it shall state what definition is needed, and identify the program or service in the report. It shall also provide evidence of how the program or service will be more efficiently and effectively delivered under the different definition. The department shall not adopt rules or policies changing the definition of kin without authorizing legislation;

(b) Monitor the implementation of recommendations contained in the 2002 kinship care report;

(c) Partner with nonprofit organizations and private sector businesses to guide a public education awareness campaign; and

(d) Assist with developing future recommendations on kinship care issues.

(2) The oversight committee must consist of a minimum of thirty percent kinship caregivers, who shall represent a diversity of kinship families. Statewide representation with geographic, ethnic, and gender diversity is required. Other members shall include representatives of the department, representatives of relevant state agencies, representatives of the private nonprofit and business sectors, child advocates, representatives of Washington state Indian tribes as defined under the federal Indian welfare act (25 U.S.C. Sec. 1901 et seq.), and representatives of the legal or judicial field. Birth parents, foster parents, and others who have an interest in these issues may also be included.

(3) To the extent funding is available, the department may reimburse nondepartmental members of the oversight committee for costs incurred in participating in the meetings of the oversight committee.

(4) The kinship care oversight committee shall report to the legislature and the governor on the status of kinship care issues by December 1, 2004.

(5) This section expires January 1, 2005. [2003 c 284 § 4.]

Chapter 74.14A RCW

CHILDREN AND FAMILY SERVICES

Sections

74.14A.050 Identification of children in a state-assisted support system—Program development for long-term care—Foster care caseload—Emancipation of minors study.

74.14A.050 Identification of children in a state-assisted support system—Program development for long-term care—Foster care caseload—Emancipation of minors study. The secretary shall:

(1)(a) Consult with relevant qualified professionals to develop a set of minimum guidelines to be used for identifying all children who are in a state-assisted support system, whether at-home or out-of-home, who are likely to need long-term care or assistance, because they face physical, emotional, medical, mental, or other long-term challenges;

(b) The guidelines must, at a minimum, consider the following criteria for identifying children in need of long-term care or assistance:

(i) Placement within the foster care system for two years or more;

(ii) Multiple foster care placements;

(iii) Repeated unsuccessful efforts to be placed with a permanent adoptive family;

(iv) Chronic behavioral or educational problems;

(v) Repetitive criminal acts or offenses;

(vi) Failure to comply with court-ordered disciplinary actions and other imposed guidelines of behavior, including drug and alcohol rehabilitation; and

(vii) Chronic physical, emotional, medical, mental, or other similar conditions necessitating long-term care or assistance;

(2) Develop programs that are necessary for the long-term care of children and youth that are identified for the purposes of this section. Programs must: (a) Effectively address the educational, physical, emotional, mental, and medical needs of children and youth; and (b) incorporate an array of family support options, to individual needs and choices of the child and family. The programs must be ready for implementation by January 1, 1995;

(3) Conduct an evaluation of all children currently within the foster care agency caseload to identify those children who meet the criteria set forth in this section. All children entering the foster care system must be evaluated for identification of long-term needs within thirty days of placement;

(4) As a result of the passage of chapter 232, Laws of 2000, the department is conducting a pilot project to do a comparative analysis of a variety of assessment instruments to determine the most effective tools and methods for evaluation of children. The pilot project may extend through August 31, 2001. The department shall report to the appropriate committees in the senate and house of representatives by September 30, 2001, on the results of the pilot project. The department shall select an assessment instrument that can be implemented within available resources. The department shall complete statewide implementation by December 31, 2001. The department shall report to the appropriate committees in the senate and house of representatives on how the use of the selected assessment instrument has affected department policies, by no later than December 31, 2002, December 31, 2004, and December 31, 2006;

(5) Use the assessment tool developed pursuant to subsection (4) of this section in making out-of-home placement decisions for children;

(6) Each region of the department shall make the appropriate number of referrals to the foster care assessment program to ensure that the services offered by the program are used to the extent funded pursuant to the department's contract with the program. The department shall report to the legislature by November 30, 2000, on the number of referrals, by region, to the foster care assessment program. If the regions are not referring an adequate number of cases to the program, the department shall include in its report an explanation of what action it is or has taken to ensure that the referrals are adequate;

(7) The department shall report to the legislature by December 15, 2000, on how it will use the foster care assessment program model to assess children as they enter out-of-home care;

(8) The department is to accomplish the tasks listed in subsections (4) through (7) of this section within existing resources;

(9) Study and develop a comprehensive plan for the evaluation and identification of all children and youth in need of long-term care or assistance, including, but not limited to, the mentally ill, developmentally disabled, medically fragile, seriously emotionally or behaviorally disabled, and physically impaired;

(10) Study and develop a plan for the children and youth in need of long-term care or assistance to ensure the coordination of services between the department's divisions and between other state agencies who are involved with the child or youth;

(11) Study and develop guidelines for transitional services, between long-term care programs, based on the person's age or mental, physical, emotional, or medical condition; and

(12) Study and develop a statutory proposal for the emancipation of minors. [2003 c 207 § 9; 2001 c 255 § 1; 2000 c 232 § 1; 1998 c 245 § 149; 1993 c 508 § 7; 1993 c 505 § 5.]

Section captions—Conflict with federal requirements—Severability—Effective date—1993 c 508: See RCW 74.39A.900 through 74.39A.903.

Emancipation of minors: Chapter 13.64 RCW.

Chapter 74.14C RCW

FAMILY PRESERVATION SERVICES

Sections

74.14C.070 Appropriations—Transfer of funds from foster care services to family preservation services—Annual report.

74.14C.070 Appropriations—Transfer of funds from foster care services to family preservation services—Annual report. The secretary of social and health services, or the secretary's regional designee, may transfer funds appropriated for foster care services to purchase preservation services and other preventive services for children at imminent risk of out-of-home placement or who face a substantial likelihood of out-of-home placement. This transfer may be made in those regions that lower foster care expenditures through efficient use of preservation services and permanency planning efforts. The transfer shall be equivalent to the amount of reduced foster care expenditures and shall be made in accordance with the provisions of this chapter and with the approval of the office of financial management. The department shall present an annual report to the legislature regarding any transfers under this section only if transfers occur. The department shall include caseload, expenditure, cost avoidance, identified improvements to the out-of-home care system, and outcome data related to the transfer in the report. The department shall also include in the report information regarding:

(1) The percent of cases where a child is placed in out-of-home care after the provision of intensive family preservation services or family preservation services;

(2) The average length of time before the child is placed out-of-home;

(3) The average length of time the child is placed out-of-home; and

(4) The number of families that refused the offer of either family preservation services or intensive family preservation services. [2003 c 207 § 3; 1995 c 311 § 11; 1994 c 288 § 3; 1992 c 214 § 9.]

Funds transfer review: "The juvenile issues task force established under chapter 234, Laws of 1991, shall review the advisability of transferring appropriated funds from foster care to purchase family preservation services for children at imminent risk of foster care placement and include findings and recommendations on the transfer of funds to the appropriate committees of the senate and house of representatives by December 15, 1992. The task force shall identify ways to improve the foster care system and expand family preservation services with the savings generated by avoiding the placement of children at imminent risk of foster care placement through the provision of family preservation services." [1992 c 214 § 10.]

Chapter 74.18 RCW

DEPARTMENT OF SERVICES FOR THE BLIND

Sections

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74.18.200	Business enterprises program—Definitions.
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74.18.230	Business enterprises revolving account.
74.18.250	Repealed.

74.18.010 Intent. The purposes of this chapter are to promote employment and independence of blind persons in the state of Washington through their complete integration into society on the basis of equality, and to encourage public acceptance of the abilities of blind persons. [2003 c 409 § 2; 1983 c 194 § 1.]

Findings—2003 c 409: "The legislature finds and declares the following:

- (1) Thousands of citizens in the state have disabilities, including blindness or visual impairment, that prevent them from using conventional print material.
- (2) Governmental and nonprofit organizations provide access to reading material by specialized means, including books and magazines prepared in braille, audio, and large-type formats.
- (3) Access to time-sensitive or local or regional publications, or both, is not feasible to produce through these traditional means and formats.
- (4) Lack of direct and prompt access to information included in newspapers, magazines, newsletters, schedules, announcements, and other time-sensitive materials limits educational opportunities, literacy, and full participation in society by people with print disabilities.
- (5) Creation and storage of information by computer results in electronic files used for publishing and distribution.
- (6) The use of high-speed computer and telecommunications technology combined with customized software provides a practical and cost-effective means to convert electronic text-based information, including daily newspapers, into synthetic speech suitable for statewide distribution by telephone.
- (7) Telephonic distribution of time-sensitive information, including daily newspapers, will enhance the state's current efforts to meet the needs of blind and disabled citizens for access to information which is otherwise available in print, thereby reducing isolation and supporting full integration and equal access for such individuals." [2003 c 409 § 1.]

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

(1) "Department" means an agency of state government called the department of services for the blind.

(2) "Director" means the director of the department of services for the blind. The director is appointed by the governor with the consent of the senate.

(3) "Rehabilitation council for the blind" means the body of members appointed by the governor in accordance with the provisions of RCW 74.18.070 to advise the state agency.

(4) "Blind person" means a person who: (a) Has no vision or whose vision with corrective lenses is so limited that the individual requires alternative methods or skills to do efficiently those things that are ordinarily done with sight by individuals with normal vision; (b) has an eye condition of a progressive nature which may lead to blindness; or (c) is blind for purposes of the business enterprise program as set forth in RCW 74.18.200 through 74.18.230 in accordance with requirements of the Randolph-Sheppard Act of 1936.

(5) "Telephonic reading service" means audio information provided by telephone, including the acquisition and distribution of daily newspapers and other information of local, state, or national interest. [2003 c 409 § 3; 1983 c 194 § 2.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.045 Telephonic reading service. (1)(a) The director shall provide access to a telephonic reading service for blind and disabled persons.

(b) The director shall establish criteria for eligibility for blind and disabled persons who may receive the telephonic reading services. The criteria may be based upon the eligibility criteria for persons who receive services established by the national library service for the blind and physically handicapped of the library of congress.

(2) The director may enter into contracts or other agreements that he or she determines to be appropriate to provide telephonic reading services pursuant to this section.

(3) The director may expand the type and scope of materials available on the telephonic reading service in order to meet the local, regional, or foreign language needs of blind or visually impaired residents of this state. The director may also expand the scope of services and availability of telephonic reading services by current methods and technologies that may be developed. The director may inform current and potential patrons of the availability of telephonic reading services through appropriate means, including, but not limited to, direct mailings, direct telephonic contact, and public service announcements.

(4) The director may expend moneys from the business enterprises revolving account accrued from vending machine sales in state and local government buildings, as well as donations and grants, for the purpose of supporting the cost of activities described in this section. [2003 c 409 § 4.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.050 Appointment of personnel. The director may appoint such personnel as necessary, none of whom shall be members of the rehabilitation council for the blind. The director and other personnel who are assigned substantial responsibility for formulating agency policy or directing and controlling a major administrative division, together with their confidential secretaries, up to a maximum of six persons, shall be exempt from the provisions of chapter 41.06 RCW. [2003 c 409 § 5; 1983 c 194 § 5.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.060 Department—Powers and duties. The department shall:

(1) Serve as the sole agency of the state for contracting for and disbursing all federal and state funds appropriated for

programs established by and within the jurisdiction of this chapter, and make reports and render accounting as may be required;

(2) Adopt rules, in accordance with chapter 34.05 RCW, necessary to carry out the purposes of this chapter;

(3) Negotiate agreements with other state agencies to provide services so that individuals of any age who are blind or are both blind and otherwise disabled receive the most beneficial services. [2003 c 409 § 6; 1983 c 194 § 6.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.070 Rehabilitation council for the blind—Membership. (1) There is hereby created the rehabilitation council for the blind. The rehabilitation council shall consist of the minimum number of voting members to meet the requirements of the rehabilitation council required under the federal rehabilitation act of 1973 as now or hereafter amended. A majority of the voting members shall be blind persons. Rehabilitation council members shall be residents of the state of Washington, and shall be appointed in accordance with the categories of membership specified in the federal rehabilitation act of 1973 as now or hereafter amended. The director of the department shall be an ex officio, nonvoting member.

(2) The governor shall appoint members of the rehabilitation council for terms of three years, except that the initial appointments shall be as follows: (a) Three members for terms of three years; (b) two members for terms of two years; and (c) other members for terms of one year. Vacancies in the membership of the rehabilitation council shall be filled by the governor for the remainder of the unexpired term.

(3) The governor may remove members of the rehabilitation council for cause. [2003 c 409 § 7; 2000 c 57 § 1; 1983 c 194 § 7.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.090 Rehabilitation council for the blind—Powers. The rehabilitation council for the blind may:

(1) Provide counsel to the director in developing, reviewing, making recommendations, and agreeing on the department's state plan for vocational rehabilitation, budget requests, permanent rules concerning services to blind persons, and other major policies which impact the quality or quantity of services for blind persons;

(2) Undertake annual reviews with the director of the needs of blind persons, the effectiveness of the services and priorities of the department to meet those needs, and the measures that could be taken to improve the department's services;

(3) Annually make recommendations to the governor and the legislature on issues related to the department, other state agencies, or state laws which have a significant effect on the opportunities, services, or rights of blind persons;

(4) Advise and make recommendations to the governor on the criteria and qualifications pertinent to the selection of the director;

(5) Perform additional functions as required by the federal rehabilitation act of 1973 as now or hereafter amended. [2003 c 409 § 8; 2000 c 57 § 3; 1983 c 194 § 9.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.110 Receipt of gifts, grants, and bequests. The department may receive, accept, and disburse gifts, grants, conveyances, devises, and bequests from public or private sources, in trust or otherwise, if the terms and conditions thereof will provide services for blind persons in a manner consistent with the purposes of this chapter and with other provisions of law. Any money so received shall be deposited in the state treasury for investment or expenditure in accordance with the conditions of its receipt. [2003 c 409 § 9; 1983 c 194 § 11.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.120 Administrative hearing—Appeal—Rules. (1) An applicant or eligible person who is dissatisfied with a decision, action, or inaction made by the department or its agents regarding that person's eligibility or department services provided to that person is entitled to an administrative hearing. Such administrative hearings shall be conducted pursuant to chapter 34.05 RCW by an administrative law judge.

(2) The applicant or eligible individual may appeal final decisions issued following administrative hearings under RCW 34.05.510 through 34.05.598.

(3) The department shall develop rules governing other processes for dispute resolution as required under the federal rehabilitation act of 1973. [2003 c 409 § 10; 1989 c 175 § 150; 1983 c 194 § 12.]

Findings—2003 c 409: See note following RCW 74.18.010.

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

74.18.123 Background checks—Individuals having unsupervised access to persons with significant disabilities—Rules. (1) The department shall investigate the conviction records, pending charges, and disciplinary board final decisions of individuals acting on behalf of the department who will or may have unsupervised access to persons with significant disabilities as defined by the federal rehabilitation act of 1973. This includes:

- (a) Current employees of the department;
- (b) Applicants seeking or being considered for any position with the department; and
- (c) Any service provider, contractor, student intern, volunteer, or other individual acting on behalf of the department.

(2) The investigation shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation. The background check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. If the applicant or service provider has had a background check within the previous two years, the department may waive the requirement.

(3) When necessary, applicants may be employed and service providers may be engaged on a conditional basis pending completion of the background check.

(4) The department shall use the information solely to determine the character, suitability, and competence of employees, applicants, service providers, contractors, student

interns, volunteers, and other individuals in accordance with RCW 41.06.475.

(5) The department shall adopt rules addressing procedures for undertaking background checks which shall include, but not be limited to, the following:

(a) The manner in which the individual will be provided access to and review of information obtained based on the background check required;

(b) Assurance that access to background check information shall be limited to only those individuals processing the information at the department;

(c) Action that shall be taken against a current employee, service provider, contractor, student intern, or volunteer who is disqualified from a position because of a background check not previously performed.

(6) The department shall determine who will pay costs associated with the background check. [2003 c 409 § 11.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.127 Confidentiality of personal information, records—Rules. (1) Personal information and records obtained and retained by the department concerning applicants and eligible individuals are confidential, are not subject to public disclosure, and may be released only in accordance with law or with this provision.

(2) The department shall adopt rules and develop contract language to safeguard the confidentiality of all personal information, including photographs and lists of names. Rules and contract language shall ensure that:

(a) Specific safeguards are established to protect all current and future stored personal information;

(b) Specific safeguards and procedures are established for the release of personal health information in accordance with the health insurance portability and accountability act of 1996, 45 C.F.R. 160 through 45 C.F.R. 164;

(c) All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed upon initial intake of the confidentiality of personal information and the conditions for accessing and releasing this information;

(d) All applicants or their representatives are informed about the department's need to collect personal information and the policies governing its use, including: (i) identification of the authority under which information is collected; (ii) explanation of the principal purposes for which the department intends to use or release the information; (iii) explanation of whether providing requested information to the department is mandatory or voluntary and the effects of not providing requested information; (iv) identification of those situations in which the department requires or does not require informed written consent of the individual before information may be released; and (v) identification of other agencies to which information is routinely released; and

(e) An explanation of department policies and procedures affecting personal information will be provided at intake or on request to each individual in that individual's native language and in an appropriate format including but not limited to braille, audio recording, electronic media, or large print. [2003 c 409 § 12.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.130 Vocational rehabilitation—Eligibility. The department shall provide a program of vocational rehabilitation to assist blind persons to overcome barriers to employment and to develop skills necessary for employment and independence. Applicants eligible for vocational rehabilitation services shall be blind persons who also meet eligibility requirements as specified in the federal rehabilitation act of 1973. [2003 c 409 § 13; 1983 c 194 § 13.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.140 Vocational rehabilitation—Services. The department shall ensure that vocational rehabilitation services in accordance with requirements under the federal rehabilitation act of 1973 are available to meet the identified requirements of each eligible individual in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. [2003 c 409 § 14; 1983 c 194 § 14.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.150 Vocational rehabilitation—Grants of equipment and material. The department may grant to eligible participants in the vocational rehabilitation program equipment and materials in accordance with the provisions related to transfer of capital assets as set forth by the office of financial management in the state administrative and accounting manual, provided that the equipment or materials are required by the individual's plan for employment and are used in a manner consistent therewith. The department shall adopt rules to implement this section. [2003 c 409 § 15; 1996 c 7 § 1; 1983 c 194 § 15.]

Findings—2003 c 409: See note following RCW 74.18.010.

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

74.18.170 Rehabilitation or habilitation facilities authorized. The department may establish, construct, and/or operate rehabilitation or habilitation facilities to provide instruction in alternative skills necessary to adjust to blindness or substantial vision loss, to assist blind persons to develop increased confidence and independence, or to provide other services consistent with the purposes of this chapter. The department shall adopt rules concerning selection criteria for participation, services, and other matters necessary for efficient and effective operation of such facilities. [2003 c 409 § 16; 1983 c 194 § 16.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.180 Services for independent living. (1) The department may provide a program of independent living services for blind persons who are not seeking vocational rehabilitation services.

(2) Independent living services may include, but are not limited to, instruction in adaptive skills of blindness, counseling regarding adjustment to vision loss, and provision of adaptive devices that enable service recipients to participate

in the community and maintain or increase their independence. [2003 c 409 § 17; 1983 c 194 § 18.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.200 Business enterprises program—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply in RCW 74.18.200 through 74.18.230.

(1) "Business enterprises program" means a program operated by the department under the federal Randolph-Sheppard Act, 20 U.S.C. Sec. 107 et seq., and under this chapter in support of blind persons operating vending businesses in public buildings.

(2) "Vending facility" means any stand, snack bar, cafeteria, or business at which food, tobacco, sundries, or other retail merchandise or service is sold or provided.

(3) "Vending machine" means any coin-operated machine that sells or provides food, tobacco, sundries, or other retail merchandise or service.

(4) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual selects.

(5) "Licensee" means a blind person licensed by the state of Washington under the Randolph-Sheppard Act, this chapter, and the rules issued hereunder.

(6) "Public building" means any building and immediately adjacent outdoor space associated therewith, such as a patio or entryway, which is: (a) Owned by the state of Washington or any political subdivision thereof or any space leased by the state of Washington or any political subdivision thereof in any privately-owned building; and (b) dedicated to the administrative functions of the state or any political subdivision. However, this term shall not include property under the jurisdiction and control of a local board of education without the consent of such board.

(7) "Priority" means the department has first and primary right to operate the food service and vending facilities, including vending machines, on federal, state, county, municipal, and other local government property except those otherwise exempted by statute. Such right may, at the sole discretion of the department, be waived in the event that the department is temporarily unable to assert the priority. [2003 c 409 § 18; 1985 c 97 § 1; 1983 c 194 § 20.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.210 Business enterprises program—Purposes. The department shall maintain or cause to be maintained a business enterprises program for blind persons to operate vending facilities in public buildings. The purposes of the business enterprises program are to implement the Randolph-Sheppard Act and thereby give priority to qualified blind persons in operating vending facilities on federal property, to make similar provisions for vending facilities in public buildings in the state of Washington and thereby increase employ-

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ment opportunities for blind persons, and to encourage blind persons to become successful, independent business persons. [2003 c 409 § 19; 1983 c 194 § 21.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.230 Business enterprises revolving account. (1) There is established in the state treasury an account known as the business enterprises revolving account.

(2) The net proceeds from any vending machine operation in a public building, other than an operation managed by a licensee, shall be made payable to the business enterprises program, which will pay only the blind vendors' portion, at the subscriber's rate, for the purpose of funding a plan of health insurance for blind vendors, as provided in RCW 41.05.225. Net proceeds, for purposes of this section, means gross sales less state sales tax and a fair minimum return to the vending machine owner or service provider, which return shall be a reasonable amount to be determined by the department.

(3) All federal moneys in the business enterprises revolving account shall be expended only for development and expansion of locations, equipment, management services, and payments to licensees in the business enterprises program.

(4) The business enterprises program shall be supported by the business enterprises revolving account and by income which may accrue to the department pursuant to the federal Randolph-Sheppard Act. [2003 c 409 § 20; 2002 c 71 § 2; 1993 c 369 § 1; 1991 sp.s. c 13 §§ 19, 116. Prior: 1985 c 97 § 2; 1985 c 57 § 72; 1983 c 194 § 23.]

Findings—2003 c 409: See note following RCW 74.18.010.

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

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

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

Chapter 74.34 RCW

ABUSE OF VULNERABLE ADULTS

Sections

74.34.020	Definitions.
74.34.035	Reports—Mandated and permissive—Contents—Confidentiality.

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

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse,

and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(3) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

(4) "Department" means the department of social and health services.

(5) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed by the department.

(6) "Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage.

(7) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(8) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(9) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental

health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety.

(10) "Permissive reporter" means any person, employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(11) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(12) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(13) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider. [2003 c 230 § 1; 1999 c 176 § 3; 1997 c 392 § 523; 1995 1st sp.s. c 18 § 84; 1984 c 97 § 8.]

Effective date—2003 c 230: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 230 § 3.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.34.035 Reports—Mandated and permissive—Contents—Confidentiality. (1) When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the department.

(2) When there is reason to suspect that sexual assault has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department.

(3) When there is reason to suspect that physical assault has occurred or there is reasonable cause to believe that an act has caused fear of imminent harm:

(a) Mandated reporters shall immediately report to the department; and

(b) Mandated reporters shall immediately report to the appropriate law enforcement agency, except as provided in subsection (4) of this section.

(4) A mandated reporter is not required to report to a law enforcement agency, unless requested by the injured vulnerable adult or his or her legal representative or family member, an incident of physical assault between vulnerable adults that causes minor bodily injury and does not require more than basic first aid, unless:

(a) The injury appears on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) There is a fracture;

(c) There is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or

(d) There is an attempt to choke a vulnerable adult.

(5) Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

(6) No facility, as defined by this chapter, agency licensed or required to be licensed under chapter 70.127 RCW, or facility or agency under contract with the department to provide care for vulnerable adults may develop policies or procedures that interfere with the reporting requirements of this chapter.

(7) Each report, oral or written, must contain as much as possible of the following information:

(a) The name and address of the person making the report;

(b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;

(c) The name and address of the legal guardian or alternate decision maker;

(d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;

(e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;

(f) The identity of the alleged perpetrator, if known; and

(g) Other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.

(8) Unless there is a judicial proceeding or the person consents, the identity of the person making the report under this section is confidential. [2003 c 230 § 2; 1999 c 176 § 5.]

Effective date—2003 c 230: See note following RCW 74.34.020.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

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Chapter 74.46 RCW NURSING FACILITY MEDICAID PAYMENT SYSTEM

Sections

74.46.091	Additional reporting requirements for quality maintenance fee. (<i>Contingent expiration date.</i>)
74.46.508	Direct care component rate allocation—Increases—Rules.
74.46.535	Quality maintenance fee. (<i>Contingent expiration date.</i>)

74.46.091 Additional reporting requirements for quality maintenance fee. (*Contingent expiration date.*) (1) By July 1st of each year, each nursing facility operator shall file a report with the department of social and health services listing the patient days and the gross income for the prior calendar year for each nursing facility that he or she operates.

(2) By August 1, 2003, the department of social and health services shall submit for approval to the federal department of health and human services a request for a waiver pursuant to 42 C.F.R. 433.68. The waiver shall identify the nursing facilities that the department proposes to exempt from the quality maintenance fee. Those facilities shall include at least:

(a) Nursing facilities operated by any agency of the state of Washington;

(b) Nursing facilities operated by a public hospital district; and

(c) As many nursing facilities with no or disproportionately low numbers of medicaid-funded residents as, within the judgment of the department, may be exempted from the fee pursuant to 42 C.F.R. 433.68.

(3) The department of social and health services shall notify the department of revenue and the nursing facility operator of the nursing facilities that would be exempted from the quality maintenance fee pursuant to the waiver request submitted to the federal department of health and human services. The nursing facilities included in the waiver request may withhold payment of the fee pending final action by the federal government on the request for waiver.

(4) If the request for waiver is approved, the department of social and health services shall notify the department of revenue and the nursing facility operator that no quality maintenance fee is due from the facility. If the request for waiver is denied, nursing facility operators who have withheld payment of the fee shall pay all such fees as have been withheld. No interest or penalties shall be due upon such withheld payments for the period during which final federal action was pending.

(5) The department of social and health services shall take whatever action is necessary to continue the waiver from the federal government.

(6) The department of social and health services may adopt such rules, in accordance with chapter 34.05 RCW, as necessary to provide for effective administration of this section and RCW 74.46.535. [2003 1st sp.s. c 16 § 4.]

Contingent expiration date—Severability—Effective date—2003 1st sp.s. c 16: See notes following RCW 82.71.020.

74.46.508 Direct care component rate allocation—Increases—Rules. (1) The department is authorized to increase the direct care component rate allocation calculated under RCW 74.46.506(5) for residents who have unmet

exceptional care needs as determined by the department in rule. The department may, by rule, establish criteria, patient categories, and methods of exceptional care payment.

(2) The department may by July 1, 2003, adopt rules and implement a system of exceptional care payments for therapy care.

(a) Payments may be made on behalf of facility residents who are under age sixty-five, not eligible for medicare, and can achieve significant progress in their functional status if provided with intensive therapy care services.

(b) Payments may be made only after approval of a rehabilitation plan of care for each resident on whose behalf a payment is made under this subsection, and each resident's progress must be periodically monitored. [2003 1st sp.s. c 6 § 1; 1999 c 181 § 2.]

74.46.535 Quality maintenance fee. (*Contingent expiration date.*) The department of social and health services shall prospectively add the medicaid cost of the quality maintenance fee under RCW 82.71.020 to the nursing facility component rate allocation calculated after application of all other provisions of RCW 74.46.521. [2003 1st sp.s. c 16 § 5.]

Contingent expiration date—Severability—Effective date—2003 1st sp.s. c 16: See notes following RCW 82.71.020.

Title 76

FORESTS AND FOREST PRODUCTS

Chapters

- 76.01** General provisions.
- 76.06** Forest insect and disease control.
- 76.09** Forest practices.
- 76.12** Reforestation.
- 76.13** Stewardship of nonindustrial forests and woodlands.
- 76.16** Access to state timber and other valuable material.
- 76.20** Firewood on state lands.
- 76.36** Marks and brands.
- 76.42** Wood debris—Removal from navigable waters.
- 76.48** Specialized forest products.

Chapter 76.01 RCW

GENERAL PROVISIONS

Sections

76.01.010	Recodified as RCW 79.11.005.
76.01.020	Repealed.
76.01.030	Repealed.
76.01.040	Recodified as RCW 43.30.340.
76.01.050	Recodified as RCW 43.30.345.
76.01.060	Recodified as RCW 43.30.450.

76.01.010 Recodified as RCW 79.11.005. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

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

76.01.040 Recodified as RCW 43.30.340. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.01.050 Recodified as RCW 43.30.345. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.01.060 Recodified as RCW 43.30.450. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 76.06 RCW

FOREST INSECT AND DISEASE CONTROL

Sections

76.06.010	Forest insects and tree diseases are public nuisance.
76.06.020	Definitions.
76.06.130	Exotic forest insect or disease control—Department's authority and duties—Declaration of forest health emergency.

76.06.010 Forest insects and tree diseases are public nuisance. The legislature finds and declares that:

(1) Forest insects and forest tree diseases which threaten the permanent timber production of the forested areas of the state of Washington are a public nuisance.

(2) Exotic forest insects or diseases, even in small numbers, can constitute serious threats to native forests. Native tree species may lack natural immunity. There are often no natural control agents such as diseases, predators, or parasites to limit populations of exotic forest insects or diseases. Exotic forest insects or diseases can also outcompete, displace, or destroy habitat of native species. It is in the public interest to identify, control, and eradicate outbreaks of exotic forest insects or diseases that threaten the diversity, abundance, and survivability of native forest trees and the environment. [2003 c 314 § 1; 1951 c 233 § 1.]

Findings—2003 c 314: See note following RCW 17.24.220.

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

(1) "Agent" means the recognized legal representative, representatives, agent, or agents for any owner.

(2) "Department" means the department of natural resources.

(3) "Owner" means and includes persons or their agents.

(4) "Timber land" means any land on which there is a sufficient number of trees, standing or down, to constitute, in the judgment of the department, a forest insect or forest disease breeding ground of a nature to constitute a menace, injurious and dangerous to permanent forest growth in the district under consideration.

(5) "Commissioner" means the commissioner of public lands.

(6) "Exotic" means not native to forest lands in Washington state.

(7) "Forest land" means any land on which there are sufficient numbers and distribution of trees and associated species to, in the judgment of the department, contribute to the

spread of forest insect or forest disease outbreaks that could be injurious to forest health.

(8) "Forest health" means the condition of a forest being sound in ecological function, sustainable, resilient, and resistant to insects, diseases, fire, and other disturbance, and having the capacity to meet landowner objectives.

(9) "Forest health emergency" means the introduction of, or an outbreak of, an exotic forest insect or disease that poses an imminent danger of damage to the environment by threatening the survivability of native tree species.

(10) "Forest insect or disease" means a living stage of an insect, other invertebrate animal, or disease-causing organism or agent that can directly or indirectly injure or cause disease or damage in trees, or parts of trees, or in processed or manufactured wood, or other products of trees.

(11) "Integrated pest management" means a strategy that uses various combinations of pest control methods, including biological, cultural, and chemical methods, in a compatible manner to achieve satisfactory control and ensure favorable economic and environmental consequences.

(12) "Native" means having populated Washington's forested lands prior to European settlement.

(13) "Outbreak" means a rapidly expanding population of insects or diseases with potential to spread.

(14) "Person" means any individual, partnership, private, public, or municipal corporation, county, federal, state, or local governmental agency, tribes, or association of individuals of whatever nature. [2003 c 314 § 2; 2000 c 11 § 2; 1988 c 128 § 15; 1951 c 233 § 2.]

Findings—2003 c 314: See note following RCW 17.24.220.

76.06.130 Exotic forest insect or disease control—Department's authority and duties—Declaration of forest health emergency. The department is authorized to contribute resources and expertise to assist the department of agriculture in control or eradication efforts authorized under chapter 17.24 RCW in order to protect forest lands of the state.

If either the department of agriculture has not taken action under chapter 17.24 RCW or the commissioner finds that additional efforts are required to control or prevent an outbreak of an exotic forest insect or disease which has not become so habituated that it can no longer be eradicated and that poses an imminent danger of damage to the forested environment by threatening the diversity, abundance, and survivability of native tree species, or both, the commissioner may declare a forest health emergency.

Upon declaration of a forest health emergency, the department must delineate the area at risk and determine the most appropriate integrated pest management methods to control the outbreak, in consultation with other interested agencies, affected tribes, and affected forest landowners. The department must notify affected forest landowners of its intent to conduct control operations.

Upon declaration of a forest health emergency by the commissioner, the department is authorized to enter into agreements with forest landowners, companies, individuals, tribal entities, and federal, state, and local agencies to accomplish control of exotic forest insects or diseases on any affected forest lands using such funds as have been, or may be, made available.

The department must proceed with the control of the exotic forest insects or diseases on affected nonfederal and nontribal forest lands with or without the cooperation of the owner. The department may reimburse cooperating forest landowners and agencies for actual cost of equipment, labor, and materials utilized in cooperative exotic forest insect or disease control projects, as agreed to by the department.

A forest health emergency no longer exists when the department finds that the exotic forest insect or disease has been controlled or eradicated, that the imminent threat no longer exists, or that there is no longer good likelihood of effective control.

Nothing under this chapter diminishes the authority and responsibility of the department of agriculture under chapter 17.24 RCW. [2003 c 314 § 3.]

Findings—2003 c 314: See note following RCW 17.24.220.

Chapter 76.09 RCW FOREST PRACTICES

Sections

76.09.020	Definitions.
76.09.030	Forest practices board—Created—Membership—Terms—Vacancies—Meetings—Compensation, travel expenses—Staff.
76.09.050	Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver.
76.09.055	Findings—Emergency rule making authorized.
76.09.060	Applications for forest practices—Form—Contents—Conversion of forest land to other use—Six-year moratorium—New applications—Approval—Emergencies.
76.09.063	Forest practices permit—Habitat incentives agreement.
76.09.220	Forest practices appeals board—Compensation—Travel expenses—Chair—Office—Quorum—Powers and duties—Jurisdiction—Review.
76.09.350	Long-term multispecies landscape management plans—Pilot projects, selection—Plan approval, elements—Notice of agreement recorded—Memorandums of agreements—Report, evaluation.
76.09.390	Sale of land or timber rights with continuing obligations—Notice—Failure to notify—Exemption.
76.09.410	Road maintenance and abandonment plans—Fish passage barriers.
76.09.420	Road maintenance and abandonment plans—Rules—Checklist—Report to the legislature—Emergency rules.
76.09.430	Application to RCW 76.13.150.
76.09.440	Small forest landowner—Fish passage barriers.
76.09.450	Small forest landowner—Defined.
76.09.910	Shoreline management act, hydraulics act, other statutes and ordinances not modified—Exceptions.

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

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Appeals board" means the forest practices appeals board created by RCW 76.09.210.

(3) "Aquatic resources" includes water quality, salmon, other species of the vertebrate classes Cephalaspidomorphi and Osteichthyes identified in the forests and fish report, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's salamander

(*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and their respective habitats.

(4) "Commissioner" means the commissioner of public lands.

(5) "Contiguous" means land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right of way shall be considered contiguous.

(6) "Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices rules.

(7) "Department" means the department of natural resources.

(8) "Fish passage barrier" means any artificial instream structure that impedes the free passage of fish.

(9) "Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. As it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, the term "forest land" excludes:

(a) Residential home sites, which may include up to five acres; and

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

(10) "Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(11) "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- (a) Road and trail construction;
- (b) Harvesting, final and intermediate;
- (c) Precommercial thinning;
- (d) Reforestation;
- (e) Fertilization;
- (f) Prevention and suppression of diseases and insects;
- (g) Salvage of trees; and
- (h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(12) "Forest practices rules" means any rules adopted pursuant to RCW 76.09.040.

(13) "Forest road," as it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, means a road or road segment that crosses land that meets the definition of forest land, but excludes residential access roads.

(14) "Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than fifteen years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees, but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(15) "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.

(16) "Application" means the application required pursuant to RCW 76.09.050.

(17) "Operator" means any person engaging in forest practices except an employee with wages as his or her sole compensation.

(18) "Person" means any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(19) "Public resources" means water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(20) "Small forest landowner" has the same meaning as defined in RCW 76.09.450.

(21) "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, "timber" does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(22) "Timber owner" means any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(23) "Board" means the forest practices board created in RCW 76.09.030.

(24) "Unconfined avulsing channel migration zone" means the area within which the active channel of an unconfined avulsing stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.

(25) "Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement. [2003 c 311 § 3; 2002 c 17 § 1. Prior: 2001 c 102 § 1; 2001 c 97 § 2; 1999 sp.s. c 4 § 301; 1974 ex.s. c 137 § 2.]

Findings—2003 c 311: "(1) The legislature finds that chapter 4, Laws of 1999 sp. sess. strongly encouraged the forest practices board to adopt administrative rules that were substantially similar to the recommendations

presented to the legislature in the form of the forests and fish report. The rules adopted pursuant to the 1999 legislation require all forest landowners to complete a road maintenance and abandonment plan, and those rules cannot be changed by the forest practices board without either a final order from a court, direct instructions from the legislature, or a recommendation from the adaptive management process. In the time since the enactment of chapter 4, Laws of 1999 sp. sess., it has become clear that both the planning aspect and the implementation aspect of the road maintenance and abandonment plan requirement may cause an unforeseen and unintended disproportionate financial hardship on small forest landowners.

(2) The legislature further finds that the commissioner of public lands and the governor have explored solutions that minimize the hardship caused to small forest landowners by the forest road maintenance and abandonment requirements of the forests and fish law, while maintaining protection for public resources. This act represents recommendations stemming from that process.

(3) The legislature further finds that it is in the state's interest to help small forest landowners comply with the requirements of the forest practices rules in a way that does not require the landowner to spend unreasonably high and unpredictable amounts of money to complete road maintenance and abandonment plan preparation and implementation. Small forest landowners provide significant wildlife habitat and serve as important buffers between urban development and Washington's public forest land holdings." [2003 c 311 § 1.]

Effective date—2003 c 311: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2003]." [2003 c 311 § 13.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.09.030 Forest practices board—Created—Membership—Terms—Vacancies—Meetings—Compensation, travel expenses—Staff. (1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:

(a) The commissioner of public lands or the commissioner's designee;

(b) The director of the department of community, trade, and economic development or the director's designee;

(c) The director of the department of agriculture or the director's designee;

(d) The director of the department of ecology or the director's designee;

(e) The director of the department of fish and wildlife or the director's designee;

(f) An elected member of a county legislative authority appointed by the governor: PROVIDED, That such member's service on the board shall be conditioned on the member's continued service as an elected county official; and

(g) Six members of the general public appointed by the governor, one of whom shall be an owner of not more than five hundred acres of forest land, and one of whom shall be an independent logging contractor.

(2) The director of the department of fish and wildlife's service on the board may be terminated two years after August 18, 1999, if the legislature finds that after two years the department has not made substantial progress toward integrating the laws, rules, and programs governing forest practices, chapter 76.09 RCW, and the laws, rules, and programs governing hydraulic projects, chapter 77.55 RCW. Such a finding shall be based solely on whether the department of fish and wildlife makes substantial progress as defined in this subsection, and will not be based on other actions taken as a member of the board. Substantial progress shall include recommendations to the legislature for closer

integration of the existing rule-making authorities of the board and the department of fish and wildlife, and closer integration of the forest practices and hydraulics permitting processes, including exploring the potential for a consolidated permitting process. These recommendations shall be designed to resolve problems currently associated with the existing dual regulatory and permitting processes.

(3) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his or her successor is appointed and qualified. The commissioner of public lands or the commissioner's designee shall be the chairman of the board.

(4) The board shall meet at such times and places as shall be designated by the chairman or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

(5) Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(6) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties. [2003 c 39 § 32; 1999 sp.s. c 4 § 1001; 1995 c 399 § 207; 1993 c 257 § 1; 1987 c 330 § 1301; 1985 c 466 § 70; 1984 c 287 § 108; 1975-'76 2nd ex.s. c 34 § 173; 1975 1st ex.s. c 200 § 1; 1974 ex.s. c 137 § 3.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

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

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

76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver. (1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

Class II: Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. However, the work may not begin until all forest practice fees required under RCW 76.09.065 have been received by the department. Class II shall not include forest practices:

(a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW or on lands that have or are being converted to another use;

(b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.100;

(c) Within "shorelines of the state" as defined in RCW 90.58.030;

(d) Excluded from Class II by the board; or

(e) Including timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, which are Class IV;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department;

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, (d) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or (e) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the

application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, no Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended. However, in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, if a notification or application is delivered in person to the department by the operator or the operator's agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, the department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED, FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of

subsection (2) of this section. Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) For those forest practices regulated by the board and the department, if the county, city, or town believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) For those forest practices regulated by the board and the department, the department shall not approve portions of applications to which a county, city, or town objects if:

(a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to lands either:

(i) Platted after January 1, 1960, as provided in chapter 58.17 RCW; or

(ii) On lands that have or are being converted to another use.

The department shall either disapprove those portions of such application or appeal the county, city, or town objections to the appeals board. If the objections related to subparagraphs (b)(i) and (ii) of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county, city, or town objections has expired.

(8) For those forest practices regulated by the board and the department, in addition to any rights under the above paragraph, the county, city, or town may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.220(8). In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

(10) For those forest practices regulated by the board and the department, the department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) For those forest practices regulated by the board and the department, a county, city, or town may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department.

(12) Notwithstanding subsections (2) through (5) of this section, forest practices applications or notifications are not required for exotic insect and disease control operations conducted in accordance with RCW 76.09.060(8) where eradication can reasonably be expected. [2003 c 314 § 4; 2002 c 121 § 1; 1997 c 173 § 2; 1994 c 264 § 49; 1993 c 443 § 3; 1990 1st ex.s. c 17 § 61; 1988 c 36 § 47; 1987 c 95 § 9; 1975 1st ex.s. c 200 § 2; 1974 ex.s. c 137 § 5.]

Findings—2003 c 314: See note following RCW 17.24.220.

Effective date—1993 c 443: See note following RCW 76.09.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

76.09.055 Findings—Emergency rule making authorized. (1) The legislature finds that the levels of fish stocks throughout much of the state require immediate action to be taken to help these fish runs where possible. The legislature also recognizes that federal and state agencies, tribes, county representatives, and private timberland owners have spent considerable effort and time to develop the forests and fish report. Given the agreement of the parties, the legislature believes that the immediate adoption of emergency rules is appropriate in this particular instance. These rules can implement many provisions of the forests and fish report to protect the economic well-being of the state, and to minimize the risk to the state and landowners to legal challenges. This authority is not designed to set any precedents for the forest practices board in future rule making or set any precedents for other rule-making bodies of the state.

(2) The forest practices board is authorized to adopt emergency rules amending the forest practices rules with respect to the protection of aquatic resources, in accordance with RCW 34.05.350, except: (a)(i) That the rules adopted under this section may remain in effect until permanent rules are adopted, or until June 30, 2001, whichever is sooner; (ii) that the rules adopted under RCW 76.09.420(5) must remain in effect until permanent rules are adopted; (b) notice of the proposed rules must be published in the Washington State Register as provided in RCW 34.05.320; (c) at least one public hearing must be conducted with an opportunity to provide oral and written comments; and (d) a rule-making file must be maintained as required by RCW 34.05.370. In adopting emergency rules consistent with this section, the board is not required to prepare a small business economic impact statement under chapter 19.85 RCW, prepare a statement indicating whether the rules constitute a significant legislative rule under RCW 34.05.328, prepare a significant legislative rule analysis under RCW 34.05.328, or follow the procedural requirements of the state environmental policy act, chapter 43.21C RCW. Except as provided in RCW 76.09.420, the forest practices board may only adopt recommendations contained in the forests and fish report as emergency rules under this section. [2003 c 311 § 5; 2000 c 11 § 4; 1999 sp.s. c 4 § 201.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

Effective date—1999 sp.s. c 4 §§ 201, 202, and 203: "Sections 201, 202, and 203 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 7, 1999]." [1999 sp.s. c 4 § 1405.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.09.060 Applications for forest practices—Form—Contents—Conversion of forest land to other use—Six-year moratorium—New applications—Approval—Emergencies. The following shall apply to those forest practices administered and enforced by the department and for which the board shall promulgate regulations as provided in this chapter:

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. The application or notification shall be delivered in person to the department, sent by first class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.17 RCW. The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;

(g) Soil, geological, and hydrological data with respect to forest practices;

(h) The expected dates of commencement and completion of all forest practices specified in the application;

(i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;

(j) An affirmation that the statements contained in the notification or application are true; and

(k) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a Class II forest practice is subject to the three-year reforestation requirement.

(a) If the application states that any such land will be or is intended to be so converted:

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact

so converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070 as now or hereafter amended;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as now or hereafter amended as well as the forest practices rules.

(b) Except as provided elsewhere in this section, if the application or notification does not state that any land covered by the application or notification will be or is intended to be so converted:

(i) For six years after the date of the application the county, city, town, and regional governmental entities shall deny any or all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of land subject to the application;

(A) The department shall submit to the local governmental entity a copy of the statement of a forest landowner's intention not to convert which shall represent a recognition by the landowner that the six-year moratorium shall be imposed and shall preclude the landowner's ability to obtain development permits while the moratorium is in place. This statement shall be filed by the local governmental entity with the county recording officer, who shall record the documents as provided in chapter 65.04 RCW, except that lands designated as forest lands of long-term commercial significance under chapter 36.70A RCW shall not be recorded due to the low likelihood of conversion. Not recording the statement of a forest landowner's conversion intention shall not be construed to mean the moratorium is not in effect.

(B) The department shall collect the recording fee and reimburse the local governmental entity for the cost of recording the application.

(C) When harvesting takes place without an application, the local governmental entity shall impose the six-year moratorium provided in (b)(i) of this subsection from the date the unpermitted harvesting was discovered by the department or the local governmental entity.

(D) The local governmental entity shall develop a process for lifting the six-year moratorium, which shall include public notification, and procedures for appeals and public hearings.

(E) The local governmental entity may develop an administrative process for lifting or waiving the six-year moratorium for the purposes of constructing a single-family residence or outbuildings, or both, on a legal lot and building site. Lifting or waiving of the six-year moratorium is subject to compliance with all local ordinances.

(F) The six-year moratorium shall not be imposed on a forest practices application that contains a conversion option harvest plan approved by the local governmental entity unless the forest practice was not in compliance with the approved forest practice permit. Where not in compliance with the conversion option harvest plan, the six-year moratorium shall be imposed from the date the application was approved by the department or the local governmental entity;

(ii) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes; and

(iii) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had so stated.

(c) The application or notification shall be signed by the forest landowner and accompanied by a statement signed by the forest landowner indicating his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

(8) Forest practices applications or notifications are not required for forest practices conducted to control exotic for-

est insect or disease outbreaks, when conducted by or under the direction of the department of agriculture in carrying out an order of the governor or director of the department of agriculture to implement pest control measures as authorized under chapter 17.24 RCW, and are not required when conducted by or under the direction of the department in carrying out emergency measures under a forest health emergency declaration by the commissioner of public lands as provided in RCW 76.06.130.

(a) For the purposes of this subsection, exotic forest insect or disease has the same meaning as defined in RCW 76.06.020.

(b) In order to minimize adverse impacts to public resources, control measures must be based on integrated pest management, as defined in RCW 17.15.010, and must follow forest practices rules relating to road construction and maintenance, timber harvest, and forest chemicals, to the extent possible without compromising control objectives.

(c) Agencies conducting or directing control efforts must provide advance notice to the appropriate regulatory staff of the department of the operations that would be subject to exemption from forest practices application or notification requirements.

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

(e) Nothing under this subsection relieves agencies conducting or directing control efforts from requirements of the federal clean water act as administered by the department of ecology under RCW 90.48.260.

(f) Forest lands where trees have been cut as part of an exotic forest insect or disease control effort under this subsection are subject to reforestation requirements under RCW 76.09.070.

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control. [2003 c 314 § 5. Prior: 1997 c 290 § 3; 1997 c 173 § 3; 1993 c 443 § 4; 1992 c 52 § 22; 1990 1st ex.s. c 17 § 62; 1975 1st ex.s. c 200 § 3; 1974 ex.s. c 137 § 6.]

Findings—2003 c 314: See note following RCW 17.24.220.

Effective date—1993 c 443: See note following RCW 76.09.010.

Effective date—1992 c 52 § 22: "Section 22 of this act shall take effect August 1, 1992." [1992 c 52 § 27.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

76.09.063 Forest practices permit—Habitat incentives agreement. When a private landowner is applying for a forest practices permit under this chapter and that landowner has entered into a habitat incentives agreement with the department and the department of fish and wildlife as provided in RCW 77.55.300, the department shall comply with

the terms of that agreement when evaluating the permit application. [2003 c 39 § 33; 1997 c 425 § 5.]

Finding—Intent—1997 c 425: See note following RCW 77.55.300.

76.09.220 Forest practices appeals board—Compensation—Travel expenses—Chair—Office—Quorum—Powers and duties—Jurisdiction—Review. (1) The appeals board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the appeals board shall operate on a full-time basis, each member shall receive an annual salary to be determined by the governor. If it is determined that the appeals board shall operate on a part-time basis, each member shall be compensated in accordance with RCW 43.03.250. The director of the environmental hearings office shall make the determination, required under RCW 43.03.250, as to what statutorily prescribed duties, in addition to attendance at a hearing or meeting of the board, shall merit compensation. This compensation shall not exceed ten thousand dollars in a fiscal year. Each member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with the provisions of RCW 43.03.050 and 43.03.060.

(2) The appeals board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chair, and shall at least biennially thereafter meet and elect or reelect a chair.

(3) The principal office of the appeals board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the appeals board shall constitute a quorum for making orders or decisions, adopting rules necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.

(4) The appeals board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members and upon being filed at the appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The appeals board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest, in such form as to assure reasonable distribution thereof.

(6) The appeals board shall maintain at its principal office a journal which shall contain all official actions of the appeals board, with the exception of findings and decisions, together with the vote of each member on such actions. The journal shall be available for public inspection at the principal office of the appeals board at all reasonable times.

(7) The forest practices appeals board shall have exclusive jurisdiction to hear appeals arising from an action or determination by the department, and the department of fish and wildlife, and the department of ecology with respect to management plans provided for under RCW 76.09.350.

(8)(a) Any person aggrieved by the approval or disapproval of an application to conduct a forest practice or the approval or disapproval of any landscape plan or permit or watershed analysis may, except as otherwise provided in chapter 43.21L RCW, seek review from the appeals board by filing a request for the same within thirty days of the approval or disapproval. Concurrently with the filing of any request for review with the board as provided in this section, the requestor shall file a copy of his or her request with the department and the attorney general. The attorney general may intervene to protect the public interest and ensure that the provisions of this chapter are complied with.

(b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. [2003 c 393 § 20; 1999 sp.s. c 4 § 902; 1999 c 90 § 1. Prior: 1997 c 423 § 2; 1997 c 290 § 5; 1989 c 175 § 164; 1984 c 287 § 109; 1979 ex.s. c 47 § 5; 1975-'76 2nd ex.s. c 34 § 174; 1975 1st ex.s. c 200 § 10; 1974 ex.s. c 137 § 22.]

Implementation—Effective date—2003 c 393: See RCW 43.21L.900 and 43.21L.901.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Finding—1997 c 423: "The legislature finds that the functions of the forest practices appeals board have overriding sensitivity and are of importance to the public welfare and operation of state government." [1997 c 423 § 1.]

Effective date—1997 c 423: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 423 § 3.]

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

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

Intent—1979 ex.s. c 47: See note following RCW 43.21B.005.

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

76.09.350 Long-term multispecies landscape management plans—Pilot projects, selection—Plan approval, elements—Notice of agreement recorded—Memorandums of agreements—Report, evaluation. The legislature recognizes the importance of providing the greatest diversity of habitats, particularly riparian, wetland, and old growth habitats, and of assuring the greatest diversity of species within those habitats for the survival and reproduction of enough individuals to maintain the native wildlife of Washington forest lands. The legislature also recognizes the importance of long-term habitat productivity for natural and wild fish, for the protection of hatchery water supplies, and for the protection of water quality and quantity to meet the needs of people, fish, and wildlife. The legislature recognizes the importance of maintaining and enhancing fish and wildlife habitats capable of sustaining the commercial and noncommercial uses of fish and wildlife. The legislature further recognizes the importance of the continued growth and development of the state's forest products industry which has a vital stake in the long-term productivity of both the public and private forest land base.

The development of a landscape planning system would help achieve these goals. Landowners and resource managers should be provided incentives to voluntarily develop

long-term multispecies landscape management plans that will provide protection to public resources. Because landscape planning represents a departure from the use of standard baseline rules and may result in unintended consequences to both the affected habitats and to a landowner's economic interests, the legislature desires to establish up to seven experimental pilot programs to gain experience with landscape planning that may prove useful in fashioning legislation of a more general application.

(1) Until December 31, 2000, the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, is granted authority to select not more than seven pilot projects for the purpose of developing individual landowner multispecies landscape management plans.

(a) Pilot project participants must be selected by the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, no later than October 1, 1997.

(b) The number and the location of the pilot projects are to be determined by the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, and should be selected on the basis of risk to the habitat and species, variety and importance of species and habitats in the planning area, geographic distribution, surrounding ownership, other ongoing landscape and watershed planning activities in the area, potential benefits to water quantity and quality, financial and staffing capabilities of participants, and other factors that will contribute to the creation of landowner multispecies landscape planning efforts.

(c) Each pilot project shall have a landscape management plan with the following elements:

(i) An identification of public resources selected for coverage under the plan and measurable objectives for the protection of the selected public resources;

(ii) A termination date of not later than 2050;

(iii) A general description of the planning area including its geographic location, physical and biological features, habitats, and species known to be present;

(iv) An identification of the existing forest practices rules that will not apply during the term of the plan;

(v) Proposed habitat management strategies or prescriptions;

(vi) A projection of the habitat conditions likely to result from the implementation of the specified management strategies or prescriptions;

(vii) An assessment of habitat requirements and the current habitat conditions of representative species included in the plan;

(viii) An assessment of potential or likely impacts to representative species resulting from the prescribed forest practices;

(ix) A description of the anticipated benefits to those species or other species as a result of plan implementation;

(x) A monitoring plan;

(xi) Reporting requirements including a schedule for review of the plan's performance in meeting its objectives;

(xii) Conditions under which a plan may be modified, including a procedure for adaptive management;

(xiii) Conditions under which a plan may be terminated;

(xiv) A procedure for adaptive management that evaluates the effectiveness of the plan to meet its measurable public resources objectives, reflects changes in the best available science, and provides changes to its habitat management strategies, prescriptions, and hydraulic project standards to the extent agreed to in the plan and in a timely manner and schedule;

(xv) A description of how the plan relates to publicly available plans of adjacent federal, state, tribal, and private timberland owners; and

(xvi) A statement of whether the landowner intends to apply for approval of the plan under applicable federal law.

(2) Until December 31, 2000, the department, in agreement with the department of fish and wildlife, and the department of ecology when the landowner elects to cover water quality in the plan, shall approve a landscape management plan and enter into a binding implementation agreement with the landowner when such departments find, based upon the best scientific data available, that:

(a) The plan contains all of the elements required under this section including measurable public resource objectives;

(b) The plan is expected to be effective in meeting those objectives;

(c) The landowner has sufficient financial resources to implement the management strategies or prescriptions to be implemented by the landowner under the plan;

(d) The plan will:

(i) Provide better protection than current state law for the public resources selected for coverage under the plan considered in the aggregate; and

(ii) Compared to conditions that could result from compliance with current state law:

(A) Not result in poorer habitat conditions over the life of the plan for any species selected for coverage that is listed as threatened or endangered under federal or state law, or that has been identified as a candidate for such listing, at the time the plan is approved; and

(B) Measurably improve habitat conditions for species selected for special consideration under the plan;

(e) The plan shall include watershed analysis or provide for a level of protection that meets or exceeds the protection that would be provided by watershed analysis, if the landowner selects fish or water quality as a public resource to be covered under the plan. Any alternative process to watershed analysis would be subject to timely peer review;

(f) The planning process provides for a public participation process during the development of the plan, which shall be developed by the department in cooperation with the landowner.

The management plans must be submitted to the department and the department of fish and wildlife, and the department of ecology when the landowner elects to cover water quality in the plan, no later than March 1, 2000. The department shall provide an opportunity for public comment on the proposed plan. The comment period shall not be less than forty-five days. The department shall approve or reject plans within one hundred twenty days of submittal by the landowner of a final plan. The decision by the department, in agreement with the department of fish and wildlife, and the department of ecology when the landowner has elected to cover water quality in the plan, to approve or disapprove the

management plan is subject to the environmental review process of chapter 43.21C RCW, provided that any public comment period provided for under chapter 43.21C RCW shall run concurrently with the public comment period provided in this subsection (2).

(3) After a landscape management plan is adopted:

(a) Forest practices consistent with the plan need not comply with:

(i) The specific forest practices rules identified in the plan; and

(ii) Any forest practice rules and policies adopted after the approval of the plan to the extent that the rules:

(A) Have been adopted primarily for the protection of a public resource selected for coverage under the plan; or

(B) Provide for procedural or administrative obligations inconsistent with or in addition to those provided for in the plan with respect to those public resources; and

(b) If the landowner has selected fish as one of the public resources to be covered under the plan, the plan shall serve as the hydraulic project approval for the life of the plan, in compliance with RCW 77.55.100.

(4) The department is authorized to issue a single landscape level permit valid for the life of the plan to a landowner who has an approved landscape management plan and who has requested a landscape permit from the department. Landowners receiving a landscape level permit shall meet annually with the department and the department of fish and wildlife, and the department of ecology where water quality has been selected as a public resource to be covered under the plan, to review the specific forest practices activities planned for the next twelve months and to determine whether such activities are in compliance with the plan. The departments will consult with the affected Indian tribes and other interested parties who have expressed an interest in connection with the review. The landowner is to provide ten calendar days' notice to the department prior to the commencement of any forest practices authorized under a landscape level permit. The landscape level permit will not impose additional conditions relating to the public resources selected for coverage under the plan beyond those agreed to in the plan. For the purposes of chapter 43.21C RCW, forest practices conducted in compliance with an approved plan are deemed not to have the potential for a substantial impact on the environment as to any public resource selected for coverage under the plan.

(5) Except as otherwise provided in a plan, the agreement implementing the landscape management plan is an agreement that runs with the property covered by the approved landscape management plan and the department shall record notice of the plan in the real property records of the counties in which the affected properties are located. Prior to its termination, no plan shall permit forest land covered by its terms to be withdrawn from such coverage, whether by sale, exchange, or other means, nor to be converted to nonforestry uses except to the extent that such withdrawal or conversion would not measurably impair the achievement of the plan's stated public resource objectives. If a participant transfers all or part of its interest in the property, the terms of the plan still apply to the new landowner for the plan's stated duration unless the plan is terminated under its terms or unless the plan specifies the conditions under

which the terms of the plan do not apply to the new landowner.

(6) The departments of natural resources, fish and wildlife, and ecology shall seek to develop memorandums of agreements with federal agencies and affected Indian tribes relating to tribal issues in the landscape management plans. The departments shall solicit input from affected Indian tribes in connection with the selection, review, and approval of any landscape management plan. If any recommendation is received from an affected Indian tribe and is not adopted by the departments, the departments shall provide a written explanation of their reasons for not adopting the recommendation.

(7) The department is directed to report to the forest practices board annually through the year 2000, but no later than December 31st of each year, on the status of each pilot project. The department is directed to provide to the forest practices board, no later than December 31, 2000, an evaluation of the pilot projects including a determination if a permanent landscape planning process should be established along with a discussion of what legislative and rule modifications are necessary. [2003 c 39 § 34; 1997 c 290 § 1.]

76.09.390 Sale of land or timber rights with continuing obligations—Notice—Failure to notify—Exemption.

(1) Except as provided in subsection (2) of this section, prior to the sale or transfer of land or perpetual timber rights subject to continuing forest land obligations under the forest practices rules adopted under RCW 76.09.370, as specifically identified in the forests and fish report the seller shall notify the buyer of the existence and nature of such a continuing obligation and the buyer shall sign a notice of continuing forest land obligation indicating the buyer's knowledge thereof. The notice shall be on a form prepared by the department and shall be sent to the department by the seller at the time of sale or transfer of the land or perpetual timber rights and retained by the department. If the seller fails to notify the buyer about the continuing forest land obligation, the seller shall pay the buyer's costs related to such continuing forest land obligation, including all legal costs and reasonable attorneys' fees, incurred by the buyer in enforcing the continuing forest land obligation against the seller. Failure by the seller to send the required notice to the department at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to the continuing forest land obligation, that the seller did not notify the buyer of the continuing forest land obligation prior to sale.

(2) Subsection (1) of this section does not apply to checklist road maintenance and abandonment plans created by RCW 76.09.420. [2003 c 311 § 6; 1999 sp.s. c 4 § 707.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.09.410 Road maintenance and abandonment plans—Fish passage barriers. (1) The state may not require a small forest landowner to invest in upgrades, replacements, or other engineering of a forest road, and any fish passage barriers that are a part of the road, that do not threaten public resources or create a barrier to the passage of fish.

(2) Participation in the forests and fish agreement provides a benefit to both the landowner in terms of federal assurances, and the public in terms of aquatic habitat preservation and water quality enhancement; therefore, if conditions do threaten public resources or create a fish passage barrier, the road maintenance and abandonment planning process may not require a small forest landowner to take a positive action that will result in high cost without a significant portion of that cost being shared by the public.

(3) Some fish passage barriers are more of a threat to public resources than others; therefore, no small forest landowner should be required to repair a fish passage barrier until higher priority fish passage barriers on other lands in the watershed have been repaired.

(4) If an existing fish passage barrier on land owned by a small forest landowner was installed under an approved forest practices application or notification, and hydraulics approval, and that fish passage barrier becomes a high priority for fish passage based on the watershed ranking in *RCW 76.13.150, one hundred percent public funding shall be provided.

(5) The preparation of a road maintenance and abandonment plan can require technical expertise that may require large expenditures before the time that the landowner plans to conduct any revenue-generating operations on his or her land; therefore, small forest landowners should be allowed to complete a simplified road maintenance and abandonment plan checklist, that does not require professional engineering or forestry expertise to complete, and that does not need to be submitted until the time that the landowner submits a forest practices application or notification for final or intermediate harvesting, or for salvage of trees. Chapter 311, Laws of 2003 is intended to provide an alternate way for small forest landowners to comply with the road maintenance and abandonment plan goals identified in the forest practices rules. [2003 c 311 § 2.]

*Reviser's note: The reference to RCW 76.13.150 appears to be erroneous. Reference to RCW 77.12.755 was apparently intended.

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.09.420 Road maintenance and abandonment plans—Rules—Checklist—Report to the legislature—Emergency rules. (1) The board must amend the forest practices rules relating to road maintenance and abandonment plans that exist on May 14, 2003, to reflect the following:

(a) A forest landowner who owns a total of eighty acres or less of forest land in Washington is not required to submit a road maintenance and abandonment plan for any block of forest land that is twenty contiguous acres or less in area;

(b) A landowner who satisfies the definition of a small forest landowner, but who does not qualify under (a) of this subsection, is only required to submit a checklist road maintenance and abandonment plan with the abbreviated content requirements provided for in subsection (3) of this section, and is not required to comply with annual reporting and review requirements; and

(c) Existing forest roads must be maintained only to the extent necessary to prevent damage to public resources.

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(2) The department must provide a landowner who is either exempted from submitting a road maintenance and abandonment plan under subsection (1)(a) of this section, or who qualifies for a checklist road maintenance and abandonment plan under subsection (1)(b) of this section, with an educational brochure outlining road maintenance standards and requirements. In addition, the department must develop a series of nonmandatory educational workshops on the rules associated with road construction and maintenance.

(3)(a) A landowner who qualifies for a checklist road maintenance and abandonment plan under subsection (1)(b) of this section is only required to submit a checklist, designed by the department in consultation with the small forest landowner office advisory committee created in RCW 76.13.110, that confirms that the landowner is applying the checklist criteria to forest roads covered or affected by a forest practices application or notification. When developing the checklist road maintenance and abandonment plan, the department shall ensure that the checklist does not exceed current state law. Nothing in this subsection increases or adds to small forest landowners' duties or responsibilities under any other section of the forest practices rules or any other state law or rule.

(b) A landowner who qualifies for the checklist road maintenance and abandonment plan is not required to submit the checklist before the time that he or she submits a forest practices application or notification for final or intermediate harvesting, or for salvage of trees. The department may encourage and accept checklists prior to the time that they are due.

(4) The department must monitor the extent of the checklist road maintenance and abandonment plan approach and report its findings to the appropriate committees of the legislature by December 31, 2008, and December 31, 2013.

(5) The board shall adopt emergency rules under RCW 34.05.090 by October 31, 2003, to implement this section. The emergency rules shall remain in effect until permanent rules can be adopted. The forest practices rules that relate to road maintenance and abandonment plans shall remain in effect as they existed on May 14, 2003, until emergency rules have been adopted under this section.

(6) This section is only intended to relate to the board's duties as they relate to the road maintenance and abandonment plan element of the forests and fish report. Nothing in this section alters any forest landowner's duties and responsibilities under any other section of the forest practices rules, or any other state law or rule. [2003 c 311 § 4.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.09.430 Application to RCW 76.13.150. RCW 76.13.150 applies to road maintenance and abandonment plans under this chapter. [2003 c 311 § 8.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.09.440 Small forest landowner—Fish passage barriers. The department shall not disapprove a forest practices application filed by a small forest landowner on the basis that fish passage barriers have not been removed or replaced if the small forest landowner filing the application

has committed to participate in the program established in RCW 76.13.150 for all fish passage barriers existing on the block of forest land covered by the forest practices application, and the fish passage barriers existing on the block of forest land covered by the forest practices application are lower on the funding order list established for the program than the current projects that are capable of being funded by the program. [2003 c 311 § 9.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.09.450 Small forest landowner—Defined. For the purposes of this chapter and RCW 76.13.150 and 77.12.755, "small forest landowner" means an owner of forest land who, at the time of submission of required documentation to the department, has harvested from his or her own lands in this state no more than an average timber volume of two million board feet per year during the three years prior to submitting documentation to the department and who certifies that he or she does not expect to harvest from his or her own lands in the state more than an average timber volume of two million board feet per year during the ten years following the submission of documentation to the department. However, any landowner who exceeded the two million board feet annual average timber harvest threshold from their land in the three years prior to submitting documentation to the department, or who expects to exceed the threshold during any of the following ten years, shall still be deemed a "small forest landowner" if he or she establishes to the department's reasonable satisfaction that the harvest limits were, or will be, exceeded in order to raise funds to pay estate taxes or for an equally compelling and unexpected obligation, such as for a court-ordered judgment or for extraordinary medical expenses. [2003 c 311 § 11.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.09.910 Shoreline management act, hydraulics act, other statutes and ordinances not modified—Exceptions. Nothing in RCW 76.09.010 through 76.09.280 as now or hereafter amended shall modify any requirements to comply with the Shoreline Management Act of 1971 except as limited by RCW 76.09.240 as now or hereafter amended, or the hydraulics act (RCW 77.55.100), other state statutes in effect on January 1, 1975, and any local ordinances not inconsistent with RCW 76.09.240 as now or hereafter amended. [2003 c 39 § 35; 1975 1st ex.s. c 200 § 12; 1974 ex.s. c 137 § 32.]

**Chapter 76.12 RCW
REFORESTATION**

Sections

76.12.015	Repealed.
76.12.020	Recodified as RCW 79.22.010.
76.12.030	Recodified as RCW 79.22.040.
76.12.033	Repealed.
76.12.035	Recodified as RCW 79.22.100.
76.12.040	Recodified as RCW 79.10.040.
76.12.045	Recodified as RCW 79.10.050.
76.12.050	Recodified as RCW 79.17.020.
76.12.060	Recodified as RCW 79.17.060.
76.12.065	Recodified as RCW 79.17.070.
76.12.067	Recodified as RCW 79.22.120.
76.12.070	Recodified as RCW 79.22.110.

76.12.072	Recodified as RCW 79.22.300.
76.12.073	Recodified as RCW 79.22.310.
76.12.074	Recodified as RCW 79.22.320.
76.12.075	Recodified as RCW 79.22.330.
76.12.080	Recodified as RCW 79.22.020.
76.12.090	Recodified as RCW 79.22.080.
76.12.100	Recodified as RCW 79.22.090.
76.12.110	Recodified as RCW 79.64.100.
76.12.120	Recodified as RCW 79.22.050.
76.12.125	Recodified as RCW 79.22.060.
76.12.140	Recodified as RCW 79.22.070.
76.12.155	Recodified as RCW 79.22.030.
76.12.160	Recodified as RCW 43.30.710.
76.12.170	Recodified as RCW 43.30.720.
76.12.180	Recodified as RCW 79.38.070.
76.12.205	Recodified as RCW 43.30.800.
76.12.210	Recodified as RCW 43.30.810.
76.12.220	Recodified as RCW 43.30.820.
76.12.230	Recodified as RCW 43.30.830.
76.12.240	Recodified as RCW 79.02.420.

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

76.12.020 Recodified as RCW 79.22.010. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.030 Recodified as RCW 79.22.040. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

76.12.035 Recodified as RCW 79.22.100. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.040 Recodified as RCW 79.10.040. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.045 Recodified as RCW 79.10.050. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.050 Recodified as RCW 79.17.020. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.060 Recodified as RCW 79.17.060. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.065 Recodified as RCW 79.17.070. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.067 Recodified as RCW 79.22.120. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.070 Recodified as RCW 79.22.110. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.072 Recodified as RCW 79.22.300. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.073 Recodified as RCW 79.22.310. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.074 Recodified as RCW 79.22.320. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.075 Recodified as RCW 79.22.330. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.080 Recodified as RCW 79.22.020. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.090 Recodified as RCW 79.22.080. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.100 Recodified as RCW 79.22.090. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.110 Recodified as RCW 79.64.100. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.120 Recodified as RCW 79.22.050. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.125 Recodified as RCW 79.22.060. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.140 Recodified as RCW 79.22.070. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.155 Recodified as RCW 79.22.030. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.160 Recodified as RCW 43.30.710. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.170 Recodified as RCW 43.30.720. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.180 Recodified as RCW 79.38.070. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.205 Recodified as RCW 43.30.800. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.210 Recodified as RCW 43.30.810. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.220 Recodified as RCW 43.30.820. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.230 Recodified as RCW 43.30.830. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.12.240 Recodified as RCW 79.02.420. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 76.13 RCW

STEWARDSHIP OF NONINDUSTRIAL FORESTS AND WOODLANDS

Sections

- 76.13.100 Findings.
- 76.13.150 Fish passage barriers—Cost-sharing program.

76.13.100 Findings. (1) The legislature finds that increasing regulatory requirements continue to diminish the economic viability of small forest landowners. The concerns set forth in RCW 77.85.180 about the importance of sustaining forestry as a viable land use are particularly applicable to small landowners because of the location of their holdings, the expected complexity of the regulatory requirements, and the need for significant technical expertise not readily available to small landowners. The further reduction in harvestable timber owned by small forest landowners as a result of the rules to be adopted under RCW 76.09.055 will further erode small landowners' economic viability and willingness or ability to keep the lands in forestry use and, therefore, reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources, as defined in RCW 76.09.020.

(2) The legislature finds that the concerns identified in subsection (1) of this section should be addressed by establishing within the department of natural resources a small forest landowner office that shall be a resource and focal point for small forest landowner concerns and policies. The legislature further finds that a forestry riparian easement program shall be established to acquire easements from small landowners along riparian and other areas of value to the state for protection of aquatic resources. The legislature further finds that small forest landowners should have the option of alternate management plans or alternate harvest restrictions on smaller harvest units that may have a relatively low impact on aquatic resources. The small forest landowner office should

be responsible for assisting small landowners in the development and implementation of these plans or restrictions. [2003 c 39 § 36; 1999 sp.s. c 4 § 501.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.13.150 Fish passage barriers—Cost-sharing program. (1) The legislature finds that a state-led cost-sharing program is necessary to assist small forest landowners with removing and replacing fish passage barriers that were added to their land prior to May 14, 2003, to help achieve the goals of the forests and fish report, and to assist small forest landowners in complying with the state's fish passage requirements.

(2) The small forest landowner office must, in cooperation with the department of fish and wildlife, establish a program designed to assist small forest landowners with repairing or removing fish passage barriers and assist lead entities in acquiring the data necessary to fill any gaps in fish passage barrier information. The small forest landowner office and the department of fish and wildlife must work closely with lead entities or other local watershed groups to make maximum use of current information regarding the location and priority of current fish passage barriers. Where additional fish passage barrier inventories are necessary, funding will be sought for the collection of this information. Methods, protocols, and formulas for data gathering and prioritizing must be developed in consultation with the department of fish and wildlife. The department of fish and wildlife must assist in the training and management of fish passage barrier location data collection.

(3) The small forest landowner office must actively seek out funding for the program authorized in this section. The small forest landowner office must work with consenting landowners to identify and secure funding from local, state, federal, tribal, or nonprofit habitat restoration organizations and other private sources, including the salmon recovery funding board, the United States department of agriculture, the United States department of transportation, the Washington state department of transportation, the United States department of commerce, and the federal highway administration.

(4)(a) Except as otherwise provided in this subsection, the small forest landowner office, in implementing the program established in this section, must provide the highest proportion of public funding available for the removal or replacement of any fish passage barrier.

(b) In no case shall a small forest landowner be required to pay more than the lesser of either: (i) Twenty-five percent of any costs associated with the removal or replacement of a particular fish passage barrier; or (ii) five thousand dollars for the removal or replacement of a particular fish passage barrier. No small forest landowner shall be required to pay more than the maximum total annual costs in (c) of this subsection.

(c) The portion of the total cost of removing or replacing fish passage barriers that a small forest landowner must pay in any calendar year shall be determined based on the average annual timber volume harvested from the landowner's lands in this state during the three preceding calendar years, and whether the fish passage barrier is in eastern or western Washington.

(i) In western Washington (west of the Cascade Crest), a small forest landowner who has harvested an average annual timber volume of less than five hundred thousand board feet shall not be required to pay more than a total of eight thousand dollars during that calendar year, a small forest landowner who has harvested an annual average timber volume between five hundred thousand and nine hundred ninety-nine thousand board feet shall not be required to pay more than a total of sixteen thousand dollars during that calendar year, a small forest landowner who has harvested an average annual timber volume between one million and one million four hundred ninety-nine thousand board feet shall not be required to pay more than a total of twenty-four thousand dollars during that calendar year, and a small forest landowner who has harvested an average annual timber volume greater than or equal to one million five hundred thousand board feet shall not be required to pay more than a total of thirty-two thousand dollars during that calendar year, regardless of the number of fish passage barriers removed or replaced on the landowner's lands during that calendar year.

(ii) In eastern Washington (east of the Cascade Crest), a small forest landowner who has harvested an average annual timber volume of less than five hundred thousand board feet shall not be required to pay more than a total of two thousand dollars during that calendar year, a small forest landowner who has harvested an annual average timber volume between five hundred thousand and nine hundred ninety-nine thousand board feet shall not be required to pay more than a total of four thousand dollars during that calendar year, a small forest landowner who has harvested an average annual timber volume between one million and one million four hundred ninety-nine thousand board feet shall not be required to pay more than a total of twelve thousand dollars during that calendar year, and a small forest landowner who has harvested an average annual timber volume greater than or equal to one million five hundred thousand board feet shall not be required to pay more than a total of sixteen thousand dollars during that calendar year, regardless of the number of fish passage barriers removed or replaced on the landowner's lands during that calendar year.

(iii) Maximum total annual costs for small forest landowners with fish passage barriers in both western and eastern Washington shall be those specified under (c)(i) and (ii) of this subsection.

(d) If an existing fish passage barrier on land owned by a small forest landowner was installed under an approved forest practices application or notification, and hydraulics approval, and that fish passage barrier becomes a high priority for fish passage based on the watershed ranking in *RCW 76.13.150, one hundred percent public funding shall be provided.

(5) If a small forest landowner is required to contribute a portion of the funding under the cost-share program established in this section, that landowner may satisfy his or her required proportion by providing either direct monetary contributions or in-kind services to the project. In-kind services may include labor, equipment, materials, and other landowner-provided services determined by the department to have an appropriate value to the removal of a particular fish passage barrier.

(6)(a) The department, using fish passage barrier assessments and ranked inventory information provided by the department of fish and wildlife and the appropriate lead entity as delineated in RCW 77.12.755, must establish a prioritized list for the funding of fish passage barrier removals on property owned by small forest landowners that ensures that funding is provided first to the known fish passage barriers existing on forest land owned by small forest landowners that cause the greatest harm to public resources.

(b) As the department collects information about the presence of fish passage barriers from submitted checklists, it must share this information with the department of fish and wildlife and the technical advisory groups established in RCW 77.85.070. If the addition of the information collected in the checklists or any other changes to the scientific instruments described in RCW 77.12.755 alter the analysis conducted under RCW 77.12.755, the department must alter the funding order appropriately to reflect the new information.

(7) The department may accept commitments from small forest landowners that they will participate in the program to remove fish passage barriers from their land at any time, regardless of the funding order given to the fish passage barriers on a particular landowner's property. [2003 c 311 § 7.]

***Reviser's note:** The reference to RCW 76.13.150 appears to be erroneous. Reference to RCW 77.12.755 was apparently intended.

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

Chapter 76.16 RCW

ACCESS TO STATE TIMBER AND OTHER VALUABLE MATERIAL

Sections

76.16.010	Recodified as RCW 79.36.310.
76.16.020	Recodified as RCW 79.36.320.
76.16.030	Recodified as RCW 79.36.330.
76.16.040	Recodified as RCW 79.36.340.

76.16.010 Recodified as RCW 79.36.310. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.16.020 Recodified as RCW 79.36.320. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.16.030 Recodified as RCW 79.36.330. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.16.040 Recodified as RCW 79.36.340. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 76.20 RCW

FIREWOOD ON STATE LANDS

Sections

76.20.010	Recodified as RCW 79.15.400.
76.20.020	Recodified as RCW 79.15.410.
76.20.030	Recodified as RCW 79.15.420.
76.20.035	Recodified as RCW 79.15.430.
76.20.040	Recodified as RCW 79.15.440.

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76.20.010 Recodified as RCW 79.15.400. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.20.020 Recodified as RCW 79.15.410. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.20.030 Recodified as RCW 79.15.420. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.20.035 Recodified as RCW 79.15.430. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.20.040 Recodified as RCW 79.15.440. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 76.36 RCW

MARKS AND BRANDS

Sections

76.36.035	Registration of brands—Assignments—Fee—Rules—Penalty. (<i>Effective July 1, 2004.</i>)
76.36.110	Penalty for false branding, etc. (<i>Effective July 1, 2004.</i>)
76.36.120	Forgery of mark, etc.—Penalty. (<i>Effective July 1, 2004.</i>)

76.36.035 Registration of brands—Assignments—Fee—Rules—Penalty. (*Effective July 1, 2004.*) (1) All applications for brands, catch brands, renewals, and assignments thereof shall be submitted to and approved by the department prior to use. The department may refuse to approve any brand or catch brand which is identical to or closely resembles a registered brand or catch brand, or is in use by any other person or was not selected in good faith for the marking or branding of forest products. If approval is denied the applicant will select another brand.

(2) The registration for all existing brands or catch brands shall expire on December 31, 1984, unless renewed prior to that date. Renewals or new approved applications shall be for five-year periods or portions thereof beginning on January 1, 1985. On or before September 30, 1984, and September 30th immediately preceding the end of each successive five-year period the department shall notify by mail all registered owners of brands or catch brands of the forthcoming expiration of their brands and the requirements for renewal.

(3) A fee of fifteen dollars shall be charged by the department for registration of all brands, catch brands, renewals or assignments prior to January 1, 1985. Thereafter the fee shall be twenty-five dollars.

(4) Abandoned or canceled brands shall not be reissued for a period of at least one year. The department shall determine the right to use brands or catch brands in dispute by applicants.

(5) The department may adopt and enforce rules implementing the provisions of this chapter.

(6)(a) Except as provided in (b) of this subsection, a violation of any rule adopted by the department under this [the] authority of this section is a misdemeanor.

(b) The department may specify by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW. [2003 c 53 § 370; 1987 c 380 § 18; 1984 c 60 § 8.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

76.36.110 Penalty for false branding, etc. (Effective July 1, 2004.) Every person is guilty of a gross misdemeanor:

(1) Except boom companies organized as corporations for the purpose of catching or reclaiming and holding or disposing of forest products for the benefit of the owners, and authorized to do business under the laws of this state, who has or takes in tow or into custody or possession or under control, without the authorization of the owner of a registered mark or brand thereupon, any forest products or booming equipment having thereupon a mark or brand registered as required by the terms of this chapter, or, with or without such authorization, any forest products or booming equipment which may be branded under the terms of this chapter with a registered mark or brand and having no registered mark or brand impressed thereupon or cut therein; or,

(2) Who impresses upon or cut in any forest products or booming equipment a mark or brand that is false, forged or counterfeit; or,

(3) Who interferes with, prevents, or obstructs the owner of any registered mark or brand, or his or her duly authorized agent or representative, entering into or upon any tidelands, marshes or beaches of this state or any mill, mill site, mill yard or mill boom or rafting or storage grounds or any forest products or any raft or boom thereof for the purpose of searching for forest products and booming equipment having impressed thereupon a registered mark or brand belonging to him or her or retaking any forest products or booming equipment so found by him or her; or,

(4) Who impresses or cuts a catch brand that is not registered under the terms of this chapter upon or into any forest products or booming equipment upon which there is a registered mark or brand as authorized by the terms of this chapter or a catch brand, whether registered or not, upon any forest products or booming equipment that was not purchased or lawfully acquired by him or her from the owner. [2003 c 53 § 371; 1994 c 163 § 1; 1984 c 60 § 6; 1925 ex.s. c 154 § 11; RRS § 8381-11. Prior: 1890 p 112 § 8.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

76.36.120 Forgery of mark, etc.—Penalty. (Effective July 1, 2004.) Every person is guilty of a class B felony punishable according to chapter 9A.20 RCW who, with an intent to injure or defraud the owner:

(1) Shall falsely make, forge or counterfeit a mark or brand registered as herein provided and use it in marking or branding forest products or booming equipment; or,

(2) Shall cut out, destroy, alter, deface, or obliterate any registered mark or brand impressed upon or cut into any forest products or booming equipment; or,

(3) Shall sell, encumber or otherwise dispose of or deal in, or appropriate to his or her own use, any forest products or booming equipment having impressed thereupon a mark or brand registered as required by the terms of this chapter; or

(4) Shall buy or otherwise acquire or deal in any forest products or booming equipment having impressed thereupon a registered mark or brand. [2003 c 53 § 372; 1925 ex.s. c 154 § 12; RRS § 8381-12. Prior: 1890 p 111 §§ 6, 7.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 76.42 RCW

WOOD DEBRIS—REMOVAL FROM NAVIGABLE WATERS

Sections

76.42.060 Navigable waters—Unlawful to deposit wood debris into—Exception.

76.42.060 Navigable waters—Unlawful to deposit wood debris into—Exception. It shall be unlawful to dispose of wood debris by depositing such material into any of the navigable waters of this state, except as authorized by law including any discharge or deposit allowed to be made under and in compliance with chapter 90.48 RCW and any rules duly adopted thereunder or any deposit allowed to be made under and in compliance with chapter 76.09 or 77.85 RCW and any rules duly adopted under those chapters. Violation of this section shall be a misdemeanor. [2003 c 39 § 37; 1999 sp.s. c 4 § 601; 1973 c 136 § 7.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Chapter 76.48 RCW

SPECIALIZED FOREST PRODUCTS

Sections

76.48.120 False, fraudulent, stolen or forged specialized forest products permit, sales invoice, bill of lading, etc.—Penalty. (Effective July 1, 2004.)

76.48.120 False, fraudulent, stolen or forged specialized forest products permit, sales invoice, bill of lading, etc.—Penalty. (Effective July 1, 2004.) (1) It is unlawful for any person, upon official inquiry, investigation, or other authorized proceedings, to offer as genuine any paper, document, or other instrument in writing purporting to be a specialized forest products permit, or true copy thereof, authorization, sales invoice, or bill of lading, or to make any representation of authority to possess or conduct harvesting or transporting of specialized forest products, knowing the same to be in any manner false, fraudulent, forged, or stolen.

(2) Any person who knowingly or intentionally violates this section is guilty of a class C felony punishable by imprisonment in a state correctional institution for a maximum term fixed by the court of not more than five years or by a fine of not more than five thousand dollars, or by both imprisonment and fine.

(3) Whenever any law enforcement officer reasonably suspects that a specialized forest products permit or true copy thereof, authorization, sales invoice, or bill of lading is forged, fraudulent, or stolen, it may be retained by the officer until its authenticity can be verified. [2003 c 53 § 373; 1995 c 366 § 12; 1979 ex.s. c 94 § 14; 1977 ex.s. c 147 § 9; 1967 ex.s. c 47 § 13.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1995 c 366: See note following RCW 76.48.020.

Title 77

FISH AND WILDLIFE

Chapters

77.08	General terms defined.
77.12	Powers and duties.
77.15	Fish and wildlife enforcement code.
77.32	Licenses.
77.36	Wildlife damage.
77.55	Construction projects in state waters.
77.65	Food fish and shellfish—Commercial licenses.
77.70	License limitation programs.
77.85	Salmon recovery.
77.105	Recreational salmon and marine fish enhancement program.

Chapter 77.08 RCW

GENERAL TERMS DEFINED

Sections

77.08.010 Definitions.

77.08.010 Definitions. As used in this title or rules adopted under this title, unless the context clearly requires otherwise:

- (1) "Director" means the director of fish and wildlife.
- (2) "Department" means the department of fish and wildlife.
- (3) "Commission" means the state fish and wildlife commission.
- (4) "Person" means and includes an individual; a corporation; a public or private entity or organization; a local, state, or federal agency; all business organizations, including corporations and partnerships; or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.
- (5) "Fish and wildlife officer" means a person appointed and commissioned by the director, with authority to enforce this title and rules adopted pursuant to this title, and other statutes as prescribed by the legislature. Fish and wildlife officer includes a person commissioned before June 11, 1998, as a wildlife agent or a fisheries patrol officer.
- (6) "Ex officio fish and wildlife officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fish and wildlife officer" includes special agents of the national marine fisheries service, state parks commissioned officers, United States fish and wildlife special agents, department of natural

resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(7) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.

(8) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(9) "To fish," "to harvest," and "to take," and their derivatives means an effort to kill, injure, harass, or catch a fish or shellfish.

(10) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission. "Open season" includes the first and last days of the established time.

(11) "Closed season" means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. "Closed season" also means all hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission as an open season.

(12) "Closed area" means a place where the hunting of some or all species of wild animals or wild birds is prohibited.

(13) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing or harvesting is prohibited.

(14) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(15) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(16) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, old world rats and mice of the family Muridae of the order Rodentia, or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

(17) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state and the species *Rana catesbeiana* (bullfrog). The term "wild animal" does not include feral domestic mammals or old world rats and mice of the family Muridae of the order Rodentia.

(18) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(19) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(20) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(21) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(22) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(23) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(24) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(25) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(26) "Game farm" means property on which wildlife is held or raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(27) "Person of disability" means a permanently disabled person who is not ambulatory without the assistance of a wheelchair, crutches, or similar devices.

(28) "Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

(29) "Raffle" means an activity in which tickets bearing an individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle.

(30) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting.

(31) "Senior" means a person seventy years old or older.

(32) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(33) "Saltwater" means those marine waters seaward of river mouths.

(34) "Freshwater" means all waters not defined as saltwater including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(35) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(36) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(37) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(38) "Resident" means a person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, and who is not licensed to hunt or fish as a resident in another state.

(39) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(40) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(41) "Commercial" means related to or connected with buying, selling, or bartering.

(42) "To process" and its derivatives mean preparing or preserving fish, wildlife, or shellfish.

(43) "Personal use" means for the private use of the individual taking the fish or shellfish and not for sale or barter.

(44) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.

(45) "Fishery" means the taking of one or more particular species of fish or shellfish with particular gear in a particular geographical area.

(46) "Limited-entry license" means a license subject to a license limitation program established in chapter 77.70 RCW.

(47) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

(48) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.

(49) "Invasive species" means a plant species or a nonnative animal species that either:

(a) Causes or may cause displacement of, or otherwise threatens, native species in their natural communities;

(b) Threatens or may threaten natural resources or their use in the state;

(c) Causes or may cause economic damage to commercial or recreational activities that are dependent upon state waters; or

(d) Threatens or harms human health.

(50) "Prohibited aquatic animal species" means an invasive species of the animal kingdom that has been classified as a prohibited aquatic animal species by the commission.

(51) "Regulated aquatic animal species" means a potentially invasive species of the animal kingdom that has been classified as a regulated aquatic animal species by the commission.

(52) "Unregulated aquatic animal species" means a nonnative animal species that has been classified as an unregulated aquatic animal species by the commission.

(53) "Unlisted aquatic animal species" means a nonnative animal species that has not been classified as a prohibited aquatic animal species, a regulated aquatic animal species, or an unregulated aquatic animal species by the commission.

(54) "Aquatic plant species" means an emergent, submersed, partially submersed, free-floating, or floating-leaving plant species that grows in or near a body of water or wetland.

(55) "Retail-eligible species" means commercially harvested salmon, crab, and sturgeon. [2003 c 387 § 1; 2002 c 281 § 2; 2001 c 253 § 10; 2000 c 107 § 207; 1998 c 190 § 111; 1996 c 207 § 2; 1993 sp.s. c 2 § 66; 1989 c 297 § 7; 1987 c

506 § 11; 1980 c 78 § 9; 1955 c 36 § 77.08.010. Prior: 1947 c 275 § 9; Rem. Supp. 1947 § 5992-19.]

Purpose—2002 c 281: "The legislature recognizes the potential economic and environmental damage that can occur from the introduction of invasive aquatic species. The purpose of this act is to increase public awareness of invasive aquatic species and enhance the department of fish and wildlife's regulatory capability to address threats posed by these species." [2002 c 281 § 1.]

Intent—1996 c 207: "It is the intent of the legislature to clarify hunting and fishing laws in light of the decision in *State v. Bailey*, 77 Wn. App. 732 (1995). The fish and wildlife commission has the authority to establish hunting and fishing seasons. These seasons are defined by limiting the times, manners of taking, and places or waters for lawful hunting, fishing, or possession of game animals, game birds, or game fish, as well as by limiting the physical characteristics of the game animals, game birds, or game fish which may be lawfully taken at those times, in those manners, and at those places or waters." [1996 c 207 § 1.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Chapter 77.12 RCW POWERS AND DUTIES

Sections

77.12.065	Wildlife viewing tourism.
77.12.150	Game seasons—Opening and closing—Special hunt.
77.12.170	State wildlife fund—Deposits.
77.12.755	Ranked inventory of fish passage barriers.
77.12.880	Wildlife program management.

77.12.065 Wildlife viewing tourism. The department shall manage wildlife programs in a manner that provides for public opportunities to view wildlife and supports wildlife viewing tourism without impairing the state's wildlife resources. [2003 c 183 § 1.]

77.12.150 Game seasons—Opening and closing—Special hunt. (1) By emergency rule only, and in accordance with criteria established by the commission, the director may close or shorten a season for game animals, game birds, or game fish, and after a season has been closed or shortened, may reopen it and reestablish bag limits on game animals, game birds, or game fish during that season. The director shall advise the commission of the adoption of emergency rules. A copy of an emergency rule, certified as a true copy by the director or by a person authorized in writing by the director to make the certification, is admissible in court as prima facie evidence of the adoption and validity of the rule.

(2)(a) If the director finds that game animals have increased in numbers in an area of the state so that they are damaging public or private property or over-utilizing their habitat, the commission may establish a special hunting season and designate the time, area, and manner of taking and the number and sex of the animals that may be killed or possessed by a licensed hunter. The director shall include notice of the special season in the rules establishing open seasons.

(b) When the department receives six complaints concerning damage to commercial agricultural and horticultural crop production by wildlife from the owner or tenant of real property, or from several owners or tenants in a locale, the

commission shall conduct a special hunt or special hunts or take remedial action to reduce the potential for the damage, and shall authorize either one or two permits per hunter. Each complaint must be confirmed by qualified department staff, or their designee.

(c) The director shall determine by random selection the identity of hunters who may hunt within the area of the special hunt and shall determine the conditions and requirements of the selection process. Within this process, the department must maintain a list of all persons holding valid wildlife hunting licenses, arranged by county of residence, who may hunt deer or elk that are causing damage to crops. The department must update the list annually and utilize the list when contacting persons to assist in controlling game damage to crops. The department must make all reasonable efforts to contact individuals residing within the county where the hunting of deer or elk will occur before contacting a person who is not a resident of that county. The department must randomize the names of people on the list in order to provide a fair distribution of the hunting opportunities. Hunters who participate in hunts under this section must report any kills to the department. The department must include a summary of the wildlife harvested in these hunts in the annual game management reports it makes available to the public. [2003 c 385 § 2; 1987 c 506 § 24; 1984 c 240 § 4; 1980 c 78 § 29; 1977 ex.s. c 58 § 1; 1975 1st ex.s. c 102 § 1; 1955 c 36 § 77.12.150. Prior: 1949 c 205 § 2; 1947 c 275 § 25; Rem. Supp. 1949 § 5992-35.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Special hunting season permits: RCW 77.32.370.

77.12.170 State wildlife fund—Deposits. (1) There is established in the state treasury the state wildlife fund which consists of moneys received from:

- (a) Rentals or concessions of the department;
- (b) The sale of real or personal property held for department purposes;
- (c) The sale of licenses, permits, tags, and stamps required by chapter 77.32 RCW and RCW 77.65.490, except annual resident adult saltwater and all shellfish licenses, which shall be deposited into the state general fund;
- (d) Fees for informational materials published by the department;
- (e) Fees for personalized vehicle license plates as provided in chapter 46.16 RCW;
- (f) Articles or wildlife sold by the director under this title;
- (g) Compensation for damage to department property or wildlife losses or contributions, gifts, or grants received under RCW 77.12.320;
- (h) Excise tax on anadromous game fish collected under chapter 82.27 RCW;
- (i) The sale of personal property seized by the department for fish, shellfish, or wildlife violations;
- (j) The department's share of revenues from auctions and raffles authorized by the commission; and
- (k) The sale of watchable wildlife decals under RCW 77.32.560.

(2) State and county officers receiving any moneys listed in subsection (1) of this section shall deposit them in the state treasury to be credited to the state wildlife fund. [2003 c 317 § 3; 2001 c 253 § 15; 2000 c 107 § 216. Prior: 1998 c 191 § 38; 1998 c 87 § 2; 1996 c 101 § 7; 1989 c 314 § 4; 1987 c 506 § 25; 1984 c 258 § 334; prior: 1983 1st ex.s. c 8 § 2; 1983 c 284 § 1; 1981 c 310 § 2; 1980 c 78 § 30; 1979 c 56 § 1; 1973 1st ex.s. c 200 § 12 (Referendum Bill No. 33); 1969 ex.s. c 199 § 33; 1955 c 36 § 77.12.170; prior: 1947 c 275 § 27; Rem. Supp. 1947 § 5992-37.]

Findings—2003 c 317: See note following RCW 77.32.560.

Effective date—1998 c 191: See note following RCW 77.32.400.

Effective date—1998 c 87: See note following RCW 77.32.380.

Findings—1996 c 101: See note following RCW 77.32.530.

Finding—1989 c 314: See note following RCW 77.15.098.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

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

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

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—1981 c 310: "(1) Sections 9 and 10 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1981.

(2) Section 13 of this act shall take effect on May 1, 1982.

(3) Sections 8, 11, 12, and 14 of this act shall take effect on July 1, 1982.

(4) All other sections of this act shall take effect on January 1, 1982." [1981 c 310 § 32.]

Legislative intent—1981 c 310: "The legislature finds that abundant deer and elk populations are in the best interest of the state, and for many reasons the state's deer and elk populations have apparently declined. The legislature further finds that antlerless deer and elk seasons have been an issue of great controversy throughout the state, and that antlerless deer and elk seasons may contribute to a further decline in the state's deer and elk populations." [1981 c 310 § 1.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.755 Ranked inventory of fish passage barriers.

In coordination with the department of natural resources and lead entity groups, the department must establish a ranked inventory of fish passage barriers on land owned by small forest landowners based on the principle of fixing the worst first within a watershed consistent with the fish passage priorities of the forest and fish report. The department shall first gather and synthesize all available existing information about the locations and impacts of fish passage barriers in Washington. This information must include, but not be limited to, the most recently available limiting factors analysis conducted pursuant to RCW 77.85.060(2), the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHIAP), and any comparable science-based assessment when available. The inventory of fish passage barriers must be kept current and at a minimum be updated by the beginning of each calendar year. Nothing in this section grants the department or others additional right of entry onto private property. [2003 c 311 § 10.]

Findings—Effective date—2003 c 311: See notes following RCW 77.09.020.

77.12.880 Wildlife program management. The department shall manage wildlife programs in a manner that provides for public opportunities to view wildlife and supports nature-based and wildlife viewing tourism without impairing the state's wildlife resources. [2003 c 153 § 3.]

Findings—2003 c 153: See note following RCW 43.330.090.

Chapter 77.15 RCW

FISH AND WILDLIFE ENFORCEMENT CODE

Sections

77.15.075	Enforcement authority of fish and wildlife officers.
77.15.194	Unlawful traps—Penalty. (<i>Effective July 1, 2004.</i>)
77.15.196	Unlawful poison—Penalty. (<i>Effective July 1, 2004.</i>)
77.15.198	Violation of RCW 77.15.194 or 77.15.196—Penalty. (<i>Effective July 1, 2004.</i>)
77.15.310	Unlawful failure to use or maintain approved fish guard on water diversion device—Penalty.
77.15.552	Qualifying commercial fishing violations.
77.15.554	License suspension review committee.
77.15.568	Retail fish seller's failure to account for commercial harvest—Penalty.
77.15.700	Grounds for department revocation and suspension of privileges.

77.15.075 Enforcement authority of fish and wildlife officers. (1) Fish and wildlife officers and ex officio fish and wildlife officers shall enforce this title, rules of the department, and other statutes as prescribed by the legislature. Fish and wildlife officers who are not ex officio officers shall have and exercise, throughout the state, such police powers and duties as are vested in sheriffs and peace officers generally. An applicant for a fish and wildlife officer position must be a citizen of the United States of America who can read and write the English language. All fish and wildlife officers employed after June 13, 2002, must successfully complete the basic law enforcement academy course, known as the basic course, sponsored by the criminal justice training commission, or the basic law enforcement equivalency certification, known as the equivalency course, provided by the criminal justice training commission. All officers employed on June 13, 2002, must have successfully completed the basic course, the equivalency course, or the supplemental course in criminal law enforcement, known as the supplemental course, offered under chapter 155, Laws of 1985. Any officer who has not successfully completed the basic course, the equivalency course, or the supplemental course must complete the basic course or the equivalency course within fifteen months of June 13, 2002.

(2) Fish and wildlife officers are peace officers.

(3) Any liability or claim of liability under chapter 4.92 RCW that arises out of the exercise or alleged exercise of authority by a fish and wildlife officer rests with the department unless the fish and wildlife officer acts under the direction and control of another agency or unless the liability is otherwise assumed under an agreement between the department and another agency.

(4) Fish and wildlife officers may serve and execute warrants and processes issued by the courts. [2003 c 388 § 3; 2002 c 128 § 4; 2000 c 107 § 212; 1998 c 190 § 112; 1993 sp.s. c 2 § 67; 1988 c 36 § 50; 1987 c 506 § 16; 1985 c 155 § 2; 1980 c 78 § 17. Formerly RCW 77.12.055.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.15.194 Unlawful traps—Penalty. (Effective July 1, 2004.) (1) It is unlawful to use or authorize the use of any steel-jawed leghold trap, neck snare, or other body-gripping trap to capture any mammal for recreation or commerce in fur.

(2) It is unlawful to knowingly buy, sell, barter, or otherwise exchange, or offer to buy, sell, barter, or otherwise exchange the raw fur of a mammal or a mammal that has been trapped in this state with a steel-jawed leghold trap or any other body-gripping trap, whether or not pursuant to permit.

(3) It is unlawful to use or authorize the use of any steel-jawed leghold trap or any other body-gripping trap to capture any animal, except as provided in subsections (4) and (5) of this section.

(4) Nothing in this section prohibits the use of a Conibear trap in water, a padded leghold trap, or a nonstrangling type foot snare with a special permit granted by the director under (a) through (d) of this subsection. Issuance of the special permits shall be governed by rules adopted by the department and in accordance with the requirements of this section. Every person granted a special permit to use a trap or device listed in this subsection shall check the trap or device at least every twenty-four hours.

(a) Nothing in this section prohibits the director, in consultation with the department of social and health services or the United States department of health and human services from granting a permit to use traps listed in this subsection for the purpose of protecting people from threats to their health and safety.

(b) Nothing in this section prohibits the director from granting a special permit to use traps listed in this subsection to a person who applies for such a permit in writing, and who establishes that there exists on a property an animal problem that has not been and cannot be reasonably abated by the use of nonlethal control tools, including but not limited to guard animals, electric fencing, or box and cage traps, or if such nonlethal means cannot be reasonably applied. Upon making a finding in writing that the animal problem has not been and cannot be reasonably abated by nonlethal control tools or if the tools cannot be reasonably applied, the director may authorize the use, setting, placing, or maintenance of the traps for a period not to exceed thirty days.

(c) Nothing in this section prohibits the director from granting a special permit to department employees or agents to use traps listed in this subsection where the use of the traps is the only practical means of protecting threatened or endangered species as designated under RCW 77.08.010.

(d) Nothing in this section prohibits the director from issuing a permit to use traps listed in this subsection, excluding Conibear traps, for the conduct of legitimate wildlife research.

(5) Nothing in this section prohibits the United States fish and wildlife service, its employees or agents, from using a trap listed in subsection (4) of this section where the fish and wildlife service determines, in consultation with the

director, that the use of such traps is necessary to protect species listed as threatened or endangered under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.).

(6) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 374; 2001 c 1 § 3 (Initiative Measure No. 713, approved November 7, 2000).]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Severability—2001 c 1 (Initiative Measure No. 713): See notes following RCW 77.15.192.

77.15.196 Unlawful poison—Penalty. (Effective July 1, 2004.) (1) It is unlawful to poison or attempt to poison any animal using sodium fluoroacetate, also known as compound 1080, or sodium cyanide.

(2) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 375; 2001 c 1 § 4 (Initiative Measure No. 713, approved November 7, 2000).]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Severability—2001 c 1 (Initiative Measure No. 713): See notes following RCW 77.15.192.

77.15.198 Violation of RCW 77.15.194 or 77.15.196—Penalty. (Effective July 1, 2004.) In addition to appropriate criminal penalties, the director shall revoke the trapping license of any person convicted of a violation of RCW 77.15.194 or 77.15.196. The director shall not issue the violator a trapping license for a period of five years following the revocation. Following a subsequent conviction for a violation of RCW 77.15.194 or 77.15.196 by the same person, the director shall not issue a trapping license to the person at any time. [2003 c 53 § 376; 2001 c 1 § 5 (Initiative Measure No. 713, approved November 7, 2000).]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Severability—2001 c 1 (Initiative Measure No. 713): See notes following RCW 77.15.192.

77.15.310 Unlawful failure to use or maintain approved fish guard on water diversion device—Penalty.

(1) A person is guilty of unlawful failure to use or maintain an approved fish guard on a diversion device if the person owns, controls, or operates a device used for diverting or conducting water from a lake, river, or stream and:

(a) The device is not equipped with a fish guard, screen, or bypass approved by the director as required by RCW 77.55.040 or 77.55.320; or

(b) The person knowingly fails to maintain or operate an approved fish guard, screen, or bypass so as to effectively screen or prevent fish from entering the intake.

(2) Unlawful failure to use or maintain an approved fish guard, screen, or bypass on a diversion device is a gross misdemeanor. Following written notification to the person from the department that there is a violation, each day that a diversion device is operated without an approved or maintained fish guard, screen, or bypass is a separate offense. [2003 c 39 § 38; 2000 c 107 § 240; 1998 c 190 § 53.]

77.15.552 Qualifying commercial fishing violations.

(1) If a person is convicted of two or more qualifying com-

mercial fishing violations within a three-year period, the person's privileges to participate in the commercial fishery to which the violations applied may be suspended by the director for up to one year. A commercial fishery license that is suspended under this section may not be transferred after the director issues a notice of suspension, or used by an alternative operator or transferred during the period of suspension, if the person who is the subject of the suspension notice is the person who owns the commercial fishery license.

(2) For the purposes of this section only, "qualifying commercial fishing violation" means either:

(a) A conviction under RCW 77.15.500, 77.15.510, 77.15.520, 77.15.530, 77.15.550(1)(a), 77.15.570, 77.15.580, or 77.15.590;

(b) A gross misdemeanor or felony involving commercial fish harvesting, buying, or selling that is unlawful under the terms of the license, this title, or the rules issued pursuant to this title, if the quantity of unlawfully harvested, possessed, bought, or sold fish, other than shellfish, groundfish, or coastal pelagic species of baitfish totals greater than six percent, by weight, of the harvest available for inspection at the time of citation and the cumulative value of the unlawfully harvested fish is more than two hundred fifty dollars at the time of citation;

(c) A gross misdemeanor or felony involving commercial groundfish or coastal pelagic baitfish harvest, buying, or selling that is unlawful under the terms of the license, this title, or the rules issued under this title, if: (i) The quantity of unlawfully harvested, possessed, bought, or sold groundfish or coastal pelagic baitfish totals greater than ten percent, by weight, of the harvest available for inspection at the time of citation and has a cumulative value greater than five hundred dollars; or (ii) the quantity, by weight, of the unlawfully commercially harvested groundfish or coastal pelagic baitfish is ten percent greater than the landing allowances provided under rules adopted by the department for species categorized as over-fished by the national marine fisheries service; or

(d) A gross misdemeanor or felony involving commercial shellfish harvesting, buying, or selling that is unlawful under the terms of the license, this title, or the rules issued pursuant to this title, if the quantity of unlawfully harvested, possessed, bought, or sold shellfish: (i) Totals greater than six percent of the harvest available for inspection at the time of citation; and (ii) totals fifty or more individual shellfish.

(3)(a) The director may refer a person convicted of one qualifying commercial fishing violation to the license suspension review committee if the director feels that the qualifying commercial fishing violation was of a severe enough magnitude to justify suspension of the individual's license renewal privileges.

(b) The director may refer any person convicted of one egregious shellfish violation to the license suspension review committee.

(c) For the purposes of this section only, "egregious shellfish violation" means a gross misdemeanor or felony involving commercial shellfish harvesting, buying, or selling that is unlawful under the terms of the license, this title, or the rules issued pursuant to this title, if the quantity of unlawfully harvested, possessed, bought, or sold shellfish: (i) Totals more than twenty percent of the harvest available for inspec-

tion at the time of citation; (ii) totals five hundred or more individual shellfish; and (iii) is valued at two thousand five hundred dollars or more.

(4) A person who has a commercial fishing license suspended or revoked under this section may file an appeal with the license suspension review committee pursuant to RCW 77.15.554. An appeal must be filed within thirty-one days of notice of license suspension or revocation. If an appeal is filed, the suspension or revocation issued by the department does not take effect until after the license suspension review committee has delivered an opinion. If no appeal is filed within thirty-one days of notice of license suspension or revocation, the right to an appeal is considered waived. All suspensions ordered under this section take effect either thirty-one days following the conviction for the second qualifying commercial fishing violation, or upon a decision pursuant to RCW 77.15.554, whichever is later.

(5) A fishing privilege suspended under this section is in addition to the statutory penalties assigned to the underlying crime.

(6) For the purposes of this section only, the burden is on the state to show the dollar amount or the percent of a harvest that is comprised of unlawfully harvested, bought, or sold individual fish or shellfish. [2003 c 386 § 3.]

Findings—Intent—2003 c 386: See note following RCW 77.15.700.

77.15.554 License suspension review committee. (1) The license suspension review committee is created. The license suspension review committee may only hear appeals from commercial fishers who have had a license revoked or suspended pursuant to RCW 77.15.552.

(2)(a) The license suspension review committee is composed of five voting members and up to four alternates.

(b) Two of the members must be appointed by the director and may be department employees.

(c) Three members, and up to four alternates, must be peer-group members, who are individuals owning a commercial fishing license issued by the department. If a peer-group member appears before the license suspension review committee because of a qualifying commercial fishing violation, the member must recuse himself or herself from the proceedings relating to that violation. No two voting peer-group members may reside in the same county. All peer-group members must be appointed by the commission, who may accept recommendations from professional organizations that represent commercial fishing interests or from the legislative authority of any Washington county.

(d) All license suspension review committee members serve a two-year renewable term.

(e) The commission may develop minimum member standards for service on the license suspension review committee, and standards for terminating a member before the expiration of his or her term.

(3) The license suspension review committee must convene and deliver an opinion on a license renewal suspension within three months of appeal or of referral from the department. The director shall consider the committee's opinion and make a decision and may issue, not issue, or modify the license suspension.

(4) The license suspension review committee shall collect the information and hear the testimony that it feels neces-

sary to deliver an opinion on the proper length, if any, of a suspension of a commercial license. The opinion may be based on extenuating circumstances presented by the individual convicted of the qualifying commercial fishing violation or considerations of the type and magnitude of violations that have been committed by the individual. The maximum length of any suspension may not exceed one year.

(5) All opinions of the license suspension review committee must be by a majority vote of all voting members. Alternate committee members may only vote when one of the voting members is unavailable, has been recused, or has decided not to vote on the case before the committee. Non-voting alternates may be present and may participate at all license suspension review committee meetings.

(6) Members of the license suspension review committee serve as volunteers, and are not eligible for compensation other than travel expenses pursuant to RCW 43.03.050 and 43.03.060.

(7) Staff of the license suspension review committee must be provided by the department. [2003 c 386 § 4.]

Findings—Intent—2003 c 386: See note following RCW 77.15.700.

77.15.568 Retail fish seller's failure to account for commercial harvest—Penalty. Since violation of rules of the department relating to the accounting of the commercial harvest of food fish, commercialized game fish, and shellfish result in damage to the resources of the state, persons selling such fish and shellfish at retail, including but not limited to stores, markets, and restaurants, must maintain sufficient records for the department to be able to ascertain the origin of the fish and shellfish in their possession.

(1) A retail fish seller is guilty of retail fish seller's failure to account for commercial harvest if the retail seller sells fish or shellfish at retail, the fish or shellfish were required to be entered on a Washington state fish receiving ticket, the seller is not a wholesale fish dealer or fisher selling under a direct retail sale endorsement, and the seller fails to maintain sufficient records at the location where the fish or shellfish are being sold to determine the following:

(a) The name of the wholesale fish dealer or fisher selling under a direct retail sale endorsement from whom the fish were purchased;

(b) The wholesale fish dealer's license number or the number of the fisher's sale under a direct retail sale endorsement;

(c) The fish receiving ticket number documenting original receipt, if known;

(d) The date of purchase; and

(e) The amount of fish or shellfish originally purchased from the wholesale dealer or fisher selling under a direct retail sale endorsement.

(2) A retail fish seller's failure to account for commercial harvest is a misdemeanor. [2003 c 336 § 1.]

77.15.700 Grounds for department revocation and suspension of privileges. The department shall impose revocation and suspension of privileges upon conviction in the following circumstances:

(1) If directed by statute for an offense;

(2) If the department finds that actions of the defendant demonstrated a willful or wanton disregard for conservation of fish or wildlife. Such suspension of privileges may be permanent. This subsection (2) does not apply to violations involving commercial fishing;

(3) If a person is convicted twice within ten years for a violation involving unlawful hunting, killing, or possessing big game, the department shall order revocation and suspension of all hunting privileges for two years. RCW 77.12.722 or *77.16.050 as it existed before June 11, 1998, may comprise one of the convictions constituting the basis for revocation and suspension under this subsection;

(4) If a person is convicted three times in ten years of any violation of recreational hunting or fishing laws or rules, the department shall order a revocation and suspension of all recreational hunting and fishing privileges for two years. [2003 c 386 § 2; 2001 c 253 § 46; 1998 c 190 § 66.]

***Reviser's note:** RCW 77.16.050 was repealed by 1998 c 190 § 124.

Findings—Intent—2003 c 386: "(1)(a) The legislature finds that existing law as it relates to the suspension of commercial fishing licenses does not take into account the real-life circumstances faced by the state's commercial fishing fleets. The nature of the commercial fishing industry, together with the complexity of fisheries regulations, is such that honest mistakes can be made by well-meaning and otherwise law-abiding fishers. Commercial fishing violations that occur within an acceptable margin of error should not result in the suspension of fishing privileges. Likewise, fishers facing the possibility of license suspension or revocation deserve the opportunity to explain any extenuating circumstances prior to having his or her professional privileges suspended.

(b) The legislature intends, by creating the license suspension review committee, to provide a fisher with the opportunity to explain any extenuating circumstances that led to a commercial fishing violation. The legislature intends for the license suspension review committee to give serious considerations to the case-specific facts and scenarios leading up to a violation, and for license suspensions to issue only when the facts indicate a willful act that undermines the conservation of fish stocks. Frivolous violations should not result in the suspension of privileges, and should be punished only by the criminal sanctions attached to the underlying crime.

(2)(a) The legislature further finds that gross abuses of fish stocks should not be tolerated. Individuals convicted of even one violation that is egregious in nature, causing serious detriment to a fishery or the competitive disposition of other fishers, should have his or her license suspended and revoked.

(b) The legislature intends for the license suspension review committee to take egregious fisheries' violations seriously. When dealing with individuals convicted of only one violation, the license suspension review committee should only consider suspension for individuals that are convicted of violations that are of a severe magnitude and show a wanton disregard for the public's resource." [2003 c 386 § 1.]

Chapter 77.32 RCW

LICENSES

Sections

77.32.050	Recreational licenses, permits, tags, stamps, and raffle tickets issued by authorized officials—Rules—Fees—Transaction fee.
77.32.256	Duplicate licenses, rebates, permits, tags, and stamps—Fees. (<i>Effective April 1, 2004.</i>)
77.32.380	Fish and wildlife lands vehicle use permit—Improved access facility—Fee—Youth groups—Display—Transfer between vehicles—Penalty.
77.32.430	Catch record cards. (<i>Effective April 1, 2004.</i>)
77.32.470	Personal use fishing licenses—Fees—Temporary fishing license—Family fishing weekend license—Rules.
77.32.555	Surcharge to fund biotoxin testing and monitoring.
77.32.560	Watchable wildlife decals.

77.32.050 Recreational licenses, permits, tags, stamps, and raffle tickets issued by authorized officials—

Rules—Fees—Transaction fee. All recreational licenses, permits, tags, and stamps required by this title and raffle tickets authorized under chapter 77.12 RCW shall be issued under the authority of the commission. The commission shall adopt rules for the issuance of recreational licenses, permits, tags, stamps, and raffle tickets, and for the collection, payment, and handling of license fees, terms and conditions to govern dealers, and dealers' fees. A transaction fee on recreational documents issued through an automated licensing system may be set by the commission and collected from licensees. The department may authorize all or part of such fee to be paid directly to a contractor providing automated licensing system services. Fees retained by dealers shall be uniform throughout the state. The department shall authorize dealers to collect and retain dealer fees of at least two dollars for purchase of a standard hunting or fishing recreational license document, except that the commission may set a lower dealer fee for issuance of tags or when a licensee buys a license that involves a stamp or display card format rather than a standard department licensing document form. [2003 c 389 § 1; 2000 c 107 § 266; 1999 c 243 § 2; 1998 c 191 § 10; 1996 c 101 § 8; 1995 c 116 § 1; 1987 c 506 § 77; 1981 c 310 § 16; 1980 c 78 § 106; 1979 ex.s. c 3 § 2; 1955 c 36 § 77.32.050. Prior: 1953 c 75 § 2; 1947 c 275 § 97; Rem. Supp. 1947 § 5992-106.]

Finding—1999 c 243: "The legislature finds that recreational license dealers are private businesses that provide the service of license sales in every part of the state. The dealers who sell recreational fishing and hunting licenses for the department of fish and wildlife perform a valuable public service function for those members of the public who purchase licenses as well as a revenue generating function for the department. The modernized fishing and hunting license format will require additional investments by license dealers in employee training and public education." [1999 c 243 § 1.]

Effective date—1999 c 243: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 1999]." [1999 c 243 § 4.]

Effective date—1998 c 191: "Sections 10, 24, 31 through 33, 37, 43, and 45 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 27, 1998]." [1998 c 191 § 49.]

Findings—1996 c 101: See note following RCW 77.32.530.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.256 Duplicate licenses, rebates, permits, tags, and stamps—Fees. (Effective April 1, 2004.) The director shall by rule establish the conditions and fees for issuance of duplicate licenses, rebates, permits, tags, and stamps required by this chapter. The fee for duplicate licenses, rebates, permits, tags, and stamps, except catch record cards, may not exceed the actual cost to the department for issuing the duplicate. [2003 c 318 § 2; 2002 c 222 § 1; 1995 c 116 § 6; 1994 c 255 § 13; 1991 sp.s. c 7 § 7; 1987 c 506 § 86; 1985 c 464 § 7; 1981 c 310 § 30; 1980 c 78 § 121; 1975 1st ex.s. c 15 § 32.]

Effective date—2003 c 318: See note following RCW 77.32.430.

Effective date—1994 c 255 §§ 1-13: See note following RCW 77.32.520.

Effective date—1991 sp.s. c 7: See note following RCW 77.65.450.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.191.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.65.450.

77.32.380 Fish and wildlife lands vehicle use permit—Improved access facility—Fee—Youth groups—Display—Transfer between vehicles—Penalty. (1) Persons who enter upon or use clearly identified department improved access facilities with a motor vehicle may be required to display a current annual fish and wildlife lands vehicle use permit on the motor vehicle while within or while using an improved access facility. An "improved access facility" is a clearly identified area specifically created for motor vehicle parking, and includes any boat launch or boat ramp associated with the parking area, but does not include the department parking facilities at the Gorge Concert Center near George, Washington. One vehicle use permit shall be issued at no charge with an initial purchase of either an annual saltwater, freshwater, combination, small game hunting, big game hunting, or trapping license, or a watchable wildlife decal, issued by the department. The annual fee for a fish and wildlife lands vehicle use permit, if purchased separately, is ten dollars. A person to whom the department has issued a vehicle use permit or who has purchased a vehicle use permit separately may purchase additional vehicle use permits from the department at a cost of five dollars per vehicle use permit. Revenue derived from the sale of fish and wildlife lands vehicle use permits shall be used solely for the stewardship and maintenance of department improved access facilities.

Youth groups may use department improved access facilities without possessing a vehicle use permit when accompanied by a vehicle use permit holder.

(2) The vehicle use permit must be displayed from the interior of the motor vehicle so that it is clearly visible from outside of the motor vehicle before entering upon or using the motor vehicle on a department improved access facility. The vehicle use permit can be transferred between two vehicles and must contain space for the vehicle license numbers of each vehicle.

(3) Failure to display the fish and wildlife lands vehicle use permit if required by this section is an infraction under chapter 7.84 RCW, and department employees are authorized to issue a notice of infraction to the registered owner of any motor vehicle entering upon or using a department improved access facility without such a vehicle use permit. The penalty for failure to clearly display the vehicle use permit is sixty-six dollars. This penalty is reduced to thirty dollars if the registered owner provides proof to the court that he or she purchased a vehicle use permit within fifteen days after the issuance of the notice of violation. [2003 c 317 § 4; 2001 c 243 § 1; 2000 c 107 § 271; 1998 c 87 § 1; 1993 sp.s. c 2 § 77; 1991 sp.s. c 7 § 12; 1988 c 36 § 52; 1987 c 506 § 90; 1985 c 464 § 11; 1981 c 310 § 15.]

Findings—2003 c 317: See note following RCW 77.32.560.

Effective date—1998 c 87: "This act takes effect January 1, 1999." [1998 c 87 § 3.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Effective date—1991 sp.s. c 7: See note following RCW 77.65.450.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.65.450.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.32.430 Catch record cards. (Effective April 1, 2004.) (1) Catch record cards necessary for proper management of the state's food fish and game fish species and shellfish resources shall be administered under rules adopted by the commission and issued at no charge for the initial catch record card and ten dollars for each subsequent catch record card. A duplicate catch record [card] costs ten dollars.

(2) Catch record cards issued with affixed temporary short-term charter stamp licenses are not subject to the ten-dollar charge as provided in this section. Charter boat or guide operators issuing temporary short-term charter stamp licenses shall affix the stamp to each catch record card issued before fishing commences. Catch record cards issued with a temporary short-term charter stamp are valid for two consecutive days.

(3) The department shall include provisions for recording marked and unmarked salmon in catch record cards issued after March 31, 2004.

(4) The funds received from the sale of catch record cards must be deposited into the wildlife fund. [2003 c 318 § 1; 1998 c 191 § 5; 1989 c 305 § 10. Formerly RCW 75.25.190.]

Effective date—2003 c 318: "This act takes effect April 1, 2004." [2003 c 318 § 3.]

Effective date—1998 c 191: See note following RCW 77.32.400.

77.32.470 Personal use fishing licenses—Fees—Temporary fishing license—Family fishing weekend license—Rules. (1) A personal use saltwater, freshwater, combination, temporary, or family fishing weekend license is required for all persons fifteen years of age or older to fish for or possess fish taken for personal use from state waters or offshore waters.

(2) The fees for annual personal use saltwater, freshwater, or combination licenses are as follows:

(a) A combination license allows the holder to fish for or possess fish, shellfish, and seaweed from state waters or offshore waters. The fee for this license is thirty-six dollars for residents, seventy-two dollars for nonresidents, and five dollars for youth.

(b) A saltwater license allows the holder to fish for or possess fish taken from saltwater areas. The fee for this license is eighteen dollars for residents, thirty-six dollars for nonresidents, and five dollars for resident seniors.

(c) A freshwater license allows the holder to fish for, take, or possess food fish or game fish species in all freshwater areas. The fee for this license is twenty dollars for resi-

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dents, forty dollars for nonresidents, and five dollars for resident seniors.

(3) A temporary fishing license is valid for two consecutive days and allows the holder to fish for or possess fish taken from state waters or offshore waters. The fee for this temporary fishing license is six dollars for both residents and nonresidents. Except for active duty military personnel serving in any branch of the United States armed forces, this license is not valid on game fish species for an eight-consecutive-day period beginning on the opening day of the lowland lake fishing season.

(4) A family fishing weekend license allows for a maximum of six anglers: One resident and five youth; two residents and four youth; or one resident, one nonresident, and four youth. This license allows the holders to fish for or possess fish taken from state waters or offshore waters. The fee for this license is twenty dollars. This license is only valid during periods as specified by rule of the department.

(5) The commission may adopt rules to create and sell combination licenses for all hunting and fishing activities at or below a fee equal to the total cost of the individual license contained within any combination. [2003 c 181 § 1; 1998 c 191 § 16.]

Effective date—2003 c 181: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2003]." [2003 c 181 § 2.]

Effective date—1998 c 191: See note following RCW 77.32.400.

77.32.555 Surcharge to fund biotoxin testing and monitoring. In addition to the fees authorized in this chapter, the department shall include a surcharge to fund biotoxin testing and monitoring by the department of health of beaches used for recreational shellfishing, and to fund monitoring by the Olympic region harmful algal bloom program of the Olympic natural resources center at the University of Washington. A surcharge of three dollars applies to resident and nonresident shellfish and seaweed licenses as authorized by RCW 77.32.520(2) (a) and (b); and a surcharge of two dollars applies to resident and nonresident adult combination licenses as authorized by RCW 77.32.470(2)(a). Amounts collected from these surcharges must be deposited in the general fund—local account managed by the department of health, except that one hundred fifty thousand dollars per year shall be deposited in the general fund—local account managed by the University of Washington.

Amounts in excess of the annual costs of the department of health recreational shellfish testing and monitoring program shall be transferred to the general fund by the department of health. [2003 c 263 § 2.]

Findings—2003 c 263: "The legislature finds that testing and monitoring of beaches used for recreational shellfishing is essential to ensure the health of recreational shellfishers. The legislature also finds that it is essential to have a stable and reliable source of funding for such biotoxin testing and monitoring. The legislature also finds that the cost of the resident and nonresident personal use shellfish and seaweed licenses is undervalued and not properly aligned with neighboring states and provinces." [2003 c 263 § 1.]

Effective date—2003 c 263: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 263 § 4.]

77.32.560 Watchable wildlife decals. (1) The department may sell watchable wildlife decals. Proceeds from the sale of the decal must be deposited into the state wildlife fund created in RCW 77.12.170 and must be dedicated to the support of the department's watchable wildlife activities. The department may also use proceeds from the sale of the decal for marketing the decal and for marketing watchable wildlife activities in the state.

(2) The term "watchable wildlife activities" includes but is not limited to: Initiating partnerships with communities to jointly develop watchable wildlife projects, building infrastructure to serve wildlife viewers, assisting and training communities in conducting wildlife watching events, developing destination wildlife viewing corridors and trails, tours, maps, brochures, and travel aides, and offering grants to assist rural communities in identifying key wildlife attractions and ways to protect and promote them.

(3) The commission must adopt by rule the cost of the watchable wildlife decal. A person may, at their discretion, contribute more than the cost as set by the commission by rule for the watchable wildlife decal in order to support watchable wildlife activities. A person who purchases a watchable wildlife decal must be issued one vehicle use permit free of charge. [2003 c 317 § 2.]

Findings—2003 c 317: "The legislature finds that healthy wildlife populations significantly contribute to the economic vitality of Washington's rural areas through increased opportunities for watchable wildlife and related tourism. Travel related to watchable wildlife is one of the fastest growing segments of the travel industry. Much of this travel occurs off-season, creating jobs and providing revenue to local businesses and governments during otherwise slow periods. The watchable wildlife industry is particularly important to Washington's rural economies.

The legislature also finds that it is vital to support programs that enhance watchable wildlife activities and tourism, while also protecting the wildlife resources that attract the viewers. A revenue source must be created and directed to the watchable wildlife programs of the department of fish and wildlife to develop watchable wildlife opportunities in cooperation with other local, state, and federal agencies, and nongovernmental organizations." [2003 c 317 § 1.]

Chapter 77.36 RCW WILDLIFE DAMAGE

Sections

77.36.020 Game damage control—Special hunt/remedial action.

77.36.020 Game damage control—Special hunt/remedial action. The department shall work closely with landowners and tenants suffering game damage problems to control damage without killing the animals when practical, to increase the harvest of damage-causing animals in hunting seasons, and to kill the animals when no other practical means of damage control is feasible.

If the department receives recurring complaints regarding property being damaged as described in this section or RCW 77.36.030 from the owner or tenant of real property, or receives such complaints from several such owners or tenants in a locale, the commission shall conduct a special hunt or special hunts or take remedial action to reduce the potential for such damage. The commission shall authorize either one or two antlerless permits per hunter for special hunts held in damage areas where qualified department staff, or their designee, have confirmed six incidents of crop damage by deer or elk.

As an alternative to hunting, the department shall work with affected entities to relocate deer and elk when needed to augment existing herds. [2003 c 385 § 1; 1996 c 54 § 3.]

Chapter 77.55 RCW

CONSTRUCTION PROJECTS IN STATE WATERS

Sections

77.55.060 Fishways required in dams, obstructions—Penalties, remedies for failure.
77.55.100 Hydraulic projects or other work—Plans and specifications—Permits—Approval—Emergencies—Tide gates.
77.55.170 Hydraulic appeals board—Members—Jurisdiction—Procedures.
77.55.370 "Tide gate" defined.

77.55.060 Fishways required in dams, obstructions—Penalties, remedies for failure. (1) Subject to subsection (3) of this section, a dam or other obstruction across or in a stream shall be provided with a durable and efficient fishway approved by the director. Plans and specifications shall be provided to the department prior to the director's approval. The fishway shall be maintained in an effective condition and continuously supplied with sufficient water to freely pass fish.

(2) If a person fails to construct and maintain a fishway or to remove the dam or obstruction in a manner satisfactory to the director, then within thirty days after written notice to comply has been served upon the owner, his or her agent, or the person in charge, the director may construct a fishway or remove the dam or obstruction. Expenses incurred by the department constitute the value of a lien upon the dam and upon the personal property of the person owning the dam. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the dam or obstruction is situated. The lien may be foreclosed in an action brought in the name of the state.

If, within thirty days after notice to construct a fishway or remove a dam or obstruction, the owner, his or her agent, or the person in charge fails to do so, the dam or obstruction is a public nuisance and the director may take possession of the dam or obstruction and destroy it. No liability shall attach for the destruction.

(3) For the purposes of this section, "other obstruction" does not include tide gates, flood gates, and associated man-made agricultural drainage facilities that were originally installed as part of an agricultural drainage system on or before May 20, 2003, or the repair, replacement, or improvement of such tide gates or flood gates. [2003 c 391 § 1; 1998 c 190 § 86; 1983 1st ex.s. c 46 § 72; 1955 c 12 § 75.20.060. Prior: 1949 c 112 § 47; Rem. Supp. 1949 § 5780-321. Formerly RCW 75.20.060.]

Severability—2003 c 391: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 391 § 8.]

Effective date—2003 c 391: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 2003]." [2003 c 391 § 9.]

77.55.100 Hydraulic projects or other work—Plans and specifications—Permits—Approval—Emergen-

cies—Tide gates. (1) In the event that any person or government agency desires to construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, such person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure the approval of the department as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld or unreasonably conditioned.

(2)(a) The department shall grant or deny approval of a standard permit within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of the state environmental policy act, made in the manner prescribed in this section. The permit must contain provisions allowing for minor modifications to the plans and specifications without requiring reissuance of the permit.

(b) The applicant may document receipt of application by filing in person or by registered mail. A complete application for approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within the mean higher high water line in salt water or within the ordinary high water line in fresh water, and complete plans and specifications for the proper protection of fish life.

(c) The forty-five day requirement shall be suspended if:

(i) After ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project;

(ii) The site is physically inaccessible for inspection; or

(iii) The applicant requests delay. Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

(d) For purposes of this section, "standard permit" means a written permit issued by the department when the conditions under subsections (3) and (5)(b) of this section are not met.

(3)(a) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to repair existing structures, move obstructions, restore banks, protect property, or protect fish resources. Expedited permit requests require a complete written application as provided in subsection (2)(b) of this section and shall be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance.

(b) For the purposes of this subsection, "imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

(c) The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

(d) The department or the county legislative authority may determine if an imminent danger exists. The county leg-

islative authority shall notify the department, in writing, if it determines that an imminent danger exists.

(4) Approval of a standard permit is valid for a period of up to five years from date of issuance. The permittee must demonstrate substantial progress on construction of that portion of the project relating to the approval within two years of the date of issuance. If the department denies approval, the department shall provide the applicant, in writing, a statement of the specific reasons why and how the proposed project would adversely affect fish life. Protection of fish life shall be the only ground upon which approval may be denied or conditioned. Chapter 34.05 RCW applies to any denial of project approval, conditional approval, or requirements for project modification upon which approval may be contingent.

(5)(a) In case of an emergency arising from weather or stream flow conditions or other natural conditions, the department, through its authorized representatives, shall issue immediately, upon request, oral approval for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written approval prior to commencing work. Conditions of an oral approval to protect fish life shall be established by the department and reduced to writing within thirty days and complied with as provided for in this section. Oral approval shall be granted immediately, upon request, for a stream crossing during an emergency situation.

(b) For purposes of this section and RCW 77.55.110, "emergency" means an immediate threat to life, the public, property, or of environmental degradation.

(c) The department or the county legislative authority may declare and continue an emergency when one or more of the criteria under (b) of this subsection are met. The county legislative authority shall immediately notify the department if it declares an emergency under this subsection.

(6) The department shall, at the request of a county, develop five-year maintenance approval agreements, consistent with comprehensive flood control management plans adopted under the authority of RCW 86.12.200, or other watershed plan approved by a county legislative authority, to allow for work on public and private property for bank stabilization, bridge repair, removal of sand bars and debris, channel maintenance, and other flood damage repair and reduction activity under agreed-upon conditions and times without obtaining permits for specific projects.

(7) This section shall not apply to the construction of any form of hydraulic project or other work which diverts water for agricultural irrigation or stock watering purposes authorized under or recognized as being valid by the state's water codes, or when such hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020. These irrigation or stock watering diversion and streambank stabilization projects shall be governed by RCW 77.55.110.

A landscape management plan approved by the department and the department of natural resources under RCW 76.09.350(2), shall serve as a hydraulic project approval for the life of the plan if fish are selected as one of the public resources for coverage under such a plan.

(8) For the purposes of this section and RCW 77.55.110, "bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water run-off devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

(9) The phrase "to construct any form of hydraulic project or perform other work" does not include the act of driving across an established ford. Driving across streams or on wetted stream beds at areas other than established fords requires approval. Work within the ordinary high water line of state waters to construct or repair a ford or crossing requires approval.

(10) The department shall not require a fishway on a tide gate, flood gate, or other associated man-made agricultural drainage facilities as a condition of a hydraulic project approval if such fishway was not originally installed as part of an agricultural drainage system existing on or before May 20, 2003.

(11) Any condition requiring a self-regulating tide gate to achieve fish passage in an existing hydraulic project approval under this section may not be enforced. [2003 c 391 § 2; 2002 c 368 § 2; 2000 c 107 § 16; 1998 c 190 § 87. Prior: 1997 c 385 § 1; 1997 c 290 § 4; 1993 sp.s. c 2 § 30; 1991 c 322 § 30; 1988 c 272 § 1; 1988 c 36 § 33; 1986 c 173 § 1; 1983 1st ex.s. c 46 § 75; 1975 1st ex.s. c 29 § 1; 1967 c 48 § 1; 1955 c 12 § 75.20.100; prior: 1949 c 112 § 49; Rem. Supp. 1949 § 5780-323. Formerly RCW 75.20.100.]

Severability—Effective date—2003 c 391: See notes following RCW 77.55.060.

Finding—Intent—2002 c 368: "The legislature finds that hydraulic project approvals should ensure that fish life is properly protected, but conditions attached to the approval of these permits must reasonably relate to the potential harm that the projects may produce. The legislature is particularly concerned over the current overlap of agency jurisdiction regarding storm water projects, and believes that there is an immediate need to address this issue to ensure that project applicants are not given conflicting directions over project design. Requiring a major redesign of a project results in major delays, produces exponentially rising costs for both public and private project applicants, and frequently produces only marginal benefits for fish.

The legislature recognizes that the department of ecology is primarily responsible for the approval of storm water projects. The legislature believes that once the department of ecology approves a proposed storm water project, it is inappropriate for the department of fish and wildlife to require a major redesign of that project in order for the applicant to obtain hydraulic project approval. The legislature further believes that it is more appropriate for the department of fish and wildlife to defer the design elements of a storm water project to the department of ecology and focus its own efforts on determining reasonable mitigation or conditions for the project based upon the project's potential harm to fish. It is the intent of the legislature to restore some balance over conditions attached to hydraulic permits, and to minimize overlapping state regulatory authority regarding storm water projects in order to reduce waste in both time and money while still providing ample protection for fish life." [2002 c 368 § 1.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

Severability—1988 c 279: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 272 § 6.]

77.55.170 Hydraulic appeals board—Members—Jurisdiction—Procedures. (1) There is hereby created within the environmental hearings office under RCW

43.21B.005 the hydraulic appeals board of the state of Washington.

(2) The hydraulic appeals board shall consist of three members: The director of the department of ecology or the director's designee, the director of the department of agriculture or the director's designee, and the director or the director's designee of the department whose action is appealed under subsection (6) of this section. A decision must be agreed to by at least two members of the board to be final.

(3) The board may adopt rules necessary for the conduct of its powers and duties or for transacting other official business.

(4) The board shall make findings of fact and prepare a written decision in each case decided by it, and that finding and decision shall be effective upon being signed by two or more board members and upon being filed at the hydraulic appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The board has exclusive jurisdiction to hear appeals arising from the approval, denial, conditioning, or modification of a hydraulic approval issued by the department: (a) Under the authority granted in RCW 77.55.110 for the diversion of water for agricultural irrigation or stock watering purposes or when associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020; or (b) under the authority granted in RCW 77.55.230 for off-site mitigation proposals.

(6)(a) Any person aggrieved by the approval, denial, conditioning, or modification of a hydraulic approval pursuant to RCW 77.55.110 may, except as otherwise provided in chapter 43.21L RCW, seek review from the board by filing a request for the same within thirty days of notice of the approval, denial, conditioning, or modification of such approval.

(b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. [2003 c 393 § 21; 2000 c 107 § 20; 1996 c 276 § 2; 1993 sp.s. c 2 § 37; 1989 c 175 § 160; 1988 c 272 § 3; 1988 c 36 § 37; 1986 c 173 § 4. Formerly RCW 75.20.130.]

Implementation—Effective date—2003 c 393: See RCW 43.21L.900 and 43.21L.901.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

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

Severability—1988 c 272: See note following RCW 77.55.100.

77.55.370 "Tide gate" defined. As used in this chapter, "tide gate" means a one-way check valve that prevents the backflow of tidal water. [2003 c 391 § 6.]

Severability—Effective date—2003 c 391: See notes following RCW 77.55.060.

Chapter 77.65 RCW

FOOD FISH AND SHELLFISH— COMMERCIAL LICENSES

Sections

- 77.65.030 Commercial licenses and permits—Application deadline—
Exception.
- 77.65.510 Direct retail endorsement—Fee—Responsibilities of holder.

- 77.65.515 Direct retail endorsement—Requirements.
 77.65.520 Direct retail endorsement—Compliance—Violations—Suspension.

77.65.030 Commercial licenses and permits—Application deadline—Exception. The application deadline for a commercial license or permit established in this chapter is December 31st of the calendar year for which the license or permit is sought. The department shall accept no license or permit applications after December 31st of the calendar year for which the license or permit is sought. The application deadline in this section does not apply to a license or permit that has not been renewed because of the death or incapacity of the license or permit holder. The license or permit holder's surviving spouse, estate, estate beneficiary, attorney in fact, or guardian must be given an additional one hundred eighty days to renew the license or permit. [2003 c 386 § 5; 2001 c 244 § 2; 1993 c 340 § 3; 1986 c 198 § 8; 1983 1st ex.s. c 46 § 103; 1981 c 201 § 1; 1965 ex.s. c 57 § 1; 1959 c 309 § 4; 1957 c 171 § 3. Formerly RCW 75.28.014.]

Effective date—2003 c 386 § 5: "Section 5 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 2003]." [2003 c 386 § 6.]

Findings—Intent—2003 c 386: See note following RCW 77.15.700.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

77.65.510 Direct retail endorsement—Fee—Responsibilities of holder. (1) The department must establish and administer a direct retail endorsement to serve as a single license that permits the holder of a Washington license to commercially harvest retail-eligible species and to clean, dress, and sell his or her catch directly to consumers at retail, including over the internet. The direct retail endorsement must be issued as an optional addition to all holders of a commercial fishing license for retail-eligible species that the department offers under this chapter.

(2) The direct retail endorsement must be offered at the time of application for the qualifying commercial fishing license. Individuals in possession of a qualifying commercial fishing license issued under this chapter may add a direct retail endorsement to their current license at any time. Individuals who do not have a commercial fishing license for retail-eligible species issued under this chapter may not receive a direct retail endorsement. The costs, conditions, responsibilities, and privileges associated with the endorsed commercial fishing license is not affected or altered in any way by the addition of a direct retail endorsement. These costs include the base cost of the license and any revenue and excise taxes.

(3) An individual need only add one direct retail endorsement to his or her license portfolio. If a direct retail endorsement is selected by an individual holding more than one commercial fishing license issued under this chapter, a single direct retail endorsement is considered to be added to all qualifying commercial fishing licenses held by that individual, and is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses. The direct retail endorsement applies only to the person named on the endorsed license, and

may not be used by an alternate operator named on the endorsed license.

(4) In addition to any fees charged for the endorsed licenses and harvest documentation as required by this chapter or the rules of the department, the department may set a reasonable annual fee not to exceed the administrative costs to the department for a direct retail endorsement.

(5) The holder of a direct retail endorsement is responsible for documenting the commercial harvest of salmon and crab according to the provisions of this chapter, the rules of the department for a wholesale fish dealer, and the reporting requirements of the endorsed license. Any retail-eligible species caught by the holder of a direct retail endorsement must be documented on fish tickets.

(6) The direct retail endorsement must be displayed in a readily visible manner by the seller wherever and whenever a sale to someone other than a licensed wholesale dealer occurs. The commission may require that the holder of a direct retail endorsement notify the department up to eighteen hours before conducting an in-person sale of retail-eligible species, except for in-person sales that have a cumulative retail sales value of less than one hundred fifty dollars in a twenty-four hour period that are sold directly from the vessel. For sales occurring in a venue other than in person, such as over the internet, through a catalog, or on the phone, the direct retail endorsement number of the seller must be provided to the buyer both at the time of sale and the time of delivery. All internet sales must be conducted in accordance with federal laws and regulations.

(7) The direct retail endorsement is to be held by a natural person and is not transferrable or assignable. If the endorsed license is transferred, the direct retail endorsement immediately becomes void, and the transferor is not eligible for a full or prorated reimbursement of the annual fee paid for the direct retail endorsement. Upon becoming void, the holder of a direct retail endorsement must surrender the physical endorsement to the department.

(8) The holder of a direct retail endorsement must abide by the provisions of Title 69 RCW as they apply to the processing and retail sale of seafood. The department must distribute a pamphlet, provided by the department of agriculture, with the direct retail endorsement generally describing the labeling requirements set forth in chapter 69.04 RCW as they apply to seafood.

(9) The holder of a qualifying commercial fishing license issued under this chapter must either possess a direct retail endorsement or a wholesale dealer license provided for in RCW 77.65.280 in order to lawfully sell their catch or harvest in the state to anyone other than a licensed wholesale dealer.

(10) The direct retail endorsement entitles the holder to sell a retail-eligible species only at a temporary food service establishment as that term is defined in RCW 69.06.045, or directly to a restaurant or other similar food service business. [2003 c 387 § 2; 2002 c 301 § 2.]

Finding—2002 c 301: "The legislature finds that commercial fishing is vitally important not just to the economy of Washington, but also to the cultural heritage of the maritime communities in the state. Fisher men and women have a long and proud history in the Pacific Northwest. State and local governments should seek out ways to enable and encourage these professionals to share the rewards of their craft with the nonfishing citizens of and visitors to the state of Washington by encouraging the exploration and development of new niche markets." [2002 c 301 § 1.]

Effective date—2002 c 301: "This act takes effect July 1, 2002." [2002 c 301 § 12.]

77.65.515 Direct retail endorsement—Requirements.

(1) Prior to being issued a direct retail endorsement, an individual must:

(a) Obtain and submit to the department a signed letter on appropriate letterhead from the health department of the county in which the individual makes his or her official residence or where the hailing port for any documented vessel owned by the individual is located as to the fulfillment of all requirements related to county health rules, including the payment of all required fees. The local health department generating the letter may charge a reasonable fee for any necessary inspections. The letter must certify that the methods used by the individual to transport, store, and display any fresh retail-eligible species meets that county's standards and the statewide standards adopted by the board of health for food service operations; and

(b) Submit proof to the department that the individual making the direct retail sales is in possession of a valid food and beverage service worker's permit, as provided for in chapter 69.06 RCW.

(2) The requirements of subsection (1) of this section must be completed each license year before a renewal direct retail endorsement can be issued.

(3) Any individual possessing a direct retail endorsement must notify the local health department of the county in which retail sales are to occur, except for the county that conducted the initial inspection, forty-eight hours before any transaction and make his or her facilities available for inspection by a fish and wildlife officer, the local health department of any county in which he or she sells any legally harvested retail-eligible species, and any designee of the department of health or the department of agriculture.

(4) Neither the department or a local health department may be held liable in any judicial proceeding alleging that consumption of or exposure to seafood sold by the holder of a direct retail endorsement resulted in a negative health consequence, as long as the department can show that the individual holding the direct retail endorsement complied with the requirements of subsection (1) of this section prior to being issued his or her direct retail license, and neither the department nor a local health department acted in a reckless manner. For the purposes of this subsection, the department or a local health district shall not be deemed to be acting recklessly for not conducting a permissive inspection. [2003 c 387 § 3; 2002 c 301 § 3.]

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

77.65.520 Direct retail endorsement—Compliance—Violations—Suspension. (1) The direct retail endorsement is conditioned upon compliance:

(a) With the requirements of this chapter as they apply to wholesale fish dealers and to the rules of the department relating to the payment of fines for violations of rules for the accounting of the commercial harvest of retail-eligible species; and

(b) With the state board of health and local rules for food service establishments.

(2) Violations of the requirements and rules referenced in subsection (1) of this section may result in the suspension of the direct retail endorsement. The suspended individual must not be reimbursed for any portion of the suspended endorsement. Suspension of the direct retail endorsement may not occur unless and until:

(a) The director has notified by order the holder of the direct retail endorsement when a violation of subsection (1) of this section has occurred. The notification must specify the type of violation, the liability to be imposed for damages caused by the violation, a notice that the amount of liability is due and payable by the holder of the direct retail endorsement, and an explanation of the options available to satisfy the liability; and

(b) The holder of the direct retail endorsement has had at least ninety days after the notification provided in (a) of this subsection was received to either make full payment for all liabilities owed or enter into an agreement with the department to pay off all liabilities within a reasonable time.

(3)(a) If, within ninety days after receipt of the order provided in subsection (2)(a) of this section, the amount specified in the order is not paid or the holder of the direct retail endorsement has not entered into an agreement with the department to pay off all liabilities, the prosecuting attorney for any county in which the persons to whom the order is directed do business, or the attorney general upon request of the department, may bring an action on behalf of the state in the superior court for Thurston county, or any county in which the persons to whom the order is directed do business, to seek suspension of the individual's direct retail endorsement for up to five years.

(b) The department may temporarily suspend the privileges provided by the direct retail endorsement for up to one hundred twenty days following the receipt of the order provided in subsection (2)(a) of this section, unless the holder of the direct retail endorsement has deposited with the department an acceptable performance bond on forms prescribed and provided by the department. This performance bond must be a corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under chapter 48.28 RCW and approved by the department. The bond must be filed and maintained in an amount equal to one thousand dollars.

(4) For violations of state board of health and local rules under subsection (1)(b) of this section only, any person inspecting the facilities of a direct retail endorsement holder under RCW 77.65.515 may suspend the privileges granted by the endorsement for up to seven days. Within twenty-four hours of the discovery of the violation, the inspecting entity must notify the department of the violation. Upon notification, the department may proceed with the procedures outlined in this section for suspension of the endorsement. If the violation of a state board of health rule is discovered by a local health department, that local jurisdiction may fine the holder of the direct retail endorsement according to the local jurisdiction's rules as they apply to retail food operations.

(5) Subsections (2) and (3) of this section do not apply to a holder of a direct retail endorsement that executes a surety bond and abides by the conditions established in RCW 77.65.320 and 77.65.330 as they apply to wholesale dealers. [2003 c 387 § 4; 2002 c 301 § 4.]

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

Chapter 77.70 RCW

LICENSE LIMITATION PROGRAMS

Sections

77.70.280	Crab fishery—License required—Dungeness crab-coastal fishery license—Dungeness crab-coastal class B fishery license—Coastal crab and replacement vessel defined—Federal fleet reduction program.
77.70.380	Repealed.
77.70.450	Commercial fisheries buyback account.
77.70.460	Collection of fee—Fee schedule—Deposit of moneys. (<i>Contingent expiration date.</i>)
77.70.470	Ban on assessing fee under RCW 77.70.460. (<i>Contingent expiration date.</i>)

77.70.280 Crab fishery—License required—Dungeness crab-coastal fishery license—Dungeness crab-coastal class B fishery license—Coastal crab and replacement vessel defined—Federal fleet reduction program.

(1) A person shall not commercially fish for coastal crab in Washington state waters without a Dungeness crab—coastal or a Dungeness crab—coastal class B fishery license. Gear used must consist of one buoy attached to each crab pot. Each crab pot must be fished individually.

(2) A Dungeness crab—coastal fishery license is transferable. Except as provided in subsections (3) and (8) of this section, such a license shall only be issued to a person who proved active historical participation in the coastal crab fishery by having designated, after December 31, 1993, a vessel or a replacement vessel on the qualifying license that singly or in combination meets the following criteria:

(a) Made a minimum of eight coastal crab landings totaling a minimum of five thousand pounds per season in at least two of the four qualifying seasons identified in subsection (5) of this section, as documented by valid Washington state shellfish receiving tickets; and showed historical and continuous participation in the coastal crab fishery by having held one of the following licenses or their equivalents each calendar year beginning 1990 through 1993, and was designated on the qualifying license of the person who held one of the following licenses in 1994:

(i) Crab pot—Non-Puget Sound license, issued under RCW 77.65.220(1)(b);

(ii) Nonsalmon delivery license, issued under RCW 77.65.210;

(iii) Salmon troll license, issued under RCW 77.65.160;

(iv) Salmon delivery license, issued under RCW 77.65.170;

(v) Food fish trawl license, issued under RCW 77.65.200; or

(vi) Shrimp trawl license, issued under RCW 77.65.220;

or

(b) Made a minimum of four Washington landings of coastal crab totaling two thousand pounds during the period from December 1, 1991, to March 20, 1992, and made a minimum of eight crab landings totaling a minimum of five thousand pounds of coastal crab during each of the following periods: December 1, 1991, to September 15, 1992; December 1, 1992, to September 15, 1993; and December 1, 1993, to September 15, 1994. For landings made after December 31,

1993, the vessel shall have been designated on the qualifying license of the person making the landings; or

(c) Made any number of coastal crab landings totaling a minimum of twenty thousand pounds per season in at least two of the four qualifying seasons identified in subsection (5) of this section, as documented by valid Washington state shellfish receiving tickets, showed historical and continuous participation in the coastal crab fishery by having held one of the qualifying licenses each calendar year beginning 1990 through 1993, and the vessel was designated on the qualifying license of the person who held that license in 1994.

(3) A Dungeness crab-coastal fishery license shall be issued to a person who had a new vessel under construction between December 1, 1988, and September 15, 1992, if the vessel made coastal crab landings totaling a minimum of five thousand pounds by September 15, 1993, and the new vessel was designated on the qualifying license of the person who held that license in 1994. All landings shall be documented by valid Washington state shellfish receiving tickets. License applications under this subsection may be subject to review by the advisory review board in accordance with *RCW 77.70.030. For purposes of this subsection, "under construction" means either:

(a)(i) A contract for any part of the work was signed before September 15, 1992; and

(ii) The contract for the vessel under construction was not transferred or otherwise alienated from the contract holder between the date of the contract and the issuance of the Dungeness crab-coastal fishery license; and

(iii) Construction had not been completed before December 1, 1988; or

(b)(i) The keel was laid before September 15, 1992; and

(ii) Vessel ownership was not transferred or otherwise alienated from the owner between the time the keel was laid and the issuance of the Dungeness crab-coastal fishery license; and

(iii) Construction had not been completed before December 1, 1988.

(4) A Dungeness crab—coastal class B fishery license is not transferable. Such a license shall be issued to persons who do not meet the qualification criteria for a Dungeness crab—coastal fishery license, if the person has designated on a qualifying license after December 31, 1993, a vessel or replacement vessel that, singly or in combination, made a minimum of four landings totaling a minimum of two thousand pounds of coastal crab, documented by valid Washington state shellfish receiving tickets, during at least one of the four qualifying seasons, and if the person has participated continuously in the coastal crab fishery by having held or by having owned a vessel that held one or more of the licenses listed in subsection (2) of this section in each calendar year subsequent to the qualifying season in which qualifying landings were made through 1994. Dungeness crab—coastal class B fishery licenses cease to exist after December 31, 1999, and the continuing license provisions of RCW 34.05.422(3) are not applicable.

(5) The four qualifying seasons for purposes of this section are:

(a) December 1, 1988, through September 15, 1989;

(b) December 1, 1989, through September 15, 1990;

(c) December 1, 1990, through September 15, 1991; and

(d) December 1, 1991, through September 15, 1992.

(6) For purposes of this section and RCW 77.70.340, "coastal crab" means Dungeness crab (cancer magister) taken in all Washington territorial and offshore waters south of the United States-Canada boundary and west of the Bonilla-Tatoosh line (a line from the western end of Cape Flattery to Tatoosh Island lighthouse, then to the buoy adjacent to Duntz Rock, then in a straight line to Bonilla Point of Vancouver island), Grays Harbor, Willapa Bay, and the Columbia river.

(7) For purposes of this section, "replacement vessel" means a vessel used in the coastal crab fishery in 1994, and that replaces a vessel used in the coastal crab fishery during any period from 1988 through 1993, and which vessel's licensing and catch history, together with the licensing and catch history of the vessel it replaces, qualifies a single applicant for a Dungeness crab—coastal or Dungeness crab—coastal class B fishery license. A Dungeness crab—coastal or Dungeness crab—coastal class B fishery license may only be issued to a person who designated a vessel in the 1994 coastal crab fishery and who designated the same vessel in 1995.

(8) A Dungeness crab—coastal fishery license may not be issued to a person who participates in the federal fleet reduction program created in RCW 77.70.460 within ten years of that person's participation in the federal program, if reciprocal restrictions are imposed by the states of Oregon and California on persons participating in the federal fleet reduction program. [2003 c 174 § 5; 2000 c 107 § 76; 1998 c 190 § 108; 1995 c 252 § 1; 1994 c 260 § 2. Formerly RCW 75.30.350.]

***Reviser's note:** RCW 77.70.030 was repealed by 2001 c 291 § 501, effective July 1, 2001.

Finding—1994 c 260: "The legislature finds that the commercial crab fishery in coastal and offshore waters is overcapitalized. The legislature further finds that this overcapitalization has led to the economic destabilization of the coastal crab industry, and can cause excessive harvesting pressures on the coastal crab resources of Washington state. In order to provide for the economic well-being of the Washington crab industry and to protect the livelihood of Washington crab fishers who have historically and continuously participated in the coastal crab fishery, the legislature finds that it is in the best interests of the economic well-being of the coastal crab industry to reduce the number of fishers taking crab in coastal waters, to reduce the number of vessels landing crab taken in offshore waters, to limit the number of future licenses, and to limit fleet capacity by limiting vessel size." [1994 c 260 § 1.]

Severability—1994 c 260: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 260 § 24.]

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: "Sections 1 through 5, 9 through 19, and 21 through 24 of this act shall take effect January 1, 1995." [1994 c 260 § 25.]

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

77.70.450 Commercial fisheries buyback account. The commercial fisheries buyback account is created in the custody of the state treasurer. All receipts from money collected by the commission under RCW 77.70.460, moneys appropriated for the purposes of this section, and other gifts, grants, or donations specifically made to the fund must be deposited into the account. Expenditures from the account may be used only for the purpose of repaying moneys

advanced by the federal government under a groundfish fleet reduction program established by the federal government, or for other fleet reduction efforts, commercial fishing license buyback programs, or similar programs designed to reduce the harvest capacity in a commercial fishery. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2003 c 174 § 1.]

77.70.460 Collection of fee—Fee schedule—Deposit of moneys. (Contingent expiration date.) (1) The commission shall collect a fee upon all deliveries of fish or shellfish from persons holding: (a) A federal pacific groundfish limited entry permit with a trawl endorsement; (b) an ocean pink shrimp delivery license issued under RCW 77.65.390; (c) a Dungeness crab—coastal fishery license issued under RCW 77.70.280; (d) a food fish delivery license issued under RCW 77.65.200; or (e) a shrimp trawl license under RCW 77.65.220, to repay the federal government for moneys advanced by the federal government under a groundfish fleet reduction program established by the federal government.

(2) The commission shall adopt a fee schedule by rule for the collection of the fee required by subsection (1) of this section. The fee schedule adopted shall limit the total amount of moneys collected through the fee to the minimum amount necessary to repay the moneys advanced by the federal government, but be sufficient to repay the debt obligation of each fishery. The fee charged to the holders of a Dungeness crab—coastal fishery license may not exceed two percent of the total ex-vessel value of annual landings, and the fee charged to all other eligible license holders may not exceed five percent of the total ex-vessel value of annual landings. The commission may adjust the fee schedule as necessary to ensure that the funds collected are adequate to repay the debt obligation of each fishery.

(3) The commission shall deposit moneys collected under this section in the commercial fisheries buyback account created in RCW 77.70.450. [2003 c 174 § 2.]

Contingent expiration date—2003 c 174 §§ 2 and 3: "Sections 2 and 3 of this act expire January 1, 2033, or when the groundfish fleet reduction program referenced in section 2 of this act is completed, whichever is sooner." [2003 c 174 § 4.]

77.70.470 Ban on assessing fee under RCW 77.70.460. (Contingent expiration date.) The commission may not assess the fee specified under RCW 77.70.460 until after the federal government creates a groundfish fleet reduction program. [2003 c 174 § 3.]

Contingent expiration date—2003 c 174 §§ 2 and 3: See note following RCW 77.70.460.

Chapter 77.85 RCW SALMON RECOVERY

Sections

77.85.220	Salmon intertidal habitat restoration planning process—Task force—Reports.
77.85.230	Intertidal salmon enhancement plan—Elements—Initial and final plan.

77.85.220 Salmon intertidal habitat restoration planning process—Task force—Reports. (1) If a limiting factors analysis has been conducted under this chapter for a specific geographic area and that analysis shows insufficient intertidal salmon habitat, the department of fish and wildlife and the county legislative authorities of the affected counties may jointly initiate a salmon intertidal habitat restoration planning process to develop a plan that addresses the intertidal habitat goals contained in the limiting factors analysis. The fish and wildlife commission and the county legislative authorities of the geographic area shall jointly appoint a task force composed of the following members:

(a) One representative of the fish and wildlife commission, appointed by the chair of the commission;

(b) Two representatives of the agricultural industry familiar with agricultural issues in the geographic area, one appointed by an organization active in the geographic area and one appointed by a statewide organization representing the industry;

(c) Two representatives of environmental interest organizations with familiarity and expertise of salmon habitat, one appointed by an organization in the geographic area and one appointed by a statewide organization representing environmental interests;

(d) One representative of a diking and drainage district, appointed by the individual districts in the geographic area or by an association of diking and drainage districts;

(e) One representative of the lead entity for salmon recovery in the geographic area, appointed by the lead entity;

(f) One representative of each county in the geographic area, appointed by the respective county legislative authorities; and

(g) One representative from the office of the governor.

(2) Representatives of the United States environmental protection agency, the United States natural resources conservation service, federal fishery agencies, as appointed by their regional director, and tribes with interests in the geographic area shall be invited and encouraged to participate as members of the task force.

(3) The task force shall elect a chair and adopt rules for conducting the business of the task force. Staff support for the task force shall be provided by the Washington state conservation commission.

(4) The task force shall:

(a) Review and analyze the limiting factors analysis for the geographic area;

(b) Initiate and oversee intertidal salmon habitat studies for enhancement of the intertidal area as provided in RCW 77.85.230;

(c) Review and analyze the completed assessments listed in RCW 77.85.230;

(d) Develop and draft an overall plan that addresses identified intertidal salmon habitat goals that has public support; and

(e) Identify appropriate demonstration projects and early implementation projects that are of high priority and should commence immediately within the geographic area.

(5) The task force may request briefings as needed on legal issues that may need to be considered when developing or implementing various plan options.

(6) Members of the task force shall be reimbursed by the conservation commission for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(7) The task force shall provide annual reports that provide an update on its activities to the fish and wildlife commission, to the involved county legislative authorities, and to the lead entity formed under this chapter. [2003 c 391 § 4.]

Initiation of process—2003 c 391 §§ 4 and 5: "The process established in sections 4 and 5 of this act shall be initiated as soon as practicable in Skagit county." [2003 c 391 § 7.]

Severability—Effective date—2003 c 391: See notes following RCW 77.55.060.

77.85.230 Intertidal salmon enhancement plan—Elements—Initial and final plan. (1) In consultation with the *task force, the conservation commission may contract with universities, private consultants, nonprofit groups, or other entities to assist it in developing a plan incorporating the following elements:

(a) An inventory of existing tide gates located on streams in the county. The inventory shall include location, age, type, and maintenance history of the tide gates and other factors as determined by the task force in consultation with the county and diking and drainage districts;

(b) An assessment of the role of tide gates located on streams in the county; the role of intertidal fish habitat for various life stages of salmon; the quantity and characterization of intertidal fish habitat currently accessible to fish; the quantity and characterization of the present intertidal fish habitat created at the time the dikes and outlets were constructed; the quantity of potential intertidal fish habitat on public lands and alternatives to enhance this habitat; the effects of saltwater intrusion on agricultural land, including the effects of backfeeding of saltwater through the underground drainage system; the role of tide gates in drainage systems, including relieving excess water from saturated soil and providing reservoir functions between tides; the effect of saturated soils on production of crops; the characteristics of properly functioning intertidal fish habitat; a map of agricultural lands designated by the county as having long-term commercial significance and the effect of that designation; and the economic impacts to existing land uses for various alternatives for tide gate alteration; and

(c) A long-term plan for intertidal salmon habitat enhancement to meet the goals of salmon recovery and protection of agricultural lands. The proposal shall consider all other means to achieve salmon recovery without converting farmland. The proposal shall include methods to increase fish passage and otherwise enhance intertidal habitat on public lands pursuant to subsection (2) of this section, voluntary methods to increase fish passage on private lands, a priority list of intertidal salmon enhancement projects, and recommendations for funding of high priority projects. The task force also may propose pilot projects that will be designed to test and measure the success of various proposed strategies.

(2) In conjunction with other public landowners and the *task force, the department shall develop an initial salmon intertidal habitat enhancement plan for public lands in the county. The initial plan shall include a list of public properties in the intertidal zone that could be enhanced for salmon, a description of how those properties could be altered to sup-

port salmon, a description of costs and sources of funds to enhance the property, and a strategy and schedule for prioritizing the enhancement of public lands for intertidal salmon habitat. This initial plan shall be submitted to the task force at least six months before the deadline established in subsection (3) of this section.

(3) The final intertidal salmon enhancement plan shall be completed within two years from the date the task force is formed and funding has been secured. A final plan shall be submitted by the task force to the lead entity for the geographic area established under this chapter. [2003 c 391 § 5.]

***Reviser's note:** The task force referred to is apparently the task force created in RCW 77.85.220.

Initiation of process—2003 c 391 §§ 4 and 5: See note following RCW 77.85.220.

Severability—Effective date—2003 c 391: See notes following RCW 77.55.060.

Chapter 77.105 RCW

RECREATIONAL SALMON AND MARINE FISH ENHANCEMENT PROGRAM

Sections

77.105.010 Program created—Coordinator.
77.105.150 Recreational fisheries enhancement account.
77.105.160 Oversight committee—Created—Duties.

77.105.010 Program created—Coordinator. There is created within the department of fish and wildlife the Puget Sound recreational salmon and marine fish enhancement program. The department of fish and wildlife shall identify a coordinator for the program who shall act as spokesperson for the program and shall:

(1) Coordinate the activities of the Puget Sound recreational salmon and marine fish enhancement program, including the Lake Washington salmon fishery; and

(2) Work within and outside of the department to achieve the goals stated in this chapter, including coordinating with the Puget Sound recreational fisheries enhancement oversight committee established in RCW 77.105.160. [2003 c 173 § 1; 1998 c 245 § 157; 1993 sp.s. c 2 § 83. Formerly RCW 75.54.010.]

77.105.150 Recreational fisheries enhancement account. The recreational fisheries enhancement account is created in the state treasury. All receipts from RCW 77.105.140 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for recreational fisheries enhancement programs identified in this chapter. Under no circumstances may moneys from the account be used to backfill shortfalls in other state funding sources. [2003 c 173 § 3; 2000 c 107 § 120; 1993 sp.s. c 2 § 98. Formerly RCW 75.54.150.]

77.105.160 Oversight committee—Created—Duties.

(1) The Puget Sound recreational fisheries enhancement oversight committee is created. The director shall appoint at least seven members representing sport fishing organizations to the committee from a list of applicants, ensuring broad representation from the sport fishing community. Each member shall serve for a term of two years, and may be reappointed

for subsequent two-year terms at the discretion of the director. Members of the committee serve without compensation.

(2) The Puget Sound recreational fisheries enhancement oversight committee has the following duties:

(a) Advise the department on all aspects of the Puget Sound recreational fisheries enhancement program;

(b) Review and provide guidance on the annual budget for the recreational fisheries enhancement account;

(c) Select a chair of the committee. It is the chair's duty to coordinate with the department on all issues related to the Puget Sound recreational fisheries enhancement program;

(d) Meet at least quarterly with the department's coordinator of the Puget Sound recreational fisheries enhancement program;

(e) Review and comment on program documents and proposed production of salmon and other species; and

(f) Address other issues related to the purposes of the Puget Sound recreational fisheries enhancement program that are of interest to recreational fishers in Puget Sound. [2003 c 173 § 2.]

Title 78

MINES, MINERALS, AND PETROLEUM

Chapters

78.12 Abandoned shafts and excavations.

78.44 Surface mining.

78.60 Geothermal resources.

Chapter 78.12 RCW

ABANDONED SHAFTS AND EXCAVATIONS

Sections

78.12.061 Safety cage in mining shaft—Regulations. (*Effective July 1, 2004.*)

78.12.062 Repealed. (*Effective July 1, 2004.*)

78.12.061 Safety cage in mining shaft—Regulations. (*Effective July 1, 2004.*) (1) It shall be unlawful for any person or persons, company or companies, corporation or corporations, to sink or work through any vertical shaft at a greater depth than one hundred and fifty feet, unless the shaft shall be provided with an iron-bonneted safety cage, to be used in the lowering and hoisting of the employees of such person or persons, company or companies, corporation or corporations.

The safety apparatus, whether consisting of eccentrics, springs or other device, shall be securely fastened to the cage, and shall be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk, provided the cable shall break. The iron bonnet shall be made of boiler sheet iron of a good quality, of at least three-sixteenths of an inch in thickness, and shall cover the top of the cage in such manner as to afford the greatest protection to life and limb from any matter falling down the shaft.

(2) Any person or persons, company or companies, or corporation or corporations, who shall neglect, fail, or refuse to comply with this section is guilty of a misdemeanor and shall be fined not less than five hundred dollars nor more than one thousand dollars. [2003 c 53 § 377; 1890 p 123 § 7; RRS § 8863. Formerly RCW 78.36.850, part.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

78.12.062 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 78.44 RCW SURFACE MINING

Sections

78.44.050	Exclusive authority to regulate reclamation—Department may delegate enforcement authority to counties, cities, towns—Other laws not affected.
78.44.320	Definitions applicable to RCW 78.44.330.
78.44.330	Mineral trespass—Penalty.
78.44.340	Mineral trespass—Limitation on application.

78.44.050 Exclusive authority to regulate reclamation—Department may delegate enforcement authority to counties, cities, towns—Other laws not affected. The department shall have the exclusive authority to regulate surface mine reclamation. No county, city, or town may require for its review or approval a separate reclamation plan or application. The department may, however, delegate some or all of its enforcement authority by contractual agreement to a county, city, or town that employs personnel who are, in the opinion of the department, qualified to enforce plans approved by the department. All counties, cities, or towns shall have the authority to zone surface mines and adopt ordinances regulating operations as provided in this chapter, except that county, city, or town operations ordinances may be preempted by the department during the emergencies outlined in RCW 78.44.200 and related rules.

This chapter shall not alter or preempt any provisions of the state water allocation and use laws (chapters 90.03 and 90.44 RCW), the state water pollution control laws (chapter 90.48 RCW), the state fish and wildlife laws (Title 77 RCW), state noise laws or air quality laws (Title 70 RCW), shoreline management (chapter 90.58 RCW), the state environmental policy act (chapter 43.21C RCW), state growth management (chapter 36.70A RCW), state drinking water laws (chapters 43.20 and 70.119A RCW), or any other state statutes. [2003 c 39 § 39; 1997 c 185 § 1; 1993 c 518 § 7; 1970 ex.s. c 64 § 6.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.320 Definitions applicable to RCW 78.44.330. The definitions in this section apply throughout RCW 78.44.330 unless the context clearly requires otherwise.

(1) "Bedrock sluice" means a wood or metal flume or trough that is permanently attached to the bedrock of the creek and is equipped with transverse riffles across the bottom of the unit and used to recover heavy mineral sands.

(2) "Dredge" means a subsurface hose from one and one-half to ten inches in diameter that is powered by an engine and is used to draw up auriferous material that is then separated in the sluice portion of the unit.

(3) "Flume" means a trough used to convey water.

(4) "Mining claim" means a portion of the public lands claimed for the valuable minerals occurring in those lands and for which the mineral rights are obtained under federal

law or a right that is recognized by the United States bureau of land management and given an identification number.

(5) "Quartz mill" means a facility for processing ores or gravel.

(6) "Rocker box" means a unit constructed of a short trough attached to curved supports that allow the unit to be rocked from side to side.

(7) "Sluice box" means a portable unit constructed of a wood or metal flume or trough equipped with transverse riffles across the bottom of the unit and that is used to recover heavy mineral sands. [2003 c 335 § 1.]

78.44.330 Mineral trespass—Penalty. (1) A person commits the crime of mineral trespass if the person intentionally and without the permission of the claim holder or person conducting the mining operation:

(a) Interferes with a lawful mining operation or stops, or causes to be stopped, a lawful mining operation;

(b) Enters a mining claim posted as required in chapter 78.08 RCW and disturbs, removes, or attempts to remove any mineral from the claim site;

(c) Tampers with or disturbs a flume, rocker box, bedrock sluice, sluice box, dredge, quartz mill, or other mining equipment at a posted mining claim; or

(d) Defaces a location stake, side post, corner post, landmark, monument, or posted written notice within a posted mining claim.

(2) Mineral trespass is a class C felony. [2003 c 335 § 2.]

78.44.340 Mineral trespass—Limitation on application. (1) RCW 78.44.330 does not apply to conduct that would otherwise constitute an offense when it is required or authorized by law or judicial decree or is performed by a public servant in the reasonable exercise of official powers, duties, or functions.

(2) As used in subsection (1) of this section, "laws or judicial decrees" includes but is not limited to:

(a) Laws defining duties and functions of public servants;

(b) Laws defining duties of private citizens to assist public servants in the performance of certain of their functions; and

(c) Judgments and orders of courts. [2003 c 335 § 3.]

Chapter 78.60 RCW GEOTHERMAL RESOURCES

Sections

78.60.010	Legislative declaration.
78.60.020	Short title.
78.60.030	Definitions.
78.60.040	Geothermal resources deemed sui generis.
78.60.050	Administration of chapter.
78.60.060	Scope of chapter.
78.60.070	Drilling permits—Applications—Hearing—Fees.
78.60.080	Drilling permits—Criteria for granting.
78.60.090	Casing requirements.
78.60.100	Plugging and abandonment of wells—Transfer of jurisdiction to department of ecology.
78.60.110	Suspension of drilling, shut-in or removal of equipment for authorized period—Unlawful abandonment.
78.60.120	Notification of abandonment or suspension of operations—Required—Procedure.
78.60.130	Performance bond or other security—Required.

78.60.140	Termination or cancellation of bond or change in other security, when.
78.60.150	Notification of sale, exchange, etc.
78.60.160	Combining orders, unitization programs and well spacing—Authority of department.
78.60.170	Designation of resident agent for service of process.
78.60.180	General authority of department.
78.60.190	Employment of personnel.
78.60.200	Drilling records, etc., to be maintained—Inspection—Filing.
78.60.210	Filing of records with department upon completion, abandonment or suspension of operations.
78.60.220	Statement of geothermal resources produced—Filing.
78.60.230	Confidentiality of records.
78.60.240	Removal, destruction, alteration, etc., of records prohibited.
78.60.250	Violations—Modification of permit, when necessary—Departmental order—Issuance—Appeal.
78.60.260	Liability in damages for violations—Procedure.
78.60.270	Injunctions—Restraining orders.
78.60.280	Judicial review.
78.60.290	Violations—Penalty. (<i>Effective until July 1, 2004.</i>)
78.60.290	Violations—Penalty. (<i>Effective July 1, 2004.</i>)
78.60.300	Aiding or abetting violations.
78.60.900	Severability—1974 ex.s. c 43.

78.60.010 Legislative declaration. The public has a direct interest in the safe, orderly and nearly pollution-free development of the geothermal resources of the state, as hereinafter in *RCW 79.76.030(1) defined. The legislature hereby declares that it is in the best interests of the state to further the development of geothermal resources for the benefit of all of the citizens of the state while at the same time fully providing for the protection of the environment. The development of geothermal resources shall be so conducted as to protect the rights of landowners, other owners of interests therein, and the general public. In providing for such development, it is the purpose of this chapter to provide for the orderly exploration, safe drilling, production and proper abandonment of geothermal resources in the state of Washington. [1974 ex.s. c 43 § 1. Formerly RCW 79.76.010.]

*Reviser's note: RCW 79.76.030 was recodified as RCW 78.60.030 pursuant to 2003 c 334 § 567.

78.60.020 Short title. This chapter shall be known as the Geothermal Resources Act. [1974 ex.s. c 43 § 2. Formerly RCW 79.76.020.]

78.60.030 Definitions. For the purposes of this chapter, unless the text otherwise requires, the following terms shall have the following meanings:

(1) "Geothermal resources" means only that natural heat energy of the earth from which it is technologically practical to produce electricity commercially and the medium by which such heat energy is extracted from the earth, including liquids or gases, as well as any minerals contained in any natural or injected fluids, brines and associated gas, but excluding oil, hydrocarbon gas and other hydrocarbon substances.

(2) "Waste", in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood and shall include:

(a) The inefficient, excessive, or improper use of, or unnecessary dissipation of, reservoir energy; or the locating, spacing, drilling, equipping, operating or producing of any geothermal energy well in a manner which results, or tends to result, in reducing the quantity of geothermal energy to be recovered from any geothermal area in this state;

(b) The inefficient above-ground transporting or storage of geothermal energy; or the locating, spacing, drilling,

equipping, operating, or producing of any geothermal well in a manner causing, or tending to cause, unnecessary excessive surface loss or destruction of geothermal energy;

(c) The escape into the open air, from a well of steam or hot water, in excess of what is reasonably necessary in the efficient development or production of a geothermal well.

(3) "Geothermal area" means any land that is, or reasonably appears to be, underlain by geothermal resources.

(4) "Energy transfer system" means the structures and enclosed fluids which facilitate the utilization of geothermal energy. The system includes the geothermal wells, cooling towers, reinjection wells, equipment directly involved in converting the heat energy associated with geothermal resources to mechanical or electrical energy or in transferring it to another fluid, the closed piping between such equipment, wells and towers and that portion of the earth which facilitates the transfer of a fluid from reinjection wells to geothermal wells: PROVIDED, That the system shall not include any geothermal resources which have escaped into or have been released into the nongeothermal ground or surface waters from either man-made containers or through leaks in the structure of the earth caused by or to which access was made possible by any drilling, redrilling, reworking or operating of a geothermal or reinjection well.

(5) "Operator" means the person supervising or in control of the operation of a geothermal resource well, whether or not such person is the owner of the well.

(6) "Owner" means the person who possesses the legal right to drill, convert or operate any well or other facility subject to the provisions of this chapter.

(7) "Person" means any individual, corporation, company, association of individuals, joint venture, partnership, receiver, trustee, guardian, executor, administrator, personal representative, or public agency that is the subject of legal rights and duties.

(8) "Pollution" means any damage or injury to ground or surface waters, soil or air resulting from the unauthorized loss, escape, or disposal of any substances at any well subject to the provisions of this chapter.

(9) "Department" means the department of natural resources.

(10) "Well" means any excavation made for the discovery or production of geothermal resources, or any special facility, converted producing facility, or reactivated or converted abandoned facility used for the reinjection of geothermal resources, or the residue thereof underground.

(11) "Core holes" are holes drilled or excavations made expressly for the acquisition of geological or geophysical data for the purpose of finding and delineating a favorable geothermal area prior to the drilling of a well.

(12) A "completed well" is a well that has been drilled to its total depth, has been adequately cased, and is ready to be either plugged and abandoned, shut-in, or put into production.

(13) "Plug and abandon" means to place permanent plugs in the well in such a way and at such intervals as are necessary to prevent future leakage of fluid from the well to the surface or from one zone in the well to the other, and to remove all drilling and production equipment from the site, and to restore the surface of the site to its natural condition or

contour or to such condition as may be prescribed by the department.

(14) "Shut-in" means to adequately cap or seal a well to control the contained geothermal resources for an interim period. [1974 ex.s. c 43 § 3. Formerly RCW 79.76.030.]

78.60.040 Geothermal resources deemed sui generis.

Notwithstanding any other provision of law, geothermal resources are found and hereby determined to be sui generis, being neither a mineral resource nor a water resource and as such are hereby declared to be the private property of the holder of the title to the surface land above the resource. [1979 ex.s. c 2 § 1; 1974 ex.s. c 43 § 4. Formerly RCW 79.76.040.]

Severability—1979 ex.s. c 2: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 2 § 2.]

78.60.050 Administration of chapter.

(1) The department shall administer and enforce the provisions of this chapter and the rules, regulations, and orders relating to the drilling, operation, maintenance, abandonment and restoration of geothermal areas, to prevent damage to and waste from underground geothermal deposits, and to prevent damage to underground and surface waters, land or air that may result from improper drilling, operation, maintenance or abandonment of geothermal resource wells.

(2) In order to implement the terms and provisions of this chapter, the department under the provisions of chapter 34.05 RCW, as now or hereafter amended, may from time to time promulgate those rules and regulations necessary to carry out the purposes of this chapter, including but not restricted to defining geothermal areas; establishing security requirements, which may include bonding; providing for liens against production; providing for casing and safety device requirements; providing for site restoration plans to be completed prior to abandonment; and providing for abandonment requirements. [1974 ex.s. c 43 § 5. Formerly RCW 79.76.050.]

78.60.060 Scope of chapter.

This chapter is intended to preempt local regulation of the drilling and operation of wells for geothermal resources but shall not be construed to permit the locating of any well or drilling when such well or drilling is prohibited under state or local land use law or regulations promulgated thereunder. Geothermal resources, byproducts and/or waste products which have escaped or been released from the energy transfer system and/or a mineral recovery process shall be subject to provisions of state law relating to the pollution of ground or surface waters (Title 90 RCW), provisions of the state fisheries law and the state game laws (Title 77 RCW), and any other state environmental pollution control laws. Authorization for use of byproduct water resources for all beneficial uses, including but not limited to greenhouse heating, warm water fish propagation, space heating plants, irrigation, swimming pools, and hot springs baths, shall be subject to the appropriation procedure as provided in Title 90 RCW. [2003 c 39 § 40; 1974 ex.s. c 43 § 6. Formerly RCW 79.76.060.]

78.60.070 Drilling permits—Applications—Hearing—Fees. (1) Any person proposing to drill a well or redrill an abandoned well for geothermal resources shall file with the department a written application for a permit to commence such drilling or redrilling on a form prescribed by the department accompanied by a permit fee of two hundred dollars. The department shall forward a duplicate copy to the department of ecology within ten days of filing.

(2) Upon receipt of a proper application relating to drilling or redrilling the department shall set a date, time, and place for a public hearing on the application, which hearing shall be in the county in which the drilling or redrilling is proposed to be made, and shall instruct the applicant to publish notices of such application and hearing by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the drilling or redrilling is proposed to be made and in such other appropriate information media as the department may direct.

(3) Any person proposing to drill a core hole for the purpose of gathering geothermal data, including but not restricted to heat flow, temperature gradients, and rock conductivity, shall be required to obtain a single permit for each geothermal area according to subsection (1) of this section, except that no permit fee shall be required, no notice need be published, and no hearing need be held. Such core holes that penetrate more than seven hundred and fifty feet into bedrock shall be deemed geothermal test wells and subject to the payment of a permit fee and to the requirement in subsection (2) of this section for public notices and hearing. In the event geothermal energy is discovered in a core hole, the hole shall be deemed a geothermal well and subject to the permit fee, notices, and hearing. Such core holes as described by this subsection are subject to all other provisions of this chapter, including a bond or other security as specified in *RCW 79.76.130.

(4) All moneys paid to the department under this section shall be deposited with the state treasurer for credit to the general fund. [1974 ex.s. c 43 § 7. Formerly RCW 79.76.070.]

***Reviser's note:** RCW 79.76.130 was recodified as RCW 78.60.130 pursuant to 2003 c 334 § 567.

78.60.080 Drilling permits—Criteria for granting. A permit shall be granted only if the department is satisfied that the area is suitable for the activities applied for; that the applicant will be able to comply with the provisions of this chapter and the rules and regulations enacted hereunder; and that a permit would be in the best interests of the state.

The department shall not allow operation of a well under permit if it finds that the operation of any well will unreasonably decrease ground water available for prior water rights in any aquifer or other ground water source for water for beneficial uses, unless such affected water rights are acquired by condemnation, purchase or other means.

The department shall have the authority to condition the permit as it deems necessary to carry out the provisions of this chapter, including but not limited to conditions to reduce any environmental impact.

The department shall forward a copy of the permit to the department of ecology within five days of issuance. [1974 ex.s. c 43 § 8. Formerly RCW 79.76.080.]

78.60.090 Casing requirements. Any operator engaged in drilling or operating a well for geothermal resources shall equip such well with casing of sufficient strength and with such safety devices as may be necessary, in accordance with methods approved by the department.

No person shall remove a casing, or any portion thereof, from any well without prior approval of the department. [1974 ex.s. c 43 § 9. Formerly RCW 79.76.090.]

78.60.100 Plugging and abandonment of wells—Transfer of jurisdiction to department of ecology. Any well drilled under authority of this chapter from which:

(1) It is not technologically practical to derive the energy to produce electricity commercially, or the owner or operator has no intention of deriving energy to produce electricity commercially, and

(2) Usable minerals cannot be derived, or the owner or operator has no intention of deriving usable minerals, shall be plugged and abandoned as provided in this chapter or, upon the owner's or operator's written application to the department of natural resources and with the concurrence and approval of the department of ecology, jurisdiction over the well may be transferred to the department of ecology and, in such case, the well shall no longer be subject to the provisions of this chapter but shall be subject to any applicable laws and regulations relating to wells drilled for appropriation and use of ground waters. If an application is made to transfer jurisdiction, a copy of all logs, records, histories, and descriptions shall be provided to the department of ecology by the applicant. [1974 ex.s. c 43 § 10. Formerly RCW 79.76.100.]

78.60.110 Suspension of drilling, shut-in or removal of equipment for authorized period—Unlawful abandonment. (1) The department may authorize the operator to suspend drilling operations, shut-in a completed well, or remove equipment from a well for the period stated in the department's written authorization. The period of suspension may be extended by the department upon the operator showing good cause for the granting of such extension.

(2) If drilling operations are not resumed by the operator, or the well is not put into production, upon expiration of the suspension or shut-in permit, an intention to unlawfully abandon shall be presumed.

(3) A well shall also be deemed unlawfully abandoned if, without written approval from the department, drilling equipment is removed.

(4) An unlawful abandonment under this chapter shall be entered in the department records and written notice thereof shall be mailed by registered mail both to such operator at his last known address as disclosed by records of the department and to the operator's surety. The department may thereafter proceed against the operator and his surety. [1974 ex.s. c 43 § 11. Formerly RCW 79.76.110.]

78.60.120 Notification of abandonment or suspension of operations—Required—Procedure. (1) Before any

operation to plug and abandon or suspend the operation of any well is commenced, the owner or operator shall submit in writing a notification of abandonment or suspension of operations to the department for approval. No operation to abandon or suspend the operation of a well shall commence without approval by the department. The department shall respond to such notification in writing within ten working days following receipt of the notification.

(2) Failure to abandon or suspend operations in accordance with the method approved by the department shall constitute a violation of this chapter, and the department shall take appropriate action under the provisions of *RCW 79.76.270. [1974 ex.s. c 43 § 12. Formerly RCW 79.76.120.]

*Reviser's note: RCW 79.76.270 was recodified as RCW 78.60.270 pursuant to 2003 c 334 § 567.

78.60.130 Performance bond or other security—Required. Every operator who engages in the drilling, redrilling, or deepening of any well shall file with the department a reasonable bond or bonds with good and sufficient surety, or the equivalent thereof, acceptable to the department, conditioned on compliance with the provisions of this chapter and all rules and regulations and permit conditions adopted pursuant to this chapter. This performance bond shall be executed in favor of and approved by the department.

In lieu of a bond the operator may file with the department a cash deposit, negotiable securities acceptable to the department, or an assignment of a savings account in a Washington bank on an assignment form prescribed by the department. The department, in its discretion, may accept a single surety or security arrangement covering more than one well. [1974 ex.s. c 43 § 13. Formerly RCW 79.76.130.]

78.60.140 Termination or cancellation of bond or change in other security, when. The department shall not consent to the termination and cancellation of any bond by the operator, or change as to other security given, until the well or wells for which it has been issued have been properly abandoned or another valid bond for such well has been submitted and approved by the department. A well is properly abandoned when abandonment has been approved by the department. [1974 ex.s. c 43 § 14. Formerly RCW 79.76.140.]

78.60.150 Notification of sale, exchange, etc. The owner or operator of a well shall notify the department in writing within ten days of any sale, assignment, conveyance, exchange, or transfer of any nature which results in any change or addition in the owner or operator of the well on such forms with such information as may be prescribed by the department. [1974 ex.s. c 43 § 15. Formerly RCW 79.76.150.]

78.60.160 Combining orders, unitization programs and well spacing—Authority of department. The department has the authority, through rules and regulations, to promulgate combining orders, unitization programs, and well spacing, and establish proportionate costs among owners or operators for the operation of such units as the result of said

combining orders, if good and sufficient reason is demonstrated that such measures are necessary to prevent the waste of geothermal resources. [1974 ex.s. c 43 § 16. Formerly RCW 79.76.160.]

78.60.170 Designation of resident agent for service of process. Each owner or operator of a well shall designate a person who resides in this state as his agent upon whom may be served all legal processes, orders, notices, and directives of the department or any court. [1974 ex.s. c 43 § 17. Formerly RCW 79.76.170.]

78.60.180 General authority of department. The department shall have the authority to conduct or authorize investigations, research, experiments, and demonstrations, cooperate with other governmental and private agencies in making investigations, receive any federal funds, state funds, and other funds and expend them on research programs concerning geothermal resources and their potential development within the state, and to collect and disseminate information relating to geothermal resources in the state: PROVIDED, That the department shall not construct or operate commercial geothermal facilities. [1974 ex.s. c 43 § 18. Formerly RCW 79.76.180.]

78.60.190 Employment of personnel. The department shall have the authority, and it shall be its duty, to employ all personnel necessary to carry out the provisions of this chapter pursuant to chapter 41.06 RCW. [1974 ex.s. c 43 § 19. Formerly RCW 79.76.190.]

78.60.200 Drilling records, etc., to be maintained—Inspection—Filing. (1) The owner or operator of any well shall keep or cause to be kept careful and accurate logs, records, descriptions, and histories of the drilling, re-drilling, or deepening of the well.

(2) All logs, records, histories, and descriptions referred to in subsection (1) of this section shall be kept in the local office of the owner or operator, and together with other reports of the owner or operator shall be subject during business hours to inspection by the department. Each owner or operator, upon written request from the department, shall file with the department a copy of the logs, records, histories, descriptions, or other records or portions thereof pertaining to the geothermal drilling or operation underway or suspended. [1974 ex.s. c 43 § 20. Formerly RCW 79.76.200.]

78.60.210 Filing of records with department upon completion, abandonment or suspension of operations. Upon completion or plugging and abandonment of any well or upon the suspension of operations conducted with respect to any well for a period of at least six months, one copy of the log, core record, electric log, history, and all other logs and surveys that may have been run on the well, shall be filed with the department within thirty days after such completion, plugging and abandonment, or six months' suspension. [1974 ex.s. c 43 § 21. Formerly RCW 79.76.210.]

78.60.220 Statement of geothermal resources produced—Filing. The owner or operator of any well produc-

ing geothermal resources shall file with the department a statement of the geothermal resources produced. Such report shall be submitted on such forms and in such manner as may be prescribed by the department. [1974 ex.s. c 43 § 22. Formerly RCW 79.76.220.]

78.60.230 Confidentiality of records. (1) The records of any owner or operator, when filed with the department as provided in this chapter, shall be confidential and shall be open to inspection only to personnel of the department for the purpose of carrying out the provisions of this chapter and to those authorized in writing by such owner or operator, until the expiration of a twenty-four month confidential period to begin at the date of commencement of production or of abandonment of the well.

(2) Such records shall in no case, except as provided in this chapter, be available as evidence in court proceedings. No officer, employee, or member of the department shall be allowed to give testimony as to the contents of such records, except as provided in this chapter for the review of a decision of the department or in any proceeding initiated for the enforcement of an order of the department, for the enforcement of a lien created by the enforcement of this chapter, or for use as evidence in criminal proceedings arising out of such records or the statements upon which they are based. [1974 ex.s. c 43 § 23. Formerly RCW 79.76.230.]

78.60.240 Removal, destruction, alteration, etc., of records prohibited. No person shall, for the purpose of evading the provision of this chapter or any rule, regulation or order of the department made thereunder, remove from this state, or destroy, mutilate, alter or falsify any such record, account, or writing. [1974 ex.s. c 43 § 24. Formerly RCW 79.76.240.]

78.60.250 Violations—Modification of permit, when necessary—Departmental order—Issuance—Appeal. Whenever it appears with probable cause to the department that:

(1) A violation of any provision of this chapter, regulation adopted pursuant thereto, or condition of a permit issued pursuant to this chapter has occurred or is about to occur, or

(2) That a modification of a permit is deemed necessary to carry out the purpose of this chapter,

the department shall issue a written order in person to the operator or his employees or agents, or by certified mail, concerning the drilling, testing, or other operation conducted with respect to any well drilled, in the process of being drilled, or in the process of being abandoned or in the process of reclamation or restoration, and the operator, owner, or designated agent of either shall comply with the terms of the order and may appeal from the order in the manner provided for in *RCW 79.76.280. When the department deems necessary the order may include a shutdown order to remain in effect until the deficiency is corrected. [1974 ex.s. c 43 § 25. Formerly RCW 79.76.250.]

***Reviser's note:** RCW 79.76.280 was recodified as RCW 78.60.280 pursuant to 2003 c 334 § 567.

78.60.260 Liability in damages for violations—Procedure. Any person who violates any of the provisions of this chapter, or fails to perform any duty imposed by this chapter, or violates an order or other determination of the department made pursuant to the provisions of this chapter, and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the state, shall be liable to pay the state damages including an amount equal to the sum of money necessary to restock such waters, replenish such resources, and otherwise restore the stream, lake, other water source, or land to its condition prior to the injury, as such condition is determined by the department. Such damages shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington in the superior court of the county in which such damages occurred: PROVIDED, That if damages occurred in more than one county the attorney general may bring action in any of the counties where the damage occurred. Any moneys so recovered by the attorney general shall be transferred to the department under whose jurisdiction the damaged resource occurs, for the purposes of restoring the resource. [1974 ex.s. c 43 § 26. Formerly RCW 79.76.260.]

78.60.270 Injunctions—Restraining orders. Whenever it shall appear that any person is violating any provision of this chapter, or any rule, regulation, or order made by the department hereunder, and if the department cannot, without litigation, effectively prevent further violation, the department may bring suit in the name of the state against such person in the court in the county of the residence of the defendant, or in the county of the residence of any defendant if there be more than one defendant, or in the county where the violation is alleged to have occurred, to restrain such person from continuing such violation. In such suit the department may, without bond, obtain injunctions prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts may warrant. [1974 ex.s. c 43 § 27. Formerly RCW 79.76.270.]

78.60.280 Judicial review. (1) Any person adversely affected by any rule, regulation, order, or permit entered by the department pursuant to this chapter may obtain judicial review thereof in accordance with the applicable provisions of chapter 34.05 RCW.

(2) The court having jurisdiction, insofar as is practicable, shall give precedence to proceedings for judicial review brought under this chapter. [1974 ex.s. c 43 § 28. Formerly RCW 79.76.280.]

78.60.290 Violations—Penalty. (Effective until July 1, 2004.) Violation of any provision of this chapter or of any rule, regulation, order of the department, or condition of any permit made hereunder is punishable, upon conviction, by a fine of not more than two thousand five hundred dollars or by imprisonment in the county jail for not more than six months, or both. [1974 ex.s. c 43 § 29. Formerly RCW 79.76.290.]

78.60.290 Violations—Penalty. (Effective July 1, 2004.) Violation of any provision of this chapter or of any rule, regulation, order of the department, or condition of any permit made hereunder is a gross misdemeanor punishable,

upon conviction, by a fine of not more than two thousand five hundred dollars or by imprisonment in the county jail for not more than six months, or both. [2003 c 53 § 381; 1974 ex.s. c 43 § 29. Formerly RCW 79.76.290.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

78.60.300 Aiding or abetting violations. No person shall knowingly aid or abet any other person in the violation of any provision of this chapter or of any rule, regulation or order of the department made hereunder. [1974 ex.s. c 43 § 30. Formerly RCW 79.76.300.]

78.60.900 Severability—1974 ex.s. c 43. If any provision of this 1974 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 43 § 32. Formerly RCW 79.76.900.]

Title 79

PUBLIC LANDS

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Reviser's note: 2003 c 334 recodified and/or repealed chapter 79.01 RCW in its entirety.

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79.01.392	79.36.530	79.01.744	79.10.010
79.01.396	79.36.540	79.01.748	79.02.310
79.01.400	79.36.550	79.01.752	79.02.330
79.01.404	79.36.560	79.01.756	79.02.320
79.01.408	79.36.570	79.01.760	79.02.300
79.01.412	79.36.580	79.01.765	79.02.080
79.01.414	79.36.355	79.01.770	79.17.110
79.01.416	79.36.360	79.01.774	79.17.120
79.01.500	79.02.030	79.01.778	79.17.130
79.01.612	79.10.030	79.01.780	79.17.140
79.01.616	79.14.300	79.01.784	79.19.100
79.01.617	79.14.310	79.01.790	79.15.210
79.01.618	79.14.320	79.01.795	79.15.220
79.01.620	79.14.330	79.01.800	79.96.200
79.01.624	79.14.340	79.01.805	79.96.210
79.01.628	79.14.350	79.01.810	79.96.220
79.01.632	79.14.360	79.01.815	79.96.230
79.01.633	79.14.370		
79.01.634	79.14.380		
79.01.640	79.14.390		
79.01.642	79.14.400		
79.01.644	79.14.410		
79.01.645	79.14.420		
79.01.648	79.14.430		
79.01.649	79.14.440		
79.01.650	79.14.450		
79.01.651	79.14.315		
79.01.652	79.14.470		
79.01.656	79.14.480		
79.01.660	79.14.490		
79.01.664	79.14.500		
79.01.668	79.14.510		
79.01.672	79.14.520		
79.01.676	79.14.530		
79.01.680	79.14.540		
79.01.684	79.14.550		
79.01.688	79.14.560		
79.01.692	79.14.570		
79.01.696	79.14.580		
79.01.704			

79.01.072 False statements—Penalty.

Reviser's note: RCW 79.01.072 was amended by 2003 c 53 § 378 without reference to its repeal by 2003 c 334 § 551. It has been decodified for publication purposes under RCW 1.12.025.

79.01.132 Valuable materials sold separately—Initial deposit—Advance payment/guarantee payment—Time limit on removal—Direct sale of valuable materials—Performance security—Proof of taxes paid.

(1) When valuable materials on state lands are sold separate from the land, they may be sold as a lump sum sale or as a scale sale. Lump sum sales under five thousand dollars appraised value shall be paid for in cash on the day of sale. The initial deposit shall be maintained until all contract obligations of the purchaser are satisfied. However, all or a portion of the initial deposit may be applied as the final payment for the valuable materials in the event the department of natural resources determines that adequate security exists for the performance or fulfillment of any remaining obligations of the purchaser under the sale contract.

(2) The initial deposits required in *RCW 79.01.204 may not exceed twenty-five percent of the actual or projected purchase price, but in the case of lump sum sales appraised at over five thousand dollars the initial deposit may not be less than five thousand dollars, and shall be made on the day of the sale. For those sales appraised below the amount specified in **RCW 79.01.200, the department of natural resources may require full cash payment on the day of sale.

(3) The purchaser shall notify the department of natural resources before any operation takes place on the sale site. Upon notification, the department of natural resources shall determine and require advance payment for the cutting, removal, or processing of the valuable materials, or may allow purchasers to guarantee payment by submitting as adequate security bank letters of credit, payment bonds, assignments of savings accounts, assignments of certificates of deposit, or other methods acceptable to the department as adequate security. The amount of such advance payments and/or security shall be determined by the department and at all times equal

or exceed the value of timber cut and other valuable materials processed or removed until paid for.

(4) In all cases where valuable materials are sold separate from the land, the same shall revert to the state if not removed from the land within the period specified in the sale contract. The specified period shall not exceed five years from the date of the purchase thereof: PROVIDED, That the specified periods in the sale contract for stone, sand, fill material, or building stone shall not exceed thirty years.

(5) In all cases where, in the judgment of the department of natural resources, the purchaser is acting in good faith and endeavoring to remove such materials, the department of natural resources may extend the time for the removal thereof for any period not exceeding forty years from the date of purchase for the stone, sand, fill material, or building stone or for a total of ten years beyond the normal termination date specified in the original sale contract for all other material. Extension of a contract is contingent upon payment to the state of a sum to be fixed by the department of natural resources, based on the estimated loss of income per acre to the state resulting from the granting of the extension. In no event may the extension payment be less than fifty dollars per extension, plus interest on the unpaid portion of the contract. The interest rate shall be fixed, from time to time, by rule adopted by the board of natural resources and shall not be less than six percent per annum. The applicable rate of interest as fixed at the date of sale, the maximum extension payment, and the method for calculating the unpaid portion of the contract upon which such interest shall be paid by the purchaser shall be set forth in the contract. The department of natural resources shall pay into the state treasury all sums received for such extension and the same shall be credited to the fund to which was credited the original purchase price of the material so sold.

(6) A direct sale of valuable materials may be sold to the applicant for cash at full appraised value without notice or advertising. The board of natural resources shall, by resolution, establish the value amount of a direct sale not to exceed twenty-five thousand dollars in appraised sale value, and establish procedures to assure that competitive market prices and accountability will be guaranteed.

(7) The department may, in addition to any other securities, require a performance security to guarantee compliance with all contract requirements. The security is limited to those types listed in subsection (3) of this section. The value of the performance security will, at all times, equal or exceed the value of work performed or to be performed by the purchaser.

(8) Any time that the department of natural resources sells timber by contract that includes a performance bond, the department shall require the purchaser to present proof of any and all property taxes paid prior to the release of the performance bond. Within thirty days of payment of taxes due by the timber purchaser, the county treasurer shall provide certified evidence of property taxes paid, clearly disclosing the sale contract number.

(9) The provisions of this section apply unless otherwise provided by statute. The board of natural resources shall establish procedures to protect against cedar theft and to ensure adequate notice is given for persons interested in purchasing cedar. [2003 c 381 § 1. Prior: 2001 c 250 § 4; 2001 c 187 § 1; 1999 c 51 § 1; 1997 c 116 § 1; 1989 c 148 § 1; 1988 c 136 § 2; 1983 c 2 § 16; prior: 1982 c 222 § 11; 1982 c 27 § 3; 1975 1st ex.s. c 52 § 1; 1971 ex.s. c 123 § 1; 1969 ex.s. c 14 § 2; 1961 c 73 § 1; 1959 c 257 § 13; 1927 c 255 § 33; RRS § 7797-33; prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.120.]

Reviser's note: *(1) RCW 79.01.204 was recodified as RCW 79.11.150 pursuant to 2003 c 334 § 556.

***(2) RCW 79.01.200 was recodified as RCW 79.11.090 pursuant to 2003 c 334 § 556.

(3) RCW 79.01.132 was also repealed by 2003 c 334 § 551 without cognizance of its amendment by 2003 c 381 § 1. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Application—2001 c 187: See note following RCW 84.40.020.

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

Severability—1982 c 222: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 222 § 17.]

79.01.132 Valuable materials sold separately—Initial deposit—Advance payment/guarantee payment—Time limit on removal—Direct sale of valuable materials—Performance security—Proof of taxes paid. [2001 c 250 § 4; 2001 c 187 § 1; 1999 c 51 § 1; 1997 c 116 § 1; 1989 c 148

§ 1; 1988 c 136 § 2; 1983 c 2 § 16. Prior: 1982 c 222 § 11; 1982 c 27 § 3; 1975 1st ex.s. c 52 § 1; 1971 ex.s. c 123 § 1; 1969 ex.s. c 14 § 2; 1961 c 73 § 1; 1959 c 257 § 13; 1927 c 255 § 33; RRS § 7797-33; prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.120.] Repealed by 2003 c 334 § 551.

Reviser's note: RCW 79.01.132 was also amended by 2003 c 381 § 1 without cognizance of its repeal by 2003 c 334 § 551. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Chapter 79.02 RCW

PUBLIC LANDS MANAGEMENT—GENERAL

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PART 1
GENERAL PROVISIONS

79.02.010 Definitions. The definitions in this section apply throughout this title unless the context clearly requires otherwise.

(1) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters as defined in chapter 79.90 RCW that are managed by the department.

(2) "Board" means the board of natural resources.

(3) "Commissioner" means the commissioner of public lands.

(4) "Community and technical college forest reserve lands" means lands managed under RCW 79.02.420.

(5) "Department" means the department of natural resources.

(6) "Improvements," when referring to state lands, means anything considered a fixture in law placed upon or attached to such lands that has changed the value of the lands or any changes in the previous condition of the fixtures that changes the value of the lands.

(7) "Land bank lands" means lands acquired under RCW 79.19.020.

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

(9) "Public lands" means lands of the state of Washington and includes lands belonging to or held in trust by the state, which are not devoted to or reserved for a particular use by law. They include state lands, tidelands, shorelands, and harbor areas as defined in chapter 79.90 RCW, and the beds of navigable waters belonging to the state.

(10) "State forest lands" means lands acquired under RCW 79.22.010, 79.22.040, and 79.22.020.

(11) "State lands" includes:

(a) School lands, that is, lands held in trust for the support of the common schools;

(b) University lands, that is, lands held in trust for university purposes;

(c) Agricultural college lands, that is, lands held in trust for the use and support of agricultural colleges;

(d) Scientific school lands, that is, lands held in trust for the establishment and maintenance of a scientific school;

(e) Normal school lands, that is, lands held in trust for state normal schools;

(f) Capitol building lands, that is, lands held in trust for the purpose of erecting public buildings at the state capital for legislative, executive, and judicial purposes;

(g) Institutional lands, that is, lands held in trust for state charitable, educational, penal, and reformatory institutions; and

(h) All public lands of the state, except tidelands, shorelands, harbor areas, and the beds of navigable waters.

(12) "Valuable materials," when referring to state lands or state forest lands, means any product or material on the lands, such as forest products, forage or agricultural crops, stone, gravel, sand, peat, and all other materials of value except mineral, coal, petroleum, and gas as provided for under chapter 79.14 RCW. [2003 c 334 § 301; 1927 c 255 §

1; RRS § 7797-1. Prior: 1911 c 36 § 1; 1907 c 256 § 1; 1897 c 89 §§ 4, 5; 1895 c 178 §§ 1, 2. Formerly RCW 79.01.004, 79.04.010.]

Intent—2003 c 334: "This act is intended to make technical amendments to certain codified statutes that deal with the department of natural resources. Any statutory changes made by this act should be interpreted as technical in nature and not be interpreted to have any substantive, policy implications." [2003 c 334 § 616.]

79.02.020 Witnesses—Compelling attendance. (1) The board or the commissioner has the power to compel through subpoena the attendance of witnesses and production of records for:

(a) Hearings pertaining to public lands as provided by this title;

(b) Determining the value and character of land, valuable materials, or improvements; and

(c) Determining waste or damage to the land.

(2) A subpoena may be served by any person authorized by law to serve process.

(3) Each witness subpoenaed is allowed the same fees and mileage as paid witnesses in courts of records in this state. The department shall pay these fees and mileage from its general fund appropriation.

(4) Any witness failing to comply with a subpoena, without legal excuse, is considered in contempt.

(a) The board or commissioner shall certify the facts to the court of the county in which the witness resides for contempt of court proceedings as provided in chapter 7.21 RCW.

(b) The certificate of the board or commissioner must be considered by the court as prima facie evidence of the guilt of the witness.

(c) Upon legal proof of the facts, the witness is subject to the same penalties as provided in like cases for contempt of court. [2003 c 334 § 302.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.030 Court review of actions. Any applicant to purchase, or lease, any public lands of the state, or any valuable materials thereon, and any person whose property rights or interests will be affected by such sale or lease, feeling aggrieved by any order or decision of the board, or the commissioner, concerning the same, may appeal therefrom to the superior court of the county in which such lands or materials are situated, by serving upon all parties who have appeared in the proceedings in which the order or decision was made, or their attorneys, a written notice of appeal, and filing such notice, with proof, or admission, of service, with the board, or the commissioner, within thirty days from the date of the order or decision appealed from, and at the time of filing the notice, or within five days thereafter, filing a bond to the state, in the penal sum of two hundred dollars, with sufficient sureties, to be approved by the secretary of the board, or the commissioner, conditioned that the appellant shall pay all costs that may be awarded against the appellant on appeal, or the dismissal thereof. Within thirty days after the filing of notice of appeal, the secretary of the board, or the commissioner, shall certify, under official seal, a transcript of all entries in the records of the board, or the commissioner, together with all processes, pleadings and other papers relating to and on file in the case, except evidence used in such

proceedings, and file such transcript and papers, at the expense of the applicant, with the clerk of the court to which the appeal is taken. The hearing and trial of said appeal in the superior court shall be de novo before the court, without a jury, upon the pleadings and papers so certified, but the court may order the pleadings to be amended, or new and further pleadings to be filed. Costs on appeal shall be awarded to the prevailing party as in actions commenced in the superior court, but no costs shall be awarded against the state, the board, or the commissioner. Should judgment be rendered against the appellant, the costs shall be taxed against the appellant and the appellant's sureties on the appeal bond, except when the state is the only adverse party, and shall be included in the judgment, upon which execution may issue as in other cases. Any party feeling aggrieved by the judgment of the superior court may seek appellate review as in other civil cases. Unless appellate review of the judgment of the superior court is sought, the clerk of said court shall, on demand, certify, under the clerk's hand and the seal of the court, a true copy of the judgment, to the board, or the commissioner, which judgment shall thereupon have the same force and effect as if rendered by the board, or the commissioner. In all cases of appeals from orders or decisions of the commissioner involving the prior right to purchase tidelands of the first class, if the appeal is not prosecuted, heard and determined, within two years from the date of the appeal, the attorney general shall, after thirty days' notice to the appellant of the attorney general's intention so to do, move the court for a dismissal of the appeal, but nothing herein shall be construed to prevent the dismissal of such appeal at any time in the manner provided by law. [2003 c 334 § 397. Prior: 1988 c 202 § 59; 1988 c 128 § 56; 1971 c 81 § 139; 1927 c 255 § 125; RRS § 7797-125; prior: 1901 c 62 §§ 1 through 7; 1897 c 89 § 52; 1895 c 178 § 82. Formerly RCW 79.01.500, 79.08.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

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

79.02.040 Reconsideration of official acts. The department may review and reconsider any of its official acts relating to state lands until such time as a lease, contract, or deed shall have been made, executed, and finally issued, and the department may recall any lease, contract, or deed issued for the purpose of correcting mistakes or errors, or supplying omissions. [2003 c 334 § 432; 1982 1st ex.s. c 21 § 177; 1927 c 255 § 195; RRS § 7797-195. Formerly RCW 79.01.740, 43.65.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.02.050 Effect of mistake or fraud. (1) Any sale, transfer, or lease of state lands in which the purchaser, transfer recipient, or lessee obtains the sale or lease by fraud or misrepresentation is void, and the contract of purchase or lease shall be of no effect. In the event of fraud, the contract, transferred property, or lease must be surrendered to the department, but the purchaser, transfer recipient, or lessee may not be refunded any money paid on account of the surrendered contract, transfer, or lease.

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[(2)] In the event that a mistake is discovered in the sale or lease of state lands, or in the sale of valuable materials on state lands, the department may take action to correct the mistake in accordance with RCW 79.02.040 if maintaining the corrected contract, transfer, or lease is in the best interests of the affected trust or trusts. [2003 c 334 § 365; 2001 c 250 § 11; 1982 1st ex.s. c 21 § 164; 1959 c 257 § 28; 1927 c 255 § 60; RRS § 7797-60. Prior: 1903 c 79 § 3. Formerly RCW 79.01.240, 79.12.280.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.02.080 Rewards for information regarding violations. The department is authorized to offer and pay a reward not to exceed ten thousand dollars in each case for information regarding violations of any statute or rule relating to the state's public lands and natural resources on those lands, except forest practices under chapter 76.09 RCW. No reward may be paid to any federal, state, or local government or agency employees for information obtained by them in the normal course of their employment. The department is authorized to adopt rules in pursuit of its authority under this section to determine the appropriate account or fund from which to pay the reward. The department is also authorized to adopt rules establishing the criteria for paying a reward and the amount to be paid. No appropriation shall be required for disbursement. [2003 c 334 § 436; 1994 c 56 § 1; 1990 c 163 § 8. Formerly RCW 79.01.765.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.090 Transfer of county auditor's duties. The duties of the county auditor in each county with a population of two hundred ten thousand or more, with regard to sales and leases dealt with under this title except RCW 79.11.250, 79.11.260, and 79.94.040, are transferred to the county treasurer. [2003 c 334 § 451; 1991 c 363 § 152; 1983 c 3 § 201; 1955 c 184 § 1. Formerly RCW 79.08.170.]

Intent—2003 c 334: See note following RCW 79.02.010.

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

79.02.095 Statutes not applicable to state tidelands, shorelands, harbor areas, and the beds of navigable waters. RCW 79.11.080, 79.11.010, 79.11.110, *79.01.140, 79.11.160, 79.10.125, 79.13.130, *79.01.252, *79.01.256, *79.01.260, *79.01.264, 79.13.180, 79.02.260, 79.13.320, 79.13.410, 79.13.010, and *79.01.277 do not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. [2003 c 334 § 317; 1979 ex.s. c 109 § 22. Formerly RCW 79.01.093.]

Reviser's note: RCW 79.01.140, 79.01.252, 79.01.256, 79.01.260, 79.01.264, and 79.01.277 were repealed by 2003 c 334 § 551.

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

PART 2
FEDERAL LAND GRANTS

79.02.100 Appearance by commissioner before United States land offices. The commissioner of public lands is authorized and directed to appear before the United States land offices in all cases involving the validity of the selections of any lands granted to the state, and to summon witnesses and pay necessary witness fees and stenographer fees in such contested cases. [1927 c 255 § 193; RRS § 7797-193. Formerly RCW 79.01.732, 43.12.070.]

79.02.110 Applications for federal certification that lands are nonmineral. The commissioner of public lands is authorized and directed to make applications, and to cause publication of notices of applications, to the interior department of the United States for certification that any land granted to the state is nonmineral in character, in accordance with the rules of the general land office of the United States. [1927 c 255 § 77; RRS § 7797-77. Prior: 1897 c 89 § 33. Formerly RCW 79.01.308, 79.08.130.]

79.02.120 Lieu lands—Selection agreements authorized. For the purpose of obtaining from the United States indemnity or lieu lands for such lands granted to the state for common schools, educational, penal, reformatory, charitable, capitol building, or other purposes, as have been or may be lost to the state, or the title to or use or possession of which is claimed by the United States or by others claiming by, through or under the United States, by reason of any of the causes entitling the state to select other lands in lieu thereof, the inclusion of the same in any reservation by or under authority of the United States, or any other appropriation or disposition of the same by the United States, whether such lands are now surveyed or unsurveyed, the department, with the advice and approval of the attorney general, is authorized and empowered to enter into an agreement or agreements, on behalf of the state, with the proper officer or officers of the United States for the relinquishment of any such lands and the selection in lieu thereof, under the provisions of RCW 79.02.120 through 79.02.140, of lands of the United States of equal area and value. [2003 c 334 § 488; 1988 c 128 § 63; 1913 c 102 § 1; RRS § 7824. Formerly RCW 79.28.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.130 Lieu lands—Examination and appraisal. Upon the making of any such agreement, the board shall be empowered and it shall be its duty to cause such examination and appraisal to be made as will determine the area and value, as nearly as may be, of the lands lost to the state, or the title to, use or possession of which is claimed by the United States by reason of the causes mentioned in RCW 79.02.120, and proposed to be relinquished to the United States, and shall cause an examination and appraisal to be made of any lands which may be designated by the officers of the United States as subject to selection by the state in lieu of the lands aforesaid, to the end that the state shall obtain lands in lieu thereof of equal area and value. [2003 c 334 § 489; 1988 c 128 § 64; 1913 c 102 § 2; RRS § 7825. Formerly RCW 79.28.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.140 Lieu lands—Transfer of title to lands relinquished. Whenever the title to any lands selected under the provisions of RCW 79.02.120 through 79.02.140 shall become vested in the state of Washington by the acceptance and approval of the lists of lands so selected, or other proper action of the United States, the governor, on behalf of the state of Washington, shall execute and deliver to the United States a deed of conveyance of the lands of the state relinquished under the provisions of RCW 79.02.120 through 79.02.140, which deed shall convey to and vest in the United States all the right, title and interest of the state of Washington therein. [2003 c 334 § 490; 1913 c 102 § 3; RRS § 7826. Formerly RCW 79.28.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.150 Selection to complete uncompleted grants. So long as any grant of lands by the United States to the state of Washington, for any purpose, or as lieu or indemnity lands therefor, remains incomplete, the commissioner of public lands shall, from time to time, cause the records in his office and in the United States land offices, to be examined for the purpose of ascertaining what of the unappropriated lands of the United States are open to selection, and whether any thereof may be of sufficient value and so situated as to warrant their selection as state lands, and in that case may cause the same to be inspected and appraised by one or more state land inspectors, and a full report made thereon by the smallest legal subdivisions of forty acres each, classifying such lands into grazing, farming and timbered lands, and estimating the value of each tract inspected and the quantity and value of all valuable material thereon, and in the case of timbered lands the amount and value of the standing timber thereon, and the estimated value of such lands after the timber is removed, which report shall be made as amply and expeditiously as possible on blanks to be furnished by the commissioner of public lands for that purpose, under the oath of the inspector to the effect that he has personally examined the tracts mentioned in each forty acres thereof, and that said report and appraisal is made from such personal examination, and is, to the best of affiant's knowledge and belief, true and correct, and that the lands are not occupied by any bona fide settler.

The commissioner of public lands shall select such unappropriated lands as he shall deem advisable, and do all things necessary under the laws of the United States to vest title thereto in the state, and shall assign lands of equal value, as near as may be, to the various uncompleted grants. [1927 c 255 § 19; RRS § 7797-19. Prior: 1897 c 89 §§ 5, 7, 9, 10. Formerly RCW 79.01.076, 79.08.050.]

Lieu lands: Chapter 79.02 RCW.

79.02.160 Relinquishment on failure or rejection of selection. In case any person interested in any tract of land heretofore selected by the territory of Washington or any officer, board, or agent thereof or by the state of Washington or any officer, board, or agent thereof or which may be hereafter selected by the state of Washington or the department, in pursuance to any grant of public lands made by the United States to the territory or state of Washington for any purpose or upon any trust whatever, the selection of which has failed or been rejected or shall fail or shall be rejected for any rea-

son, shall request it, the department shall have the authority and power on behalf of the state to relinquish to the United States such tract of land. [2003 c 334 § 308; 1927 c 255 § 20; RRS § 7797-20. Prior: 1899 c 63 § 1. Formerly RCW 79.01.080, 79.08.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 3 CONTRACTS/RECORDS/FEEES/APPLICATIONS

79.02.200 Abstracts of public lands. The department shall cause full and correct abstracts of all the public lands to be made and kept in suitable and well bound books, and other suitable records. Such abstracts shall show in proper columns and pages the section or part of section, lot or block, township and range in which each tract is situated, whether timber or prairie, improved or unimproved, the appraised value per acre, the value of improvements and the value of damages, and the total value, the several values of timber, stone, gravel, or other valuable materials thereon, the date of sale, the name of purchaser, sale price per acre, the date of lease, the name of lessee, the term of the lease, the annual rental, amount of cash paid, amount unpaid and when due, amount of annual interest, and in proper columns such other facts as may be necessary to show a full and complete abstract of the conditions and circumstances of each tract or parcel of land from the time the title was acquired by the state until the issuance of a deed or other disposition of the land by the state. [2003 c 334 § 382; 1982 1st ex.s. c 21 § 166; 1927 c 255 § 76; RRS § 7797-76. Prior: (i) 1897 c 89 § 32; RRS § 7823. (ii) 1911 c 59 § 9; RRS § 7899. Formerly RCW 79.01.304, 43.12.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.02.210 Maps and plats—Record and index—Public inspection. All maps, plats, and field notes of surveys, required to be made by this title shall, after approval by the department, be deposited and filed in the office of the department, which shall keep a careful and complete record and index of all maps, plats, and field notes of surveys in its possession, in well bound books, which shall at all times be open to public inspection. [2003 c 334 § 426; 1988 c 128 § 57; 1927 c 255 § 187; RRS § 7797-187. Formerly RCW 79.01.708, 43.12.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.220 Seal. All notices, orders, contracts, certificates, rules and regulations, or other documents or papers made and issued by or on behalf of the department, or the commissioner, as provided in this title, shall be authenticated by a seal whereon shall be the vignette of George Washington, with the words "Seal of the commissioner of public lands, State of Washington." [2003 c 334 § 427; 1988 c 128 § 58; 1927 c 255 § 188; RRS § 7797-188. Formerly RCW 79.01.712, 43.65.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

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79.02.230 Blank forms of applications for appraisal, transfer, sale, and lease of state lands, valuable materials. The department shall cause to be prepared, and furnish to applicants, blank forms of applications for the appraisal, transfer, and purchase of any state lands and the purchase of valuable materials situated thereon, and for the lease of state lands. These forms shall contain instructions to inform and aid applicants. [2003 c 334 § 310; 2001 c 250 § 1; 1982 1st ex.s. c 21 § 150; 1959 c 257 § 2; 1927 c 255 § 21; RRS § 7797-21. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.01.084, 79.08.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.02.240 Fees. The department may charge and collect fees as determined by the board for each category of services performed based on costs incurred. [2003 c 334 § 428; 1979 ex.s. c 109 § 18; 1959 c 153 § 1; 1927 c 255 § 190; RRS § 7797-190. Formerly RCW 79.01.720, 43.12.120.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.02.250 Reasonable fees—Disposition. (1) Applications for the purchase or use of lands and the sale of valuable materials by the department shall be accompanied by reasonable fees to be prescribed by the board in an amount sufficient to defray the cost of performing or otherwise providing for the processing, review, or inspection of the applications or activities permitted pursuant to the applications for each category of services performed.

(2) Fees shall be credited to the resource management cost account fund as established under RCW 79.64.020, the forest development account fund as established under RCW 79.64.100, or the agricultural college trust management account fund as established under RCW 79.64.090, as applicable. [2003 c 334 § 313.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.260 Fee book. The department shall keep a fee book, in which shall be entered all fees received, with the date paid and the name of the person paying the same, and the nature of the services rendered for which the fee is charged, which book shall be verified monthly by affidavit entered therein. All fees collected by the department shall be paid into the state treasury, as applicable, to the resource management cost account created in RCW 79.64.020, the forest development account created in RCW 79.64.100, or the agricultural college trust management account fund as established under RCW 79.64.090, and the receipt of the state treasurer taken and retained in the department's Olympia office as a voucher. [2003 c 334 § 429; 1979 ex.s. c 109 § 19; 1927 c 255 § 191; RRS § 7797-191. Formerly RCW 79.01.724, 43.12.130.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.02.270 Deed. When the entire purchase price of any state lands shall have been fully paid, the commissioner shall certify such fact to the governor, and shall cause a quitclaim deed signed by the governor and attested by the secretary of state, with the seal of the state attached thereto, to be issued to the purchaser and to be recorded in the department's Olympia office. No fee is required for any deed of land issued by the governor other than the fee provided for in this title. [2003 c 334 § 360; 1982 1st ex.s. c 21 § 160; 1959 c 257 § 25; 1927 c 255 § 55; RRS § 7797-55. Prior: 1917 c 149 § 1; 1915 c 147 § 3; 1907 c 256 § 3; 1897 c 89 § 16; 1895 c 178 §§ 25, 29. Formerly RCW 79.01.220, 79.12.390.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.02.280 Assignment of contracts or leases. All contracts of purchase, or leases, of state lands issued by the department shall be assignable in writing by the contract holder or lessee and the assignee shall be subject to and governed by the provisions of law applicable to the assignor and shall have the same rights in all respects as the original purchaser, or lessee, of the lands, provided the assignment is approved by the department and entered of record in its office. [2003 c 334 § 377; 1982 1st ex.s. c 21 § 165; 1927 c 255 § 73; RRS § 7797-73. Prior: 1903 c 79 § 8. Formerly RCW 79.01.292, 79.12.270.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.02.290 Subdivision of contracts or leases—Fee. Whenever the holder of a contract of purchase of any state lands, or the holder of any lease of any such lands, except for mining of valuable minerals or coal, or extraction of petroleum or gas, shall surrender the same to the department with the request to have it divided into two or more contracts, or leases, the department may divide the same and issue new contracts, or leases, but no new contract, or lease, shall issue while there is due and unpaid any interest, rental, or taxes or assessments on the land held under such contract or lease, nor in any case where the department is of the opinion that the state's security would be impaired or endangered by the proposed division. For all such new contracts, or leases, a fee as provided under this chapter, shall be paid by the applicant. [2003 c 334 § 363; 1982 1st ex.s. c 21 § 163; 1979 ex.s. c 109 § 8; 1959 c 257 § 27; 1955 c 394 § 2; 1927 c 255 § 59; RRS § 7797-59. Prior: 1903 c 79 § 3. Formerly RCW 79.01.236, 79.12.260.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

PART 4

TRESPASS/REGULATIONS/PENALTIES

79.02.300 Trespass, waste, damages—Prosecutions.

(1) Every person who, without authorization, uses or occupies public lands, removes any valuable material as defined

in *RCW 79.01.038 from public lands, or causes waste or damage to public lands, or injures publicly owned personal property or publicly owned improvements to real property on public lands, is liable to the state for treble the amount of the damages. However, liability shall be for single damages if the department determines, or the person proves upon trial, that the person, at time of the unauthorized act or acts, did not know, or have reason to know, that he or she lacked authorization. Damages recoverable under this section include, but are not limited to, the market value of the use, occupancy, or things removed, had the use, occupancy, or removal been authorized; and any damages caused by injury to the land, publicly owned personal property or publicly owned improvement, including the costs of restoration. In addition, the person is liable for reimbursing the state for its reasonable costs, including but not limited to, its administrative costs, survey costs to the extent they are not included in damages awarded for restoration costs, and its reasonable attorneys' fees and other legal costs.

(2) This section does not apply in any case where liability for damages is provided under RCW 64.12.030, 4.24.630, 79.02.320, or 79.02.340.

(3) The department is authorized and directed to investigate all trespasses and wastes upon, and damages to, public lands of the state, and to cause prosecutions for, and/or actions for the recovery of the same to be commenced as is provided by law. [2003 c 334 § 435; 1994 c 280 § 2; 1993 c 266 § 1; 1927 c 255 § 200; RRS § 7797-200. Prior: 1897 c 89 § 64; 1895 c 178 § 99. Formerly RCW 79.01.760, 79.40.040.]

***Reviser's note:** RCW 79.01.038 was repealed by 2003 c 334 § 551. The term "valuable materials" is defined in RCW 79.02.010.

Intent—2003 c 334: See note following RCW 79.02.010.

Waste and trespass: Chapter 64.12 RCW.

79.02.310 Trespasser guilty of larceny, when. (Effective until July 1, 2004.) Every person who wilfully commits any trespass upon any public lands of the state and cuts down, destroys or injures any timber, or any tree standing or growing thereon, or takes, or removes, or causes to be taken, or removed, therefrom any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs, quarries, mines, takes or removes therefrom any earth, soil, stone, mineral, clay, sand, gravel, or any valuable materials, shall be guilty of larceny. [1927 c 255 § 197; RRS § 7797-197. Prior: 1889-90 pp 124-125 §§ 1, 4. Formerly RCW 79.01.748, 79.40.010.]

79.02.310 Trespasser guilty of theft, when. (Effective July 1, 2004.) Every person who willfully commits any trespass upon any public lands of the state and cuts down, destroys or injures any timber, or any tree standing or growing thereon, or takes, or removes, or causes to be taken, or removed, therefrom any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs, quarries, mines, takes or removes therefrom any earth, soil, stone, mineral, clay, sand, gravel, or any valuable materials, is guilty of theft under chapter 9A.56 RCW. [2003 c 53 § 379; 1927 c 255 § 197; RRS §

7797-197. Prior: 1889-90 pp 124-125 §§ 1, 4. Formerly RCW 79.01.748, 79.40.010.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

79.02.320 Removal of timber—Treble damages.

Every person who shall cut or remove, or cause to be cut or removed, any timber growing or being upon any public lands of the state, or who shall manufacture the same into logs, bolts, shingles, lumber or other articles of use or commerce, unless expressly authorized so to do by a bill of sale from the state, or by a lease or contract from the state under which he holds possession of such lands, or by the provisions of law under and by virtue of which such bill of sale, lease or contract was issued, shall be liable to the state in treble the value of the timber or other articles so cut, removed or manufactured, to be recovered in a civil action, and shall forfeit to the state all interest in and to any article into which said timber is manufactured. [1927 c 255 § 199; RRS § 7797-199. Prior: 1897 c 89 § 66; 1895 c 178 § 101. Formerly RCW 79.01.756, 79.40.030.]

Firewood on state lands: Chapter 79.15 RCW.

Injunction to prevent waste on public land: RCW 64.12.050.

Injury to or removing trees, etc.—Damages: RCW 64.12.030.

Penalty for destroying native flora: RCW 47.40.080.

79.02.330 Lessee or contract holder guilty of misdemeanor. Every person being in lawful possession of any public lands of the state, under and by virtue of any lease or contract of purchase from the state, cuts down, destroys, or injures, or causes to be cut down, destroyed, or injured, any timber standing or growing thereon, or takes or removes, or causes to be taken or removed, therefrom, any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs, quarries, mines, takes, or removes therefrom, any earth, soil, clay, sand, gravel, stone, mineral, or other valuable material, or causes the same to be done, or otherwise injures, defaces, or damages, or causes to be injured, defaced, or damaged, any such lands unless expressly authorized so to do by the lease or contract under which possession of such lands is held, or by the provisions of law under and by virtue of which such lease or contract was issued, shall be guilty of a misdemeanor. [2003 c 334 § 434; 1927 c 255 § 198; RRS § 7797-198. Prior: 1899 c 34 §§ 1 through 3. Formerly RCW 79.01.752, 79.40.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.340 Removal of Christmas trees—Compensation. It shall be unlawful for any person to enter upon any of the state lands, including all land under the jurisdiction of the department, or upon any private land without the permission of the owner thereof and to cut, break, or remove therefrom for commercial purposes any evergreen trees, commonly known as Christmas trees, including fir, hemlock, spruce, and pine trees. Any person cutting, breaking, or removing or causing to be cut, broken, or removed, or who cuts down, cuts off, breaks, tops, or destroys any of such Christmas trees shall be liable to the state, or to the private owner thereof, for payment for such trees at a price of one dollar each if payment is

made immediately upon demand. Should it be necessary to institute civil action to recover the value of such trees, the state in the case of state lands, or the owner in case of private lands, may exact treble damages on the basis of three dollars per tree for each tree so cut or removed. [2003 c 334 § 504; 1988 c 128 § 66; 1955 c 225 § 1; 1937 c 87 § 1; RRS § 8074-1. Formerly RCW 79.40.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.350 Intent of RCW 79.02.340. RCW 79.02.340 is not intended to repeal or modify any of the provisions of existing statutes providing penalties for the unlawful removal of timber from state lands. [2003 c 334 § 505; 1937 c 87 § 2; RRS § 8074-2. Formerly RCW 79.40.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.370 Protection against cedar theft. The board must establish procedures to protect against cedar theft and to ensure adequate notice is given for persons interested in purchasing cedar. [2003 c 334 § 333.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 5

OTHER TRUST/GRANT/FOREST RESERVE LANDS

79.02.400 Charitable, educational, penal, and reformatory real property—Inventory—Transfer. (1) Every five years the department of social and health services and other state agencies that operate institutions shall conduct an inventory of all real property subject to the charitable, educational, penal, and reformatory institution account and other real property acquired for institutional purposes or for the benefit of the blind, deaf, mentally ill, developmentally disabled, or otherwise disabled. The inventory shall identify which of those real properties are not needed for state-provided residential care, custody, or treatment. By December 1, 1992, and every five years thereafter the department shall report the results of the inventory to the house of representatives committee on capital facilities and financing, the senate committee on ways and means, and the joint legislative audit and review committee.

(2) Real property identified as not needed for state-provided residential care, custody, or treatment shall be transferred to the corpus of the charitable, educational, penal, and reformatory institution account. This subsection shall not apply to leases of real property to a consortium of three or more counties in order for the counties to construct or otherwise acquire correctional facilities for juveniles or adults or to real property subject to binding conditions that conflict with the other provisions of this subsection.

(3) The department of natural resources shall manage all property subject to the charitable, educational, penal, and reformatory institution account and, in consultation with the department of social and health services and other affected agencies, shall adopt a plan for the management of real property subject to the account and other real property acquired for institutional purposes or for the benefit of the blind, deaf, mentally ill, developmentally disabled, or otherwise disabled.

(a) The plan shall be consistent with state trust land policies and shall be compatible with the needs of institutions adjacent to real property subject to the plan.

(b) The plan may be modified as necessary to ensure the quality of future management and to address the acquisition of additional real property. [1996 c 288 § 51; 1996 c 261 § 1; 1991 c 204 § 1. Formerly RCW 79.01.006.]

Reviser's note: This section was amended by 1996 c 261 § 1 and by 1996 c 288 § 51, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Department of social and health services duty: RCW 43.20A.035.

79.02.410 Charitable, educational, penal, and reformatory real property—High economic return potential—Income. Where charitable, educational, penal, and reformatory institutions land has the potential for lease for commercial, industrial, or residential uses or other uses with the potential for high economic return and is within urban or suburban areas, the department shall make every effort consistent with trust land management principles and all other provisions of law to lease the lands for such purposes, unless the land is subject to a lease to a state agency operating an existing state institution. The department is authorized, subject to approval by the board and only if a higher return can be realized, to exchange such lands for lands of at least equal value and to sell such lands and use the proceeds to acquire replacement lands. The department shall report to the appropriate legislative committees all charitable, educational, penal, and reformatory institutions land purchased, sold, or exchanged. Income from the leases shall be deposited in the charitable, educational, penal, and reformatory institutions account. The legislature shall give priority consideration to appropriating one-half of the money derived from lease income to providing community housing for persons who are mentally ill, developmentally disabled, or youth who are blind, deaf, or otherwise disabled. [2003 c 334 § 303; 1991 c 204 § 5. Formerly RCW 79.01.007.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.420 Finding—Intent—Community and technical college forest reserve land base—Management—Disposition of revenue. (1) The legislature finds that the state's community and technical colleges need a dedicated source of revenue to augment other sources of capital improvement funding. The intent of this section is to ensure that the forest land purchased under section 310, chapter 16, Laws of 1990 1st ex. sess. and known as the community and technical college forest reserve land base, is managed in perpetuity and in the same manner as state forest lands for sustainable commercial forestry and multiple use of lands consistent with RCW 79.10.120. These lands will also be managed to provide an outdoor education and experience area for organized groups. The lands will provide a source of revenue for the long-term capital improvement needs of the state community and technical college system.

(2) There has been increasing pressure to convert forest lands within areas of the state subject to population growth. Loss of forest land in urbanizing areas reduces the production of forest products and the available supply of open space, watershed protection, habitat, and recreational opportunities.

The land known as the community and technical college forest reserve land base is forever reserved from sale. However, the timber and other products on the land may be sold, or the land may be leased in the same manner and for the same purposes as authorized for state granted lands if the department finds the sale or lease to be in the best interest of this forest reserve land base and approves the terms and conditions of the sale or lease.

(3) The land exchange and acquisition powers provided in RCW 79.17.020 may be used by the department to reposition land within the community and technical college forest reserve land base consistent with subsection (1) of this section.

(4) Up to twenty-five percent of the revenue from these lands, as determined by the board, will be deposited in the forest development account to reimburse the forest development account for expenditures from the account for management of these lands.

(5) The community college forest reserve account, created under section 310, chapter 16, Laws of 1990 1st ex. sess., is renamed the community and technical college forest reserve account. The remainder of the revenue from these lands must be deposited in the community and technical college forest reserve account. Money in the account may be appropriated by the legislature for the capital improvement needs of the state community and technical college system or to acquire additional forest reserve lands. [2003 c 334 § 225; 1996 c 264 § 1. Formerly RCW 76.12.240.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.08 RCW GENERAL PROVISIONS

Sections

79.08.015	Recodified as RCW 79.17.050.
79.08.070	Recodified as RCW 79.17.030.
79.08.080	Recodified as RCW 79.94.175.
79.08.090	Recodified as RCW 79.94.181.
79.08.100	Recodified as RCW 79.94.185.
79.08.110	Recodified as RCW 79.11.220.
79.08.120	Recodified as RCW 79.13.090.
79.08.170	Recodified as RCW 79.02.090.
79.08.180	Recodified as RCW 79.17.010.
79.08.190	Repealed.
79.08.200	Repealed.
79.08.250	Recodified as RCW 79.17.040.
79.08.260	Recodified as RCW 79.90.458.
79.08.275	Recodified as RCW 79.73.010.
79.08.277	Recodified as RCW 79.73.020.
79.08.279	Recodified as RCW 79.73.030.
79.08.281	Recodified as RCW 79.73.040.
79.08.283	Recodified as RCW 79.73.050.
79.08.284	Recodified as RCW 79.73.060.

79.08.015 Recodified as RCW 79.17.050. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.08.070 Recodified as RCW 79.17.030. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.08.080 Recodified as RCW 79.94.175. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.08.090 Recodified as RCW 79.94.181. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.08.100 Recodified as RCW 79.94.185. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.08.110 Recodified as RCW 79.11.220. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.08.120 Recodified as RCW 79.13.090. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.08.170 Recodified as RCW 79.02.090. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.08.180 Recodified as RCW 79.17.010. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

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

79.08.250 Recodified as RCW 79.17.040. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.08.260 Recodified as RCW 79.90.458. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.08.275 Recodified as RCW 79.73.010. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.08.277 Recodified as RCW 79.73.020. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.08.279 Recodified as RCW 79.73.030. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.08.281 Recodified as RCW 79.73.040. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.08.283 Recodified as RCW 79.73.050. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.08.284 Recodified as RCW 79.73.060. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 79.10 RCW LAND MANAGEMENT AUTHORITIES AND POLICIES

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- 79.10.020 Department authority to accept land.
- 79.10.030 Management of acquired lands—Land acquired by escheat suitable for park purposes.
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- 79.10.070 Management of public lands within watershed area providing water supply for city or town—Lake Whatcom municipal watershed pilot project—Report—Exclusive method of condemnation by city or town for watershed purposes.
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PART 1 GENERAL PROVISIONS

79.10.010 Reports. (1) It shall be the duty of the department to report, and recommend, to each session of the legislature, any changes in the law relating to the methods of handling the public lands of the state that the department may deem advisable.

(2) The department shall provide a comprehensive biennial report to reflect the previous fiscal period. The report shall include, but not be limited to, descriptions of all department activities including: Revenues generated, program costs, capital expenditures, personnel, special projects, new and ongoing research, environmental controls, cooperative projects, intergovernmental agreements, the adopted sustainable harvest compared to the sales program, and outlines of ongoing litigation, recent court decisions, and orders on major issues with the potential for state liability. The report shall describe the status of the resources managed and the recreational and commercial utilization. The report must be delivered to the appropriate committees of the legislature and made available to the public.

(3) The department shall provide annual reports to the respective trust beneficiaries, including each county. The report shall include, but not be limited to, the following: Acres sold, acres harvested, volume from those acres, acres planted, number of stems per acre, acres precommercially thinned, acres commercially thinned, acres partially cut, acres clear cut, age of final rotation for acres clear cut, and the total number of acres off base for harvest and an explanation of why those acres are off base for harvest. [2003 c 334 § 433; 1997 c 448 § 3; 1987 c 505 § 76; 1985 c 93 § 3; 1927 c 255 § 196; RRS § 7797-196. Prior: 1907 c 114 § 1; RRS § 7801. Formerly RCW 79.01.744, 43.12.150.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.020 Department authority to accept land. The department is hereby authorized, when in its judgment it appears advisable, to accept on behalf of the state, any grant of land within the state which shall then become a part of the state forests. No grant may be accepted until the title has been examined and approved by the attorney general of the state and a report made to the board of natural resources of the result of the examination. [1986 c 100 § 48. Formerly RCW 79.01.074.]

79.10.030 Management of acquired lands—Land acquired by escheat suitable for park purposes. (1) Except as provided in subsection (2) of this section, the department shall manage and control all lands acquired by the state by escheat or under RCW 79.19.010 through 79.19.110 and all lands acquired by the state by deed of sale or gift or by devise, except such lands which are conveyed or devised to the state to be used for a particular purpose.

(2) When land is acquired by the state by escheat which because of its location or features may be suitable for park purposes, the department shall notify the state parks and recreation commission. The department and the commission shall jointly evaluate the land for its suitability for park purposes, based upon the features of the land and the need for park facilities in the vicinity. Where the department and commission determine that such land is suitable for park purposes, it shall be offered for transfer to the commission, or, in the event that the commission declines to accept the land, to the local jurisdiction providing park facilities in that area. When so offered, the payment required by the recipient agency shall not exceed the costs incurred by the department in managing and protecting the land since receipt by the state.

(3) The department may review lands acquired by escheat since January 1, 1983, for their suitability for park purposes, and apply the evaluation and transfer procedures authorized by subsection (2) of this section. [2003 c 334 § 398; 1993 c 49 § 1; 1984 c 222 § 13; 1927 c 255 § 154; RRS § 7797-154. Formerly RCW 79.01.612, 43.12.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1984 c 222: See RCW 79.66.900 and 79.66.901.

Real property distributed to state by probate court decree, jurisdiction of commissioner of public lands over: RCW 11.08.220.

79.10.040 Gifts of land for offices. Any county, city or town is authorized and empowered to convey to the state of Washington any lands owned by such county, city or town upon the selection of such lands by the department and the department is hereby authorized to select and accept conveyances of lands from such counties, cities or towns, suitable for use by the department as locations for offices, warehouses and machinery storage buildings in the administration of the forestry laws and lands of the state of Washington: PROVIDED, HOWEVER, No consideration shall be paid by the state nor by the department for the conveyance of such lands by such county, city or town. [1988 c 128 § 25; 1937 c 125 § 1; RRS § 5812-3c. FORMER PART OF SECTION: 1937 c 125 § 2 now codified as RCW 76.12.045. Formerly RCW 76.12.040.]

79.10.050 Gifts of county or city land for offices, warehouses, etc.—Use of lands authorized. The department is authorized to use such lands for the purposes hereinbefore expressed and to improve said lands and build thereon any necessary structures for the purposes hereinbefore expressed and expend in so doing such funds as may be authorized by law therefor. [1988 c 128 § 26; 1937 c 125 § 2; RRS § 5812-3d. Formerly RCW 76.12.045, 76.12.040.]

79.10.060 Compliance with local ordinances, when. The department may comply with county or municipal zoning ordinances, laws, rules, or regulations affecting the use of state lands under the jurisdiction of the department where such regulations are consistent with the treatment of similar private lands. [2003 c 334 § 544; 1971 ex.s. c 234 § 13. Formerly RCW 79.68.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.070 Management of public lands within watershed area providing water supply for city or town—Lake Whatcom municipal watershed pilot project—Report—Exclusive method of condemnation by city or town for watershed purposes. (1) In the management of public lands lying within the limits of any watershed over and through which is derived the water supply of any city or town, the department may alter its land management practices to provide water with qualities exceeding standards established for intrastate and interstate waters by the department of ecology. However, if such alterations of management by the department reduce revenues from, increase costs of management of, or reduce the market value of public lands the city or town

requesting such alterations shall fully compensate the department.

(2) The department shall initiate a pilot project for the municipal watershed delineated by the Lake Whatcom hydrographic boundaries to determine what factors need to be considered to achieve water quality standards beyond those required under chapter 90.48 RCW and what additional management actions can be taken on state trust lands that can contribute to such higher water quality standards. The department shall establish an advisory committee consisting of a representative each of the city of Bellingham, Whatcom county, the Whatcom county water district 10, the department of ecology, the department of fish and wildlife, and the department of health, and three general citizen members to assist in this pilot project. In the event of differences of opinion among the members of the advisory committee, the committee shall attempt to resolve these differences through various means, including the retention of facilitation or mediation services.

(3) The pilot project in subsection (2) of this section shall be completed by June 30, 2000. The department shall defer all timber sales in the Lake Whatcom hydrographic boundaries until the pilot project is complete.

(4) Upon completion of the study, the department shall provide a report to the natural resources committee of the house of representatives and to the natural resources, parks, and recreation committee of the senate summarizing the results of the study.

(5) The exclusive manner, notwithstanding any provisions of the law to the contrary, for any city or town to acquire by condemnation ownership or rights in public lands for watershed purposes within the limits of any watershed over or through which is derived the water supply of any city or town shall be to petition the legislature for such authority. Nothing in RCW 79.44.003 and this chapter shall be construed to affect any existing rights held by third parties in the lands applied for. [2003 c 334 § 332; 1999 c 257 § 1; 1971 ex.s. c 234 § 11; 1927 c 255 § 32; RRS § 7797-32. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.128, 79.12.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

Condemnation proceedings where state land involved: RCW 8.28.010.

Municipal corporation in adjoining state may condemn watershed property: RCW 8.28.050.

79.10.080 Classification of land after timber removed. When the merchantable timber has been sold and actually removed from any state lands, the department may classify the land, and may reserve from any future sale such portions thereof as may be found suitable for reforestation, and in such case, shall enter such reservation in its records. All lands reserved shall not be subject to sale or lease. The commissioner shall certify all such reservations for reforestation so made, to the board. It shall be the duty of the department to protect such lands, and the remaining timber thereon, from fire and to reforest the same. [2003 c 334 § 340; 1959 c 257 § 16; 1927 c 255 § 41; RRS § 7797-41. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.164, 79.12.200.]

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Intent—2003 c 334: See note following RCW 79.02.010.

Acquisition, management, and disposition of state forest lands: Chapter 79.22 RCW.

79.10.090 Economic analysis of state lands held in trust—Scope—Use. Periodically at intervals to be determined by the board, the department shall cause an economic analysis to be made of those state lands held in trust, where the nature of the trust makes maximization of the economic return to the beneficiaries of income from state lands the prime objective. The analysis shall be by specific tracts, or where such tracts are of similar economic characteristics, by groupings of such tracts.

The most recently made analysis shall be considered by the department in making decisions as to whether to sell or lease state lands, standing timber or crops thereon, or minerals therein, including but not limited to oil and gas and other hydrocarbons, rocks, gravel, and sand.

The economic analysis shall include, but shall not be limited to the following criteria: (1) Present and potential sale value; (2) present and probable future returns on the investment of permanent state funds; (3) probable future inflationary or deflationary trends; (4) present and probable future income from leases or the sale of land products; and (5) present and probable future tax income derivable therefrom specifically including additional state, local, and other tax revenues from potential private development of land currently used primarily for grazing and other similar low priority use; such private development would include, but not be limited to, development as irrigated agricultural land. [2003 c 334 § 320; 1969 ex.s. c 131 § 1. Formerly RCW 79.01.095.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 2 MULTIPLE USE

79.10.100 Concept to be utilized, when. The legislature hereby directs that a multiple use concept be utilized by the department in the management and administration of state-owned lands under the jurisdiction of the department where such a concept is in the best interests of the state and the general welfare of the citizens thereof, and is consistent with the applicable trust provisions of the various lands involved. [2003 c 334 § 534; 1971 ex.s. c 234 § 1. Formerly RCW 79.68.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.110 "Multiple use" defined. "Multiple use" as used in RCW 79.10.070, 79.44.003, and this chapter shall mean the management and administration of state-owned lands under the jurisdiction of the department to provide for several uses simultaneously on a single tract and/or planned rotation of one or more uses on and between specific portions of the total ownership consistent with the provisions of RCW 79.10.100. [2003 c 334 § 535; 1971 ex.s. c 234 § 2. Formerly RCW 79.68.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.120 Multiple uses compatible with financial obligations of trust management—Other uses permitted,

when. Multiple uses additional to and compatible with those basic activities necessary to fulfill the financial obligations of trust management may include but are not limited to:

- (1) Recreational areas;
- (2) Recreational trails for both vehicular and nonvehicular uses;
- (3) Special educational or scientific studies;
- (4) Experimental programs by the various public agencies;
- (5) Special events;
- (6) Hunting and fishing and other sports activities;
- (7) Nonconsumptive wildlife activities as defined by the board of natural resources;
- (8) Maintenance of scenic areas;
- (9) Maintenance of historical sites;
- (10) Municipal or other public watershed protection;
- (11) Greenbelt areas;
- (12) Public rights of way;
- (13) Other uses or activities by public agencies;

If such additional uses are not compatible with the financial obligations in the management of trust land they may be permitted only if there is compensation from such uses satisfying the financial obligations. [2003 c 182 § 2; 1971 ex.s. c 234 § 5. Formerly RCW 79.68.050.]

79.10.125 Land open to public for fishing, hunting, and nonconsumptive wildlife activities. All state lands hereafter leased for grazing or agricultural purposes shall be open and available to the public for purposes of hunting and fishing, and for nonconsumptive wildlife activities, as defined by the board of natural resources, unless closed to public entry because of fire hazard or unless the department gives prior written approval and the area is lawfully posted by lessee to prohibit hunting and fishing, and nonconsumptive wildlife activities, thereon in order to prevent damage to crops or other land cover, to improvements on the land, to livestock, to the lessee, or to the general public, or closure is necessary to avoid undue interference with carrying forward a departmental or agency program. In the event any such lands are so posted it shall be unlawful for any person to hunt or fish, or pursue nonconsumptive wildlife activities, on any such posted lands. Such lands shall not be open and available for wildlife activities when access could endanger crops on the land or when access could endanger the person accessing the land.

The department shall insert the provisions of this section in all new grazing and agricultural leases. [2003 c 334 § 371; 2003 c 182 § 1; 1979 ex.s. c 109 § 9; 1969 ex.s. c 46 § 1; 1959 c 257 § 29; 1947 c 171 § 1; 1927 c 255 § 61; RRS § 7797-61. Prior: 1915 c 147 § 4; 1903 c 79 § 4; 1897 c 89 § 19; 1895 c 178 § 32. Formerly RCW 79.01.244, 79.12.430.]

Reviser's note: (1) This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

(2) This section was amended by 2003 c 182 § 1 and by 2003 c 334 § 371, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.10.130 Scope of department's authorized activities. The department is hereby authorized to carry out all activities necessary to achieve the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and 79.90.456, including, but not limited to:

- (1) Planning, construction, and operation of conservation, recreational sites, areas, roads, and trails, by itself or in conjunction with any public agency;
- (2) Planning, construction, and operation of special facilities for educational, scientific, conservation, or experimental purposes by itself or in conjunction with any other public or private agency;
- (3) Improvement of any lands to achieve the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and 79.90.456;
- (4) Cooperation with public and private agencies in the utilization of such lands for watershed purposes;
- (5) The authority to make such leases, contracts, agreements, or other arrangements as are necessary to accomplish the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and 79.90.456. However, nothing in this section shall affect any existing requirements for public bidding or auction with private agencies or parties, except that agreements or other arrangements may be made with public schools, colleges, universities, governmental agencies, and nonprofit scientific and educational associations. [2003 c 334 § 540; 1987 c 472 § 12; 1971 ex.s. c 234 § 7. Formerly RCW 79.68.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—1987 c 472: See RCW 79.71.900.

79.10.140 Outdoor recreation—Construction, operation, and maintenance of primitive facilities—Right of way and public access—Use of state and federal outdoor recreation funds. The department is authorized:

(1) To construct, operate, and maintain primitive outdoor recreation and conservation facilities on lands under its jurisdiction which are of primitive character when deemed necessary by the department to achieve maximum effective development of such lands and resources consistent with the purposes for which the lands are held. This authority shall be exercised only after review by the interagency committee for outdoor recreation and determination by the committee that the department is the most appropriate agency to undertake such construction, operation, and maintenance. Such review is not required for campgrounds designated and prepared or approved by the department;

(2) To acquire right of way and develop public access to lands under the jurisdiction of the department and suitable for public outdoor recreation and conservation purposes;

(3) To receive and expend funds from federal and state outdoor recreation funding measures for the purposes of this section and RCW 79A.50.110. [2003 c 334 § 122; 1987 c 472 § 13; 1986 c 100 § 51; 1967 ex.s. c 64 § 1. Formerly RCW 43.30.300.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—1987 c 472: See RCW 79.71.900.

Construction—1967 ex.s. c 64: "Nothing in this act shall be construed as affecting the jurisdiction or responsibility of any other state or local governmental agency, except as provided in section 1 of this act." [1967 ex.s. c 64 § 4.]

Severability—1967 ex.s. c 64: "If any provision of sections 1 through 4 of this act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 ex.s. c 64 § 3.]

Exchange of lands to secure private lands for parks and recreation purposes: RCW 79A.50.110.

Interagency committee for outdoor recreation: Chapter 79A.25 RCW.

79.10.200 Multiple use land resource allocation plan—Adoption—Factors considered. The department may adopt a multiple use land resource allocation plan for all or portions of the lands under its jurisdiction providing for the identification and establishment of areas of land uses and identifying those uses which are best suited to achieve the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and 79.90.456. Such plans shall take into consideration the various ecological conditions, elevations, soils, natural features, vegetative cover, climate, geographical location, values, public use potential, accessibility, economic uses, recreational potentials, local and regional land use plans or zones, local, regional, state, and federal comprehensive land use plans or studies, and all other factors necessary to achieve the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and 79.90.456. [2003 c 334 § 542; 1971 ex.s. c 234 § 9. Formerly RCW 79.68.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.210 Public lands identified and withdrawn. For the purpose of providing increased continuity in the management of public lands and of facilitating long range planning by interested agencies, the department is authorized to identify and to withdraw from all conflicting uses at such times and for such periods as it shall determine appropriate, limited acreages of public lands under its jurisdiction. Acreages so withdrawn shall be maintained for the benefit of the public and, in particular, of the public schools, colleges, and universities, as areas in which may be observed, studied, enjoyed, or otherwise utilized the natural ecological systems thereon, whether such systems be unique or typical to the state of Washington. Nothing herein is intended to or shall modify the department's obligation to manage the land under its jurisdiction in the best interests of the beneficiaries of granted trust lands. [2003 c 334 § 539; 1971 ex.s. c 234 § 6. Formerly RCW 79.68.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.220 Conferring with other agencies. The department may confer with other public and private agencies to facilitate the formulation of policies and/or plans providing for multiple use concepts. The department is empowered to hold public hearings from time to time to assist in achieving the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and 79.90.456. [2003 c 334 § 543; 1971 ex.s. c 234 § 10. Formerly RCW 79.68.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.240 Department's existing authority and powers preserved. Nothing in RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and 79.90.456 shall be construed to affect or repeal any existing authority or powers of the department in the management or administration of the lands under its jurisdiction. [2003 c 334 § 546; 1971 ex.s. c 234 § 12. Formerly RCW 79.68.900.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.250 Existing withdrawals for state park and state game purposes preserved. Nothing in RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and 79.90.456 shall be construed to affect, amend, or repeal any existing withdrawal of public lands for state park or state game purposes. [2003 c 334 § 547; 1971 ex.s. c 234 § 15. Formerly RCW 79.68.910.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.280 Land use data bank—Contents, source. (1) The department shall design expansion of its land use data bank to include additional information that will assist in the formulation, evaluation, and updating of intermediate and long-range goals and policies for land use, population growth and distribution, urban expansion, open space, resource preservation and utilization, and other factors which shape statewide development patterns and significantly influence the quality of the state's environment. The system shall be designed to permit inclusion of other lands in the state and will do so as financing and time permit.

(2) Such data bank shall contain any information relevant to the future growth of agriculture, forestry, industry, business, residential communities, and recreation; the wise use of land and other natural resources which are in accordance with their character and adaptability; the conservation and protection of the soil, air, water, and forest resources; the protection of the beauty of the landscape; and the promotion of the efficient and economical uses of public resources.

The information shall be assembled from all possible sources, including but not limited to, the federal government and its agencies, all state agencies, all political subdivisions of the state, all state operated universities and colleges, and any source in the private sector. All state agencies, all political subdivisions of the state, and all state universities and colleges are directed to cooperate to the fullest extent in the collection of data in their possession. Information shall be collected on all areas of the state but collection may emphasize one region at a time.

(3) The data bank shall make maximum use of computerized or other advanced data storage and retrieval methods. The department is authorized to engage consultants in data processing to ensure that the data bank will be as complete and efficient as possible.

(4) The data shall be made available for use by any governmental agency, research organization, university or college, private organization, or private person as a tool to evaluate the range of alternatives in land and resource planning in the state. [2003 c 334 § 545; 1971 ex.s. c 234 § 16. Formerly RCW 79.68.120.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 3 SUSTAINABLE HARVEST

79.10.300 Definitions. Unless the context clearly requires otherwise the definitions in this section apply throughout RCW 79.10.310, 79.10.320, and 79.10.330.

(1) "Arrearage" means the summation of the annual sustainable harvest timber volume since July 1, 1979, less the sum of state timber sales contract default volume and the state timber sales volume deficit since July 1, 1979.

(2) "Default" means the volume of timber remaining when a contractor fails to meet the terms of the sales contract on the completion date of the contract or any extension thereof and timber returned to the state under *RCW 79.01.1335.

(3) "Deficit" means the summation of the difference between the department's annual planned sales program volume and the actual timber volume sold.

(4) "Planning decade" means the ten-year period covered in the forest land management plan adopted by the board.

(5) "Sustainable harvest level" means the volume of timber scheduled for sale from state-owned lands during a planning decade as calculated by the department and approved by the board. [2003 c 334 § 537; 1987 c 159 § 2. Formerly RCW 79.68.035.]

*Reviser's note: RCW 79.01.1335 expired December 31, 1984.

Intent—2003 c 334: See note following RCW 79.02.010.

Legislative findings—1987 c 159: "Adequately funding construction of the state's educational facilities represents one of the highest priority uses of state-owned lands. Many existing facilities need replacement and many additional facilities will be needed by the year 2000 to house students entering the educational system. The sale of timber from state-owned lands plays a key role in supporting the construction of school facilities. Currently and in the future, demands for school construction funds are expected to exceed available revenues.

The department of natural resources sells timber on a sustained yield basis. Since 1980, purchasers defaulted on sales contracts affecting over one billion one hundred million board feet of timber. Between 1981 and 1983, the department sold six hundred million board feet of timber less than the sustainable harvest level. As a consequence of the two actions, the department entered their 1984-1993 planning decade with a timber sale arrearage which could be sold without adversely affecting the continued productivity of the state-owned forests." [1987 c 159 § 1.]

79.10.310 "Sustained yield plans" defined. "Sustained yield plans" as used in RCW 79.10.070, 79.44.003, and this chapter shall mean management of the forest to provide harvesting on a continuing basis without major prolonged curtailment or cessation of harvest. [2003 c 334 § 536; 1971 ex.s. c 234 § 3. Formerly RCW 79.68.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.320 Sustainable harvest program. The department shall manage the state-owned lands under its jurisdiction which are primarily valuable for the purpose of growing forest crops on a sustained yield basis insofar as compatible with other statutory directives. To this end, the department shall periodically adjust the acreages designated for inclusion in the sustained yield management program and calculate a sustainable harvest level. [2003 c 334 § 538; 1987 c 159 § 3; 1971 ex.s. c 234 § 4. Formerly RCW 79.68.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

Legislative findings—1987 c 159: See note following RCW 79.68.035.

79.10.330 Arrearages—End of decade. If an arrearage exists at the end of any planning decade, the department shall conduct an analysis of alternatives to determine the course of action regarding the arrearage which provides the greatest return to the trusts based upon economic conditions then existing and forecast, as well as impacts on the environment of harvesting the additional timber. The department shall offer for sale the arrearage in addition to the sustainable harvest level adopted by the board of natural resources for the next planning decade if the analysis determined doing so will provide the greatest return to the trusts. [1987 c 159 § 4. Formerly RCW 79.68.045.]

Legislative findings—1987 c 159: See note following RCW 79.68.035.

79.10.340 Sustainable harvest sale. The board of natural resources shall offer for sale the sustainable harvest as identified in the 1984-1993 forest land management program, or as subsequently revised. In the event that decisions made by entities other than the department cause a decrease in the sustainable harvest the department shall offer additional timber sales from state-managed lands. [1989 c 424 § 9. Formerly RCW 43.30.390.]

Effective date—1989 c 424: See note following RCW 76.12.210.

PART 4 COOPERATIVE FOREST MANAGEMENT AGREEMENTS

79.10.400 Cooperative agreements. The department with regard to state forest lands and state lands is hereby authorized to enter into cooperative agreements with the United States of America, Indian tribes, and private owners of timber land providing for coordinated forest management, including time, rate, and method of cutting timber and method of silvicultural practice on a sustained yield unit. [2003 c 334 § 510; 1988 c 128 § 67; 1941 c 123 § 1; 1939 c 130 § 1; Rem. Supp. 1941 § 7879-11. Formerly RCW 79.60.010, 79.52.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.410 Cooperative units. The department is hereby authorized and directed to determine, define, and declare informally the establishment of a sustained yield unit, comprising the land area to be covered by any such cooperative agreement and include therein such other lands as may be later acquired by the department and included under the cooperative agreement. [2003 c 334 § 511; 1988 c 128 § 68; 1939 c 130 § 2; RRS § 7879-12. Formerly RCW 79.60.020, 79.52.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.420 Limitations on agreements. The department shall agree that the cutting from combined national forest lands, state forest lands, and state lands will be limited to the sustained yield capacity of these lands in the management unit as determined by the contracting parties and approved by

the board for state forest lands and by the department for state lands. Cooperation with the private contracting party or parties shall be contingent on limitation of production to a specified amount as determined by the contracting parties and approved by the board for state forest lands and by the department for state lands and shall comply with the other conditions and requirements of such cooperative agreement. [2003 c 334 § 512; 1988 c 128 § 69; 1939 c 130 § 3; RRS § 7879-13. Formerly RCW 79.60.030, 79.52.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.430 Easements—Life of agreements. The private contracting party or parties shall enjoy the right of easement over state forest lands and state lands included under said cooperative agreement for railway, road, and other uses necessary to the carrying out of the agreement. This easement shall be only for the life of the cooperative agreement and shall be granted without charge with the provision that payment shall be made for all merchantable timber cut, removed, or damaged in the use of such easement, payment to be based on the contract stumpage price for timber of like value and species and to be made within thirty days from date of cutting, removal, and/or damage of such timber and appraisal thereof by the department. [2003 c 334 § 513; 1988 c 128 § 70; 1941 c 123 § 2; Rem. Supp. 1941 § 7879-13a. Formerly RCW 79.60.040, 79.52.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.440 Sale agreements. During the period when any such cooperative agreement is in effect, the timber on the state forest lands and state lands which the department determines shall be included in the sustained yield unit may, from time to time, be sold at not less than its appraised value as approved by the department for state lands and the board for state forest lands, due consideration being given to existing forest conditions on all lands included in the cooperative management unit and such sales may be made in the discretion of the department and the contracting party or parties in the cooperative sustained yield agreement. These sale agreements shall contain such provisions as are necessary to effectually permit the department to carry out the purpose of this section and in other ways afford adequate protection to the public interests involved. [2003 c 334 § 514; 1988 c 128 § 71; 1939 c 130 § 4; RRS § 7879-14. Formerly RCW 79.60.050, 79.52.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.450 Minimum price. The sale of timber upon state forest land and state land within such sustained yield unit or units shall be made for not less than the appraised value thereof as heretofore provided for the sale of timber on state lands. However, if in the judgment of the department, it is to the best interests of the state to do so, the timber or any such sustained yield unit or units may be sold on a stumpage or scale basis for a price per thousand not less than the appraised value thereof. The department shall reserve the right to reject any and all bids if the intent of this chapter will not be carried out. Permanency of local communities and industries, prospects of fulfillment of contract requirements, and financial position of the bidder shall all be factors

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included in this decision. [2003 c 334 § 515; 1988 c 128 § 72; 1939 c 130 § 5; RRS § 7879-15. Formerly RCW 79.60.060, 79.52.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.460 Contracts—Requirements. A written contract shall be entered into with the successful bidder which shall fix the time when logging operations shall be commenced and concluded and require monthly payments for timber removed as soon as scale sheets have been tabulated and the amount of timber removed during the month determined, or require payments monthly in advance at the discretion of the board or the department. The board and the department shall designate the price per thousand to be paid for each species of timber and shall provide for supervision of logging operations, the methods of scaling and report, and shall require the purchaser to comply with all laws of the state of Washington with respect to fire protection and logging operation of the timber purchased; and shall contain such other provisions as may be deemed advisable. [2003 c 334 § 516; 1939 c 130 § 6; RRS § 7879-16. Formerly RCW 79.60.070, 79.52.050, part.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.470 Transfer or assignment of contracts. No transfer or assignment by the purchaser shall be valid unless the transferee or assignee is acceptable to the department and the transfer or assignment approved by it in writing. [2003 c 334 § 517; 1988 c 128 § 73; 1941 c 123 § 3; Rem. Supp. 1941 § 7879-16a. Formerly RCW 79.60.080, 79.52.120.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.480 Performance bond—Cash deposit. The purchaser shall, at the time of executing the contract, deliver a performance bond or sureties acceptable in regard to terms and amount to the department, but such performance bond or sureties shall not exceed ten percent of the estimated value of the timber purchased computed at the stumpage price and at no time shall exceed a total of fifty thousand dollars. The purchaser shall also be required to make a cash deposit equal to twenty percent of the estimated value of the timber purchased, computed at the stumpage bid. Upon failure of the purchaser to comply with the terms of the contract, the performance bond or sureties may be forfeited to the state upon order of the department.

At no time shall the amount due the state for timber actually cut and removed exceed the amount of the deposit as set forth in this section. The amount of the deposit shall be returned to the purchaser upon completion and full compliance with the contract by the purchaser, or it may, at the discretion of the purchaser, be applied on final payment on the contract. [2003 c 334 § 518; 1988 c 128 § 74; 1941 c 123 § 4; 1939 c 130 § 7; Rem. Supp. 1941 § 7879-17. Formerly RCW 79.60.090, 79.52.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.11 RCW STATE LAND SALES

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PART 1
SALE PROCEDURES

79.11.005 Sale of administrative sites. (1) The department is authorized to sell any real property not designated or acquired as state forest lands, but acquired by the state, either in the name of the forest board, the forestry board, or the division of forestry, for administrative sites, lien foreclosures, or other purposes whenever it shall determine that the lands are no longer or not necessary for public use.

(2) The sale may be made after public notice to the highest bidder for such a price as approved by the governor, but not less than the fair market value of the real property, plus the value of improvements thereon. Any instruments necessary to convey title must be executed by the governor in a form approved by the attorney general.

(3) All amounts received from the sale must be credited to the fund of the department of government that is responsible for the acquisition and maintenance of the property sold. [2003 c 334 § 201; 1988 c 128 § 12; 1955 c 121 § 1. Formerly RCW 76.01.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.010 Maximum and minimum acreage subject to sale—Exception—Approval by legislature or regents.

(1) Not more than one hundred and sixty acres of any land granted to the state by the United States shall be offered for sale in one parcel and no university lands shall be offered for sale except by legislative directive or with the consent of the board of regents of the University of Washington.

(2) Any land granted to the state by the United States may be sold for any lawful purpose in such minimum acreage as may be fixed by the department. [2003 c 334 § 321; 1982 c 54 § 1; 1979 ex.s. c 109 § 4; 1971 ex.s. c 200 § 1; 1970 ex.s. c 46 § 1; 1967 ex.s. c 78 § 1; 1959 c 257 § 5; 1955 c 394 § 1; 1927 c 255 § 24; RRS § 7797-24. Prior: 1915 c 147 § 15; 1909 p 256 § 4; 1907 c 256 § 5; 1903 c 91 § 3; 1897 c 89 § 11. Formerly RCW 79.01.096, 79.12.030.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

Severability—1971 ex.s. c 200: "If any provision of this 1971 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 200 § 6.]

Public lands, funds for support of common school fund: State Constitution Art. 9 § 3.

School and granted lands: State Constitution Art. 16.

University of Washington: Chapter 28B.20 RCW.

79.11.020 Powers/duties of department. The department shall exercise general supervision and control over the sale for any purpose of land granted to the state for educational purposes. It shall be the duty of the department to prepare all reports, data, and information in its records pertaining to any such proposed sale. The department shall have power, if it deems it advisable, to order that any particular sale of such land be held in abeyance pending further inspection and report. The department may cause such further inspection and report of land involved in any proposed sale to be made and for that purpose shall have power to employ its own inspectors, cruisers, and other technical assistants. Upon the basis of such further inspection and report the department shall determine whether or not, and the terms upon which, the proposed sale shall be consummated. [2003 c 334 § 318; 1988 c 128 § 54; 1941 c 217 § 3; Rem. Supp. 1941 § 7797-23A. Formerly RCW 79.01.094, 43.65.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.030 Terms of sale. All state lands shall be sold on terms and conditions established by the board in light of market conditions. Sales by real estate contract or for cash may be authorized. All deferred payments shall draw interest at such rate as may be fixed, from time to time, by rule adopted by the board, and the rate of interest, as so fixed at the date of each sale, shall be stated in all advertising for and notice of sale and in the contract of sale. All remittances for payment of either principal or interest shall be forwarded to the department. [2003 c 334 § 359; 1984 c 222 § 11; 1982 1st ex.s. c 21 § 159; 1969 ex.s. c 267 § 1; 1959 c 257 § 24; 1927 c 255 § 54; RRS § 7797-54. Prior: 1917 c 149 § 1; 1915 c

147 § 3; 1907 c 256 § 3; 1897 c 89 § 16; 1895 c 178 §§ 25, 29. Formerly RCW 79.01.216, 79.12.380.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1984 c 222: See RCW 79.66.900 and 79.66.901.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.11.040 Who may purchase—Application—Fees.

Any person desiring to purchase any state lands shall file an application on the forms provided by the department and accompanied by the fees authorized under RCW 79.02.250. [2003 c 334 § 311; 1982 1st ex.s. c 21 § 151; 1979 ex.s. c 109 § 2; 1967 c 163 § 4; 1959 c 257 § 3; 1927 c 255 § 22; RRS § 7797-22. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.01.088, 79.12.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.11.060 Entire section may be inspected. Whenever application is made to purchase less than a section of unplatted state lands, the department may order the inspection of the entire section or sections of which the lands applied for form a part. [2003 c 334 § 327; 1959 c 257 § 9; 1927 c 255 § 28; RRS § 7797-28. Prior: 1909 c 223 § 2. Formerly RCW 79.01.112, 79.12.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.070 Survey to determine area subject to sale.

The department may cause any state lands to be surveyed for the purpose of ascertaining and determining the area subject to sale. [2003 c 334 § 330; 1982 1st ex.s. c 21 § 153; 1959 c 257 § 11; 1927 c 255 § 30; RRS § 7797-30. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.01.120, 79.12.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.11.080 Inspection and appraisal. When in the judgment of the department, there is sufficient interest for the appraisal and sale of state lands, the department shall cause each tract of land to be inspected as to its topography, development potential, forestry, agricultural, and grazing qualities, coal, mineral, stone, gravel, or other valuable material, the distance from any city or town, railroad, river, irrigation canal, ditch, or other waterway, and location of utilities. In case of an application to purchase land granted to the state for educational purposes, the department shall submit a report to the board, which board shall fix the value per acre of each lot, block, subdivision, or tract proposed to be sold in one parcel, which value shall be not less than ten dollars per acre. In case of applications to purchase state lands, other than lands granted to the state for educational purposes and capitol building lands, the department shall appraise and fix the value thereof. [2003 c 334 § 314; 1979 ex.s. c 109 § 3; 1967 ex.s. c 78 § 3; 1959 c 257 § 4; 1941 c 217 § 2; 1935 c 136 §

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1; 1927 c 255 § 23; Rem. Supp. 1941 § 7797-23. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.01.092, 79.12.020.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.11.090 Sales by public auction—Appraised value (as amended by 2003 c 334). Except as provided in RCW 79.11.340, all sales of land under this chapter shall be at public auction, ((and all sales of valuable materials shall be at public auction or by sealed bid)) to the highest bidder, on the terms prescribed by law and as specified in the notice provided under RCW 79.11.120, and no land ((or materials)) shall be sold for less than its appraised value(~~(-PROVIDED, That on public lands granted to the state for educational purposes sealed bids may be accepted for sales of timber or stone only: PROVIDED FURTHER, That when valuable material has been appraised at an amount not exceeding one hundred thousand dollars, the department of natural resources, when authorized by the board of natural resources, may arrange for the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to property to be sold. This section does not apply to direct sales authorized in RCW 79.01.184)).~~ [2003 c 334 § 352; 1989 c 148 § 3; 1988 c 136 § 1; 1979 c 54 § 2; 1975 1st ex.s. c 45 § 1; 1971 ex.s. c 123 § 3; 1969 ex.s. c 14 § 4; 1961 c 73 § 3; 1959 c 257 § 21; 1933 c 66 § 1; 1927 c 255 § 50; RRS § 7797-50. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.200, 79.12.340.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.090 Sale procedure—Sales at auction or by sealed bid—Minimum price—Exception as to minor sale of valuable materials at auction (as amended by 2003 c 381). All sales of land shall be at public auction, and all sales of valuable materials shall be at public auction or by sealed bid to the highest bidder, on the terms prescribed by law and as specified in the notice provided, and no land or materials shall be sold for less than its appraised value: PROVIDED, That on public lands granted to the state for educational purposes sealed bids may be accepted for sales of timber or stone only: PROVIDED FURTHER, That when valuable material has been appraised at an amount not exceeding ((one)) two hundred fifty thousand dollars, the department of natural resources, when authorized by the board of natural resources, may arrange for the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to property to be sold. In addition, the commissioner of public lands may seek additional means of publishing the information, such as on the internet, to increase the number of prospective buyers. This section does not apply to direct sales authorized in *RCW 79.01.184. [2003 c 381 § 3; 1989 c 148 § 3; 1988 c 136 § 1; 1979 c 54 § 2; 1975 1st ex.s. c 45 § 1; 1971 ex.s. c 123 § 3; 1969 ex.s. c 14 § 4; 1961 c 73 § 3; 1959 c 257 § 21; 1933 c 66 § 1; 1927 c 255 § 50; RRS § 7797-50. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.200, 79.12.340.]

Reviser's note: *(1) RCW 79.01.184 was recodified as RCW 79.11.120 by 2003 c 334 § 556.

(2) RCW 79.11.090 was amended twice during the 2003 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

79.11.100 Date of sale limited by time of appraisal. In no case shall any lands granted to the state be offered for sale under this chapter unless the same shall have been appraised by the board within ninety days prior to the date fixed for the sale. [2003 c 334 § 328; 2001 c 250 § 2; 1982 1st ex.s. c 21 § 152; 1959 c 257 § 10; 1935 c 55 § 1 (adding section 29 to

1927 c 255 in lieu of original section 29 which was vetoed); RRS § 7797-29. Prior: 1909 c 223 § 2. Formerly RCW 79.01.116, 79.12.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.11.110 Separate appraisal of improvements.

Before any state lands are offered for sale, the department may establish the fair market value of those authorized improvements not owned by the state. [2003 c 334 § 336; 1979 ex.s. c 109 § 5; 1959 c 257 § 14; 1927 c 255 § 34; RRS § 7797-34. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.136, 79.12.130.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.11.120 Sale procedure—Fixing date, place, and time of sale (as amended by 2003 c 334). When the department (~~of natural resources shall have decided~~) decides to sell any state lands (~~or valuable materials thereon~~), or with the consent of the board of regents of the University of Washington, or by legislative directive, (~~shall have decided~~) decides to sell any lot, block, tract, or tracts of university lands, (~~or the valuable materials thereon~~), it (~~shall be~~) is the duty of the department to fix the date, place, and time of sale (~~and no sale shall be had on any day which is a legal holiday~~).

~~(The department shall give notice of the sale by advertisement published not less than two times during a four week period prior to the time of sale in at least one newspaper of general circulation in the county in which the whole, or any part of any lot, block, or tract of land to be sold, or the material upon which is to be sold is situated, and by posting a copy of the notice in a conspicuous place in the department's Olympia office, the region headquarters administering such sale, and in the office of the county auditor of such county. The notice shall specify the place, date, and time of sale, the appraised value thereof, and describe with particularity each parcel of land to be sold, or from which valuable materials are to be sold. In the case of valuable materials sales, the estimated volume will be identified and the terms of sale will be available in the region headquarters and the department's Olympia office.~~

~~The advertisement is for informational purposes only, and under no circumstances does the information in the notice of sale constitute a warranty that the purchaser will receive the stated values, volumes, or acreage. All purchasers are expected to make their own measurements, evaluations, and appraisals.~~

~~A direct sale of valuable materials may be sold to the applicant for cash at full appraised value without notice or advertising. The board of natural resources shall, by resolution, establish the value amount of a direct sale not to exceed twenty thousand dollars in appraised sale value, and establish procedures to ensure that competitive market prices and accountability will be guaranteed.)~~

~~(1) No sale may be conducted on any day that is a legal holiday.~~

~~(2) Sales must be held between the hours of 10:00 a.m. and 4:00 p.m.~~

~~If all sales cannot be offered within this time period, the sale must continue on the following day between the hours of 10:00 a.m. and 4:00 p.m.~~

~~(3) Sales must take place:~~

~~(a) At the department's regional office administering the respective sale; or~~

~~(b) On county property designated by the board of county commissioners or county legislative authority of the county in which the whole or majority of state lands are situated. [2003 c 334 § 344; 2001 c 250 § 6; 1997 c 116 § 2; 1989 c 148 § 2; 1988 c 136 § 3; 1983 c 2 § 17. Prior: 1982 1st ex.s. c 21 § 156; 1982 c 27 § 1; 1971 ex.s. c 123 § 2; 1969 ex.s. c 14 § 3; 1959 c 257 § 18; 1927 c 255 § 46; RRS § 7797-46; prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.184, 79.12.300.]~~

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.120 Sale procedure—Fixing date, place, and time of sale—Notice—Publication and posting—Advertisement for informational purposes only—Direct sale to applicant without notice, when (as amended by 2003 c 381). When the department of natural resources shall have decided to sell any state lands or valuable materials thereon, or with the consent of the board of regents of the University of Washington, or by legislative directive, shall have decided to sell any lot, block, tract, or tracts of university lands, or the valuable materials thereon, it shall be the duty of the department to fix the date, place, and time of sale, and no sale shall be had on any day which is a legal holiday.

The department shall give notice of the sale by advertisement published not less than two times during a four week period prior to the time of sale in at least one newspaper of general circulation in the county in which the whole, or any part of any lot, block, or tract of land to be sold (~~or the material upon which is to be sold~~) is situated, and by posting a copy of the notice in a conspicuous place in the department's Olympia office, the region headquarters administering such sale, and in the office of the county auditor of such county. The notice shall specify the place, date, and time of sale, the appraised value thereof, and describe with particularity each parcel of land to be sold (~~or from which valuable materials are to be sold~~). In the case of valuable materials sales, the advertisement may be by newspaper or as provided in *RCW 79.01.188, provided that the estimated volume will be identified and the terms of sale will be available in the region headquarters and the department's Olympia office.

The advertisement is for informational purposes only, and under no circumstances does the information in the notice of sale constitute a warranty that the purchaser will receive the stated values, volumes, or acreage. All purchasers are expected to make their own measurements, evaluations, and appraisals.

A direct sale of valuable materials may be sold to the applicant for cash at full appraised value without notice or advertising (~~The board of natural resources shall, by resolution, establish the value amount of a direct sale not to exceed twenty thousand dollars in appraised sale value, and establish procedures to ensure that competitive market prices and accountability will be guaranteed~~), consistent with the provisions of **RCW 79.01.132(6). [2003 c 381 § 2; 2001 c 250 § 6; 1997 c 116 § 2; 1989 c 148 § 2; 1988 c 136 § 3; 1983 c 2 § 17. Prior: 1982 1st ex.s. c 21 § 156; 1982 c 27 § 1; 1971 ex.s. c 123 § 2; 1969 ex.s. c 14 § 3; 1959 c 257 § 18; 1927 c 255 § 46; RRS § 7797-46; prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.184, 79.12.300.]

Reviser's note: *(1) RCW 79.01.188 was recodified as RCW 79.11.130 pursuant to 2003 c 334 § 556.

***(2) RCW 79.01.132 was repealed by 2003 c 334 § 551. For "sales of valuable materials," see chapter 79.15 RCW.

(3) RCW 79.01.184 (recodified as RCW 79.11.120) was amended twice during the 2003 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—1983 c 2 § 17: "Section 17 of this act shall take effect on July 1, 1983." [1983 c 2 § 18.]

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

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

County auditor, transfer of duties: RCW 79.08.170.

School and granted lands, manner and terms of sale: State Constitution Art. 16 § 2.

79.11.130 Notice—Pamphlet—List of lands to be sold—Certain valuable materials exempt. (1) The department shall give notice of the sale by advertisement published not fewer than two times during a four-week period prior to the time of sale in at least one newspaper of general circulation in the county in which the whole, or any part of any lot, block, or tract of land to be sold is situated, and by posting a copy of the notice in a conspicuous place in the department's Olympia office, the region headquarters administering such sale, and in the office of the county auditor of such county. The notice shall specify the place, date, and time of sale, the appraised value of the land, describe with particularity each parcel of land to be sold, and specify that the terms of sale

will be available in the region headquarters and the department's Olympia office.

(2) The advertisement is for informational purposes only, and under no circumstances does the information in the notice of sale constitute a warranty that the purchaser will receive the stated values, volumes, or acreage. All purchasers are expected to make their own measurements, evaluations, and appraisals.

(3) The department shall print a list of all public lands and the appraised value thereof, that are to be sold. This list should be published in a pamphlet form to be issued at least four weeks prior to the date of any sale of the lands. The list should be organized by county and by alphabetical order, and provide sale information to prospective buyers. The department shall retain for free distribution in the Olympia office and the region offices sufficient copies of the pamphlet, to be kept in a conspicuous place, and, when requested so to do, shall mail copies of the pamphlet as issued to any requesting applicant. The department may seek additional means of publishing the information in the pamphlet, such as on the internet, to increase the number of prospective buyers.

(4) The sale of valuable materials appraised at an amount not exceeding two hundred fifty thousand dollars, as described in *RCW 79.01.200 and as authorized by the board of natural resources, are exempt from the requirements of subsection (3) of this section. [2003 c 381 § 4; 2003 c 334 § 346; 2001 c 250 § 7; 1982 1st ex.s. c 21 § 157; 1959 c 257 § 19; 1927 c 255 § 47; RRS § 7797-47. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.188, 79.12.310.]

Reviser's note: *(1) RCW 79.01.200 was recodified as RCW 79.11.090 pursuant to 2003 c 334 § 556.

(2) This section was amended by 2003 c 334 § 346 and by 2003 c 381 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

County auditor, transfer of duties: RCW 79.02.090.

79.11.140 Additional advertising. The department is authorized to expend any sum in additional advertising of such sale as it determines to be for the best interest of the state. [2003 c 334 § 348; 1927 c 255 § 48; RRS § 7797-48. Prior: 1923 c 19 § 1; 1897 c 89 § 14. Formerly codified as RCW 79.01.192, 79.12.320.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.150 Conduct of sales. Sales by public auction under this chapter shall be conducted under the direction of the department or its authorized representative. The department or department's representative are hereinafter referred to as auctioneers. On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer, in cash or by certified check, cashier's check, money order payable to the order of the department of natural resources, or by bid guarantee in the form of bid bond acceptable to the department, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the appraised price for the land offered for sale, together

with any fee required by law for the issuance of contracts, deeds, or bills of sale. The deposit may, when prescribed in notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale. The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due shall on the day of the sale be paid in cash, certified check, cashier's check, bank draft, or money order, made payable to the department. If a bid bond is used, the share of the total deposit due guaranteed by the bid bond shall, within ten days of the day of sale, be paid in cash, certified check, cashier's check, money order, or other acceptable payment method payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale. The auctioneer shall deliver to the purchaser a memorandum of his or her purchase containing a description of the land or materials purchased, the price bid, and the terms of the sale. The auctioneer shall at once send to the department the cash, certified check, cashier's check, bank draft, money order, bid guarantee, or other acceptable payment method received from the purchaser, and a copy of the memorandum delivered to the purchaser, together with such additional report of the proceedings with reference to such sales as may be required by the department. [2003 c 334 § 354; 2001 c 250 § 8; 1982 c 27 § 2; 1979 c 54 § 3; 1961 c 73 § 4; 1959 c 257 § 22; 1927 c 255 § 51; RRS § 7797-51. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.204, 79.12.350.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.160 Deposit by purchaser to cover value of improvements. A purchaser of state lands who is not the owner of the authorized improvements thereon shall deposit with the auctioneer making the sale, at the time of the sale, the appraised value of such improvements. The department shall pay to the owner of the improvements the sum deposited. However, when the improvements are owned by the state in accordance with the provisions of this chapter or have been acquired by the state by escheat or operation of law, the purchaser may pay for such improvements in equal annual installments at the same time, and with the same rate of interest, as the installments of the purchase price of the land are paid, and under such rules regarding use and care of the improvements as may be fixed by the department. [2003 c 334 § 338; 1979 ex.s. c 109 § 7; 1935 c 57 § 1; 1927 c 255 § 37; RRS § 7797-37. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.148, 79.12.160.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.11.165 Reoffer. Any sale which has been offered, and for which there are no bids received shall not be reoffered until it has been readvertised as specified in RCW 79.11.130 and 79.11.140. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between 10:00 a.m. and 4:00 p.m. [2003 c

334 § 349; 1965 ex.s. c 23 § 3; 1959 c 257 § 20; 1927 c 255 § 49; RRS § 7797-49. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.196, 79.12.330.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.175 Confirmation of sale. The department shall enter upon its records a confirmation of sale and issue to the purchaser a contract of sale if the following conditions have been met:

(1) No fewer than ten days have passed since the auctioneer's report has been filed;

(2) No affidavit is filed with the department showing that the interests of the state in the sale was injuriously affected by fraud or collusion;

(3) It appears from the auctioneer's report that:

(a) The sale was fairly conducted; and

(b) The purchaser was the highest bidder and the bid was not less than the appraised value of the land sold;

(4) The department is satisfied that the land sold would not, upon being readvertised and offered for sale, sell for at least ten percent more than the price bid by the purchaser;

(5) The payment required by law to be made at the time of making the sale has been made;

(6) The department determines the best interests of the state will be served by confirming the sale. [2003 c 334 § 357; 1982 1st ex.s. c 21 § 158; 1959 c 257 § 23; 1927 c 255 § 53; RRS § 7797-53. Prior: 1907 c 256 § 7; 1903 c 79 § 2; 1897 c 89 § 15; 1895 c 178 § 29. Formerly RCW 79.01.212, 79.12.370.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

County auditor, transfer of duties: RCW 79.02.090.

79.11.190 Readvertisement of lands not sold. If any land offered for sale is not sold, it may again be advertised for sale, as provided in this chapter, whenever in the opinion of the commissioner it shall be expedient to do so. Whenever any person applies to the department in writing to have such land offered for sale, agrees to pay at least the appraised value thereof and deposits with the department at the time of making such application a sufficient sum of money to pay the cost of advertising such sale, the land shall again be advertised and offered for sale as provided in this chapter. [2003 c 334 § 356; 1927 c 255 § 52; RRS § 7797-52. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 24. Formerly RCW 79.01.208, 79.12.360.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.200 Form of contract—Rate of interest. The purchaser of state lands under the provisions of this chapter, except in cases where the full purchase price is paid at the time of the purchase, shall enter into and sign a contract with the state, to be signed by the commissioner on behalf of the state, with the seal of the commissioner's office attached, and in a form to be prescribed by the attorney general, in which the purchaser shall covenant to make the payments of principal and interest, computed from the date the contract is issued, when due, and that the purchaser will pay all taxes

and assessments that may be levied or assessed on such land, and that on failure to make the payments as prescribed in this chapter when due all rights of the purchaser under said contract may, at the election of the commissioner, acting for the state, be forfeited, and that when forfeited the state shall be released from all obligation to convey the land. The purchaser's rights under the real estate contract shall not be forfeited except as provided in chapter 61.30 RCW.

The contract provided for in this section shall be executed in duplicate, and one copy shall be retained by the purchaser and the other shall be filed in the department's Olympia office.

The commissioner may, as deemed advisable, extend the time for payment of principal and interest on contracts heretofore issued, and contracts to be issued under this chapter.

The department shall notify the purchaser of any state lands in each instance when payment on the purchaser's contract is overdue, and that the purchaser is liable to forfeiture if payment is not made when due. [2003 c 334 § 361; 1985 c 237 § 18; 1982 1st ex.s. c 21 § 162; 1959 c 257 § 26; 1927 c 255 § 57; RRS § 7797-57. Prior: 1897 c 89 §§ 17, 18, 27; 1895 c 178 §§ 30, 31. Formerly RCW 79.01.228, 79.12.400.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—Application—1985 c 237: See RCW 61.30.905 and 61.30.910.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.11.210 Reservation in contract. Each and every contract for the sale of, and each deed to, state lands shall contain the following reservation: "The party of the first part hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself and its successors and assigns forever, all oils, gases, coal, ores, minerals, and fossils of every name, kind, or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself and its successors and assigns forever, the right to enter by itself or its agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself its successors and assigns, forever, the right by its or their agents, servants, and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, and railroads, sink such shafts, remove such soil, and to remain on said lands or any part thereof for the business of mining and to occupy as much of said lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself and its successors and assigns, as aforesaid, generally, all rights and powers in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved.

No rights shall be exercised under the foregoing reservation, by the state or its successors or assigns, until provision

has been made by the state or its successors or assigns, to pay to the owner of the land upon which the rights reserved under this section to the state or its successors or assigns, are sought to be exercised, full payment for all damages sustained by said owner, by reason of entering upon said land: PROVIDED, That if said owner from any cause whatever refuses or neglects to settle said damages, then the state or its successors or assigns, or any applicant for a lease or contract from the state for the purpose of prospecting for or mining valuable minerals, or option contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the land is situate, as may be necessary to determine the damages which said owner of said land may suffer." [1982 1st ex.s. c 21 § 161; 1927 c 255 § 56; RRS § 7797-56. Prior: 1917 c 149 § 1; 1915 c 147 § 3; 1907 c 256 § 3; 1897 c 89 § 16; 1895 c 178 §§ 25, 29. Formerly RCW 79.01.224, 79.12.410.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.11.220 Relinquishment to United States, in certain cases of reserved mineral rights. Whenever the state shall have heretofore sold or may hereafter sell any state lands and issued a contract of purchase or executed a deed of conveyance therefor, in which there is a reservation of all oils, gases, coal, ores, minerals, and fossils of every kind and of rights in connection therewith, and the United States of America shall have acquired for governmental purposes and uses all right, title, claim, and interest of the purchaser, or grantee, or his or her successors in interest or assigns, in or to the contract or the land described therein, except such reserved rights, and no oils, gases, coal, ores, minerals, or fossils of any kind have been discovered or are known to exist in or upon such lands, the commissioner may, if it is advisable, cause to be prepared a deed of conveyance to the United States of America of such reserved rights, and certify the same to the governor in the manner provided by law for deeds to state lands, and the governor shall be, and hereby is authorized to execute, and the secretary of state to attest, a deed of conveyance for such reserved rights to the United States of America. [2003 c 334 § 449; 1931 c 105 § 1; RRS § 8124-1. Formerly RCW 79.08.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

Certification of deed to governor: RCW 79.02.270.

PART 2 PLATTING

79.11.250 Lands subject to platting. The department shall cause all unplatted state lands, within the limits of any incorporated city or town, or within two miles of the boundary thereof, where the valuation of such lands is found by appraisal to exceed one hundred dollars per acre, to be platted into lots and blocks, of not more than five acres in a block, before the same are offered for sale, and not more than one block shall be offered for sale in one parcel. The department may designate or describe any such plat by name, or numeral, or as an addition to such city or town, and, upon the filing of any such plat, it shall be sufficient to describe the lands, or any portion thereof, embraced in such plat, accord-

ing to the designation prescribed by the department. Such plats shall be made in duplicate, and when properly authenticated by the department, one copy thereof shall be filed in the office of the department and one copy in the office of the county auditor in which the lands are situated, and the auditor shall receive and file such plats without compensation or fees and make record thereof in the same manner as required by law for the filing and recording of other plats in the auditor's office.

In selling lands subject to the provisions of Article 16, section 4, of the state Constitution, the department will be permitted to sell the land within the required land subdivision without being required to complete the construction of streets, utilities, and such similar things as may be required by any local government entity in the instance of the platting of private or other property within their area of jurisdiction. However, no construction will be permitted on lands so sold until the purchaser or purchasers collectively comply with all of the normal requirements for platting. [2003 c 334 § 324; 1967 ex.s. c 78 § 4; 1959 c 257 § 6; 1927 c 255 § 25; RRS § 7797-25. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.01.100, 79.12.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

Platting: State Constitution Art. 16 § 4.

Recording—Duties of county auditor: Chapter 65.04 RCW.

79.11.260 Vacation—Vested rights. When, in the judgment of the department the best interest of the state will be thereby promoted, the department may vacate any plat or plats covering state lands, and vacate any street, alley, or other public place therein situated. The vacation of any such plat shall not affect the vested rights of any person or persons theretofore acquired therein. In the exercise of this authority to vacate the department shall enter an order in the records of its office and at once forward a certified copy thereof to the county auditor of the county wherein the platted lands are located. The auditor shall cause the same to be recorded in the miscellaneous records of the auditor's office and noted on the plat by reference to the volume and page of the record. [2003 c 334 § 325; 1959 c 257 § 7; 1927 c 255 § 26; RRS § 7797-26. Prior: 1903 c 127 §§ 1, 2. Formerly RCW 79.01.104, 79.12.050.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.270 Vacation—Preference right to purchase. Whenever all the owners and other persons having a vested interest in the lands abutting on any street, alley, or other public place, or any portion thereof, in any plat of state lands, lying outside the limits of any incorporated city or town, petition the department, the department may vacate any such tract, alley, or public place or part thereof and in such case all such streets, alleys, or other public places or portions thereof so vacated shall be platted, appraised, and sold or leased in the manner provided for the platting, appraisal, and sale or lease of similar lands. However, where the area vacated can be determined from the plat already filed it shall not be necessary to survey such area before platting the same. The owner or owners, or other persons having a vested interest in the lands abutting on any of the lots, blocks, or other parcels

platted upon the lands embraced within any area vacated as provided in this section, shall have a preference right for the period of sixty days from the date of filing with the department such plat and the appraisal of such lots, blocks, or other parcels of land, to purchase the same at the appraised value thereof. [2003 c 334 § 326; 1959 c 257 § 8; 1927 c 255 § 27; RRS § 7797-27. Prior: 1903 c 127 § 3. Formerly RCW 79.01.108, 79.12.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 3 OTHER SALE PROVISIONS

79.11.290 Leased lands reserved from sale. State lands held under lease as provided in RCW 79.13.370 shall not be offered for sale, or sold, during the life of the lease, except upon application of the lessee. [2003 c 334 § 380; 1927 c 255 § 75; RRS § 7797-75. Prior: 1897 c 89 § 23. Formerly RCW 79.01.300, 79.12.560.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.310 Sale of lands with low-income potential.

(1) The purpose of this section is to provide revenues to the state and its various taxing districts through the sale of public lands which are currently used primarily for grazing and similar low priority purposes, by enabling their development as irrigated agricultural lands.

(2) All applications for the purchase of lands of the foregoing character, when accompanied by a proposed plan of development of the lands for a higher priority use, shall be individually reviewed by the board. The board shall thereupon determine whether the sale of the lands is in the public interest and upon an affirmative finding shall offer such lands for sale. However, any such parcel of land shall be sold to the highest bidder but only at a bid equal to or higher than the last appraised valuation thereof as established by appraisers for the department for any such parcel of land. Further, any lands lying within United States reclamation areas, the sale price of which is limited or otherwise regulated pursuant to federal reclamation laws or regulations thereunder, need not be offered for sale so long as such limitations or regulations are applicable thereto.

(3) The department shall adopt appropriate rules defining properties of such irrigated agricultural potential and shall take into account the economic benefits to the locality in classifying such properties for sale. [2003 c 334 § 381; 1967 ex.s. c 78 § 5. Formerly RCW 79.01.301.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.320 Assessments added to purchase price. (1) When any public land of the state is offered for sale and the state has paid assessments for local improvements, or benefits, to any municipal corporation authorized by law to assess the same, the amount of the assessments paid by the state shall be added to the appraised value of such land.

(2) The amount of assessments paid by the state shall be paid by the purchaser in addition to the amount due the state for the land.

(3) In case of sale by contract under RCW 79.11.220 the purchaser may pay the assessments in equal annual install-

ments at the same time, and with the same rate of interest upon deferred payments, as the installments of the purchase price for the land are paid.

(4) No deed shall be executed until such assessments have been paid. [2003 c 334 § 430; 1927 c 255 § 192; RRS § 7797-192. Prior: 1925 ex.s. c 180 § 1; 1909 c 154 § 7; 1907 c 73 § 3; 1905 c 144 § 5. Formerly RCW 79.01.728, 79.44.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

Assessments paid by state to be added to purchase price of land: RCW 79.44.095.

79.11.340 Sale of acquired lands. (1) Except as provided in RCW 79.10.030(2), the department shall manage and control all lands acquired by the state by escheat, deed of sale, gift, devise, or under RCW 79.19.010 through 79.19.110, except such lands that are conveyed or devised to the state for a particular purpose.

(2) When the department determines to sell the lands, they shall initially be offered for sale either at public auction or direct sale to public agencies as provided in this chapter.

(3) If the lands are not sold at public auction, the department may, with approval of the board, market the lands through persons licensed under chapter 18.85 RCW or through other commercially feasible means at a price not lower than the land's appraised value.

(4) Necessary marketing costs may be paid from the sale proceeds. For the purpose of this subsection, necessary marketing costs include reasonable costs associated with advertising the property and paying commissions.

(5) Proceeds of the sale shall be deposited into the appropriate fund in the state treasury unless the grantor in any deed or the testator in case of a devise specifies that the proceeds of the sale be devoted to a particular purpose. [2003 c 334 § 399.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.12 RCW

SALES AND LEASES OF PUBLIC LANDS AND MATERIALS

Sections

79.12.015	Recodified as RCW 79.13.500.
79.12.025	Recodified as RCW 79.13.510.
79.12.035	Recodified as RCW 79.64.120.
79.12.055	Recodified as RCW 79.13.520.
79.12.095	Recodified as RCW 79.13.530.
79.12.570	Recodified as RCW 79.13.320.
79.12.600	Recodified as RCW 79.13.330.
79.12.610	Recodified as RCW 79.13.340.
79.12.620	Recodified as RCW 79.13.350.
79.12.630	Recodified as RCW 79.13.360.

79.12.015 Recodified as RCW 79.13.500. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.12.025 Recodified as RCW 79.13.510. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.12.035 Recodified as RCW 79.64.120. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.12.055 Recodified as RCW 79.13.520. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.12.095 Recodified as RCW 79.13.530. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.12.570 Recodified as RCW 79.13.320. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.12.600 Recodified as RCW 79.13.330. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.12.610 Recodified as RCW 79.13.340. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.12.620 Recodified as RCW 79.13.350. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.12.630 Recodified as RCW 79.13.360. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 79.13 RCW LAND LEASES

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PART 1 GENERAL PROVISIONS

79.13.010 Lease of state lands—General. (1) Subject to other provisions of this chapter and subject to rules adopted by the board, the department may lease state lands for purposes it deems advisable, including, but not limited to, commercial, industrial, residential, agricultural, and recreational purposes in order to obtain a fair market rental return to the state or the appropriate constitutional or statutory trust.

(2) Notwithstanding any provision in this chapter to the contrary, in leases for residential purposes, the board may waive or modify any conditions of the lease if the waiver or modification is necessary to enable any federal agency or lending institution authorized to do business in this state or elsewhere in the United States to participate in any loan secured by a security interest in a leasehold interest.

(3) Any land granted to the state by the United States may be leased for any lawful purpose in such minimum acreage as may be fixed by the department.

(4) The department shall exercise general supervision and control over the lease of state lands for any lawful purpose.

(5) State lands leased or for which permits are issued or contracts are entered into for the prospecting and extraction of valuable materials, coal, oil, gas, or other hydrocarbons are subject to the provisions of chapter 79.14 RCW. [2003 c 334 § 366; 1984 c 222 § 12; 1979 ex.s. c 109 § 10. Formerly RCW 79.01.242.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1984 c 222: See RCW 79.66.900 and 79.66.901.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.13.020 Who may lease. Any person desiring to lease any state lands for any purpose not prohibited by law may make application to the department on forms provided by the department and accompanied by the fee provided under RCW 79.02.250. [2003 c 334 § 370.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.030 Lease contents. Every lease issued by the department must contain:

- (1) The specific use or uses to which the land is to be employed;
- (2) The improvements required, if any;
- (3) Provisions providing that the rent is payable in advance in quarterly, semiannual, or annual payments as determined by the department, or as agreed upon by the lessee and the department;
- (4) Other terms and conditions as the department deems advisable, subject to review by the board, to achieve the purposes of the state Constitution and this chapter. [2003 c 334 § 367.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.040 Inspections—Surveys. (1) When in the judgment of the department there is sufficient interest for the lease of state lands, it must inspect each tract of land as to its topography, development potential, forestry, agricultural, and grazing qualities; the presence of coal, mineral, stone, gravel, or other valuable materials; the distance from any city or town, railroad, river, irrigation canal, ditch, or other waterway; and location of utilities.

(2) The department may survey any state lands to determine the area subject to lease.

(3) It is the duty of the department to prepare all reports, data, and information in its records pertaining to any proposed lease.

(4) The department may order that any particular application for a lease be held in abeyance pending further inspection and report by the department. Based on the further inspection and report, the department must determine whether or not, and the terms upon which, the proposed lease is consummated. [2003 c 334 § 316.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.050 Improvements. (1) Only improvements authorized in writing by the department or consistent with the approved plan of development may be placed on the state lands under lease. Improvements are subject to the following conditions:

(a) A minimum reasonable time must be allowed for completion of the improvements;

(b) Improvements become the property of the state at the expiration or termination of the lease unless otherwise agreed upon under the terms of the lease; and

(c) The department may require improvements to be removed at the end of the lease term at the lessee's expense.

(2) Any improvements placed upon any state lands without the written authority of the department become the property of the state and are considered part of the land, unless required to be removed by the lessee under subsection (1)(c) of this section. [2003 c 334 § 315.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.060 Lease terms. (1) State lands may be leased not to exceed ten years with the following exceptions:

(a) The lands may be leased for agricultural purposes not to exceed twenty-five years, except:

(i) Leases that authorize tree fruit or grape production may be for up to fifty-five years;

(ii) Share crop leases may not exceed ten years;

(b) The lands may be leased for commercial, industrial, business, or recreational purposes not to exceed fifty-five years;

(c) The lands may be leased for public school, college, or university purposes not to exceed seventy-five years; and

(d) The lands may be leased for residential purposes not to exceed ninety-nine years.

(2) No lessee of state lands may remain in possession of the land after the termination or expiration of the lease without the written consent of the department.

(a) The department may authorize a lease extension for a specific period beyond the term of the lease for cropping improvements for the purpose of crop rotation. These improvements shall be deemed authorized improvements under RCW 79.13.030.

(b) Upon expiration of the lease term, the department may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms, and conditions as the department may prescribe, if the leased land is not otherwise utilized.

(c) Upon expiration of the one-year lease extension, the department may issue a temporary permit to the lessee upon terms and conditions it prescribes if the department has not yet determined the disposition of the land for other purposes.

(d) The temporary permit shall not extend beyond a five-year period.

(3) If during the term of the lease of any state lands for agricultural, grazing, commercial, residential, business, or recreational purposes, in the opinion of the department it is in the best interest of the state so to do, the department may, on the application of the lessee and in agreement with the lessee, alter and amend the terms and conditions of the lease. The sum total of the original lease term and any extension thereof shall not exceed the limits provided in this section. [2003 c 334 § 323.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.070 Forfeiture. If any rental is not paid on or before its due date according to the terms of the lease, the department must declare a forfeiture, cancel the lease, and eject the lessee from the land. The department may extend the time for payment of annual rental when in its judgment the interests of the state will not be prejudiced by the extension. [2003 c 334 § 375.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.080 Disposition of crops on forfeited land. Whenever the state of Washington shall become the owner of any growing crop, or crop grown upon, any state lands, by reason of the forfeiture, cancellation, or termination of any contract or lease of state lands, or from any other cause, the department is authorized to arrange for the harvesting, sale, or other disposition of such crop in such manner as the department deems for the best interest of the state, and shall pay the proceeds of any such sale into the state treasury to be credited to the same fund as the rental of the lands upon which the crop was grown would be credited. [2003 c 334 §

342; 1927 c 255 § 43; RRS § 7797-43. Prior: 1915 c 89 §§ 1, 2. Formerly RCW 79.01.172, 79.12.240.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.090 Leases to United States for national defense. State lands may be leased to the United States for national defense purposes at the fair rental value thereof as determined by the department, for a period of five years or less. Such leases may be made without competitive bidding at public auction and without payment in advance by the United States government of the first year's rental. Such leases otherwise shall be negotiated and arranged in the same manner as other leases of state lands. [2003 c 334 § 450; 1941 c 66 § 1; Rem. Supp. 1941 § 8122-1. Formerly RCW 79.08.120.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 2 LEASE PROCEDURE

79.13.110 Types of lease authorization. (1) The department may authorize the use of state land by lease at state auction for initial leases or by negotiation for existing leases.

(2) Leases that authorize commercial, industrial, or residential uses may be entered into by public auction or negotiations at the option of the department. Negotiations are subject to rules approved by the board. [2003 c 334 § 368.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.120 Notice of leasing. (1) The department must give thirty days' notice of leasing by public auction. The notice must:

(a) Specify the place and time of auction, bid deposit if any, the appraised value, describe each parcel to be leased, and the terms and conditions of the lease;

(b) Be posted in some conspicuous place in the county auditor's office and the department's regional headquarters administering the lease; and

(c) Be published in at least two newspapers of general circulation in the area where the state land subject to public auction leasing is located.

(2) Notice of intent to lease by negotiation must be published in at least two newspapers of general circulation in the area where the state land subject to lease negotiation is located. The notice must be published within the ninety days preceding commencement of negotiations.

(3) The department is authorized to conduct any additional advertising that it determines to be in the best interest of the state. [2003 c 334 § 369.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.130 Lease procedure—Scheduling auctions. (1) When the department decides to lease any state lands at public auction it is the duty of the department to fix the date, place, and time when such lands shall be offered for lease.

(2) The auction must be conducted between the hours of 10:00 a.m. and 4:00 p.m.

(3) The auction must take place:

(a) At the department's regional office administering the lease; or

(b) When leases are auctioned by the county auditor, in the county where the state land to be leased is situated at such place as specified in the notice. [2003 c 334 § 372; 1979 ex.s. c 109 § 11; 1927 c 255 § 62; RRS § 7797-62. Prior: 1897 c 89 § 20. Formerly RCW 79.01.248, 79.12.440.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.13.140 Public auction procedure. (1) All leasing by public auction shall be by oral or by sealed bid. Leases will be awarded to the highest bidder on the terms prescribed by law and as specified in the notice of leasing described in RCW 79.13.120. No lease may be awarded for less than the appraised value.

(2) The public auction must be conducted under the direction of the department or by the auditor for the county in which the land to be leased is located. The person conducting the auction is called the auctioneer.

(3) The person to whom a lease of state lands is awarded shall pay the rental in accordance with that person's bid to the auctioneer in cash or by certified check or accepted draft on any bank in this state.

(4) The auctioneer shall send to the department such cash, certified check, draft, or money order received from the successful bidder, together with any additional report of the auction proceeding as may be required by the department.

(5) The department may reject any and all bids when the interests of the state justify it. If the department rejects a bid, it must refund any rental and bid deposit to the bidder upon return of the receipts issued.

(6) If the department approves any leasing made by the auctioneer, it must proceed to issue a lease to the successful bidder upon a form approved by the attorney general.

(a) All leases must be in duplicate and both copies signed by the lessee and the department.

(b) One signed copy must be forwarded to the lessee and one signed copy must be kept in the office of the department. [2003 c 334 § 373.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.150 Lease/rent of acquired lands. (1) Except as provided in RCW 79.10.030(2), the department shall manage and control all lands acquired by the state through escheat, deed of sale, gift, devise, or under RCW 79.19.010 through 79.19.110, except lands that are conveyed or devised to the state for a particular purpose.

(2) The department shall lease the lands in the same manner as school lands.

(3) The department may employ agents to rent any escheated, deeded, or devised lands, or lands acquired under RCW 79.19.010 through 79.19.110 for such rental, time, and manner as the department directs.

(a) The agent shall not rent the property for a period longer than one year.

(b) No tenant is entitled to compensation for any improvement that he or she makes on the property.

(c) The agent shall cause repairs to be made to the property as the department directs.

(d) Rental shall be transmitted monthly to the department. The agent shall deduct the cost of any repairs made under (c) of this subsection, together with such compensation and commission as the department authorizes from the rental.

(4) Proceeds of any lease or rental shall be deposited into the appropriate fund in the state treasury. If the grantor in any deed or the testator in case of a devise specifies that the proceeds be devoted to a particular purpose, such proceeds shall be so applied. [2003 c 334 § 400.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.160 Appraisal of improvement before lease. Before any state lands are offered for lease, or are assigned, the department may establish the fair market value of those authorized improvements not owned by the state. In the event that agreement cannot be reached between the state and the lessee on the fair market value, such valuation shall be submitted to a review board of appraisers. The board is comprised of the following members: One member to be selected by the lessee and that person's expenses shall be borne by the lessee; one member selected by the state and that person's expenses shall be borne by the state; these members so selected shall mutually select a third member and that person's expenses shall be shared equally by the lessee and the state. The majority decision of this appraisal review board shall be binding on both parties. For this purpose, "fair market value" is defined as: The highest price in terms of money that a property will bring in a competitive and open market under all conditions of a fair sale, the buyer and seller, each prudently knowledgeable and assuming the price is not affected by undue stimulus. All damages and wastes committed upon such lands and other obligations due from the lessee shall be deducted from the appraised value of the improvements. However, the department on behalf of the respective trust may purchase at fair market value those improvements if it appears to be in the best interest of the state from the resource management cost account created in RCW 79.64.020. [2003 c 334 § 337.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.170 Water right for irrigation as improvement. At any time during the existence of any lease of state lands, except lands leased for the purpose of mining of valuable minerals, or coal, or extraction of petroleum or gas, the lessee with the consent of the department, first obtained, by written application, showing the cost and benefits to be derived thereby, may purchase or acquire a water right appurtenant to and in order to irrigate the land leased. If such water right shall become a valuable and permanent improvement to the lands, then, in case of the sale or lease of such lands to other parties, the lessee acquiring such water right shall be entitled to receive the value thereof as in case of other improvements which have been placed upon the land by the lessee. [2003 c 334 § 376; 1959 c 257 § 32; 1927 c 255 § 71; RRS § 7797-71. Prior: 1903 c 79 § 7; 1897 c 89 § 31; 1895 c 178 § 41. Formerly RCW 79.01.284, 79.12.530.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.180 Record of leases. The department shall keep a full and complete record of all leases issued under the provisions of the preceding sections and the payments made thereon. [2003 c 334 § 374; 1979 ex.s. c 109 § 16; 1933 c 139 § 1; 1927 c 255 § 67; RRS § 7797-67. Prior: 1915 c 147 § 6; 1909 c 223 § 5; 1897 c 89 § 25. Formerly RCW 79.01.268, 79.12.490.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

PART 3 AGRICULTURAL/GRAZING LEASES

79.13.320 Share crop leases authorized. The department may lease state lands on a share crop basis. Upon receipt of a written application to lease state lands, the department shall make such investigations as it deems necessary. If the department finds that such a lease would be advantageous to the state, it may proceed with the leasing of such lands on such terms and conditions as other state lands are leased. [2003 c 334 § 466; 1979 ex.s. c 109 § 20; 1961 c 73 § 10; 1949 c 203 § 1; Rem. Supp. 1949 § 7895-1. Formerly RCW 79.12.570.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

79.13.330 Harvest, storage of crop—Notice—Warehouse receipt. When crops that are covered by a share crop lease are harvested, the lessee shall give written notice to the department that the crop is being harvested, and shall also give to the department the name and address of the warehouse or elevator to which such crops are sold or in which such crops will be stored. The lessee shall also serve on the owner of such warehouse or elevator a written copy of so much of the lease as shall show the percentage of division of the proceeds of such crop as between lessee and lessor. The owner of such warehouse or elevator shall make out a warehouse receipt, which receipt may be negotiable or nonnegotiable as directed by the state, showing the percentage of crops belonging to the state, and the respective gross and net amounts, grade, and location thereof, and shall deliver to the department the receipt for the state's percentage of such crops within ten days after the owner has received such instructions. [2003 c 334 § 467; 2000 c 18 § 1; 1949 c 203 § 4; Rem. Supp. 1949 § 7895-4. Formerly RCW 79.12.600.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.340 Sale, storage, or other disposition of crops. The department shall sell the crops covered by the warehouse receipt required in RCW 79.13.330 and may comply with the provisions of any federal act or the regulation of any federal agency with relation to the storage or disposition of the crop. [2003 c 334 § 468; 1977 c 20 § 1; 1949 c 203 § 5; Rem. Supp. 1949 § 7895-5. Formerly RCW 79.12.610.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.350 Insurance of crop—Division of cost. The lessee under any share crop lease issued by the department shall notify the department as soon as an estimated yield of the crop can be obtained. The estimate must be immediately submitted to the department, which is hereby authorized to insure the crop from loss by fire or hail. The cost of such insurance shall be paid by the state and lessee on the same basis as the crop returns to which each is entitled. [2003 c 334 § 469; 1949 c 203 § 6; Rem. Supp. 1949 § 7895-6. Formerly RCW 79.12.620.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.360 Application of other provisions to share crop leases. RCW 79.13.320 through 79.13.360 shall not repeal the provisions of the general leasing statutes of the state of Washington and all of the general provisions of such statutes with reference to filing of applications, deposits required therewith, forfeiture of deposits, cancellation of leases for noncompliance and general procedures shall apply to all leases issued under the provisions of RCW 79.13.320 through 79.13.360. [2003 c 334 § 470; 1949 c 203 § 7; Rem. Supp. 1949 § 7895-7. Formerly RCW 79.12.630.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.370 Grazing leases—Restrictions. The lessee, or assignee of any lease leased for grazing purposes, shall not use the land for any other purpose than that expressed in the lease. However, the lessee, or assignee, may surrender the lease to the department and request the department to issue an agricultural lease in lieu of the original lease. The department is authorized to issue a new lieu lease for the unexpired portion of the term of the lease surrendered upon payment of the fixed rental based on an appraisal of the land for agricultural purposes. Under the lieu lease the lessee shall be permitted to clear, plow, and cultivate the lands as in the case of an original lease for agricultural purposes. [2003 c 334 § 379; 1959 c 257 § 34; 1927 c 255 § 74; RRS § 7797-74. Prior: 1903 c 79 § 8. Formerly RCW 79.01.296, 79.12.550.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.380 Livestock grazing on lieu lands. The department has the power, and it is its duty, to adopt, from time to time, reasonable rules for the grazing of livestock on such tracts and areas of the indemnity or lieu public lands of the state contiguous to national forests and suitable for grazing purposes, as have been, or shall be, obtained from the United States under the provisions of RCW 79.02.120. [2003 c 334 § 491; 1923 c 85 § 1; RRS § 7826-1. Formerly RCW 79.28.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.390 Grazing permits—United States government. The department may issue permits for the grazing of livestock on the lands described in RCW 79.13.380 in such manner and upon such terms, as near as may be, as permits are, or shall be, issued by the United States for the grazing of livestock on national forest lands. The department may charge such fees as it deems adequate and advisable. The department may cooperate with the United States for the protection and preservation of the grazing areas on the state

lands contiguous to national forests and for the administration of the provisions of RCW 79.13.380 and 79.13.390. [2003 c 334 § 492; 1983 c 3 § 202; 1923 c 85 § 2; RRS § 7826-2. Formerly RCW 79.28.050.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.400 Improvement of grazing ranges—Agreements. The department is hereby authorized on behalf of the state of Washington to enter into cooperative agreements with any person as defined in RCW 1.16.080 for the improvement of the state's grazing ranges by the clearing of debris, maintenance of trails and water holes, and other requirements for the general improvement of the grazing ranges. [2003 c 334 § 493; 1963 c 99 § 1; 1955 c 324 § 1. Formerly RCW 79.28.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.410 Improvement of grazing ranges—Extension of permit. In order to encourage the improvement of grazing ranges by holders of grazing permits, the department shall consider (1) extension of grazing permit periods to a maximum of ten years; and (2) reduction of grazing fees, in situations where the permittee contributes or agrees to contribute to the improvement of the range, financially, by labor, or otherwise. [2003 c 334 § 494; 1985 c 197 § 3; 1979 ex.s. c 109 § 21; 1955 c 324 § 2. Formerly RCW 79.28.080.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.01.036.

PART 4 OTHER LEASES

79.13.500 Amateur radio repeater stations—Legislative intent. The department leases state lands and space on towers located on state lands to amateur radio operators for their repeater stations. These sites are necessary to maintain emergency communications for public safety and for use in disaster relief and search and rescue support.

The licensed amateur radio operators of the state provide thousands of hours of public communications service to the state every year. Their communication network spans the entire state, based in individual residences and linked across the state through a series of mountain-top repeater stations. The amateur radio operators install and maintain their radios and the electronic repeater stations at their own expense. The amateur radio operators who use their equipment to perform public services should not bear the sole responsibility for supporting the electronic repeater stations.

In recognition of the essential role performed by the amateur radio operators in emergency communications, the legislature intends to reduce the rental fee paid by the amateur radio operators while assuring the department full market rental for the use of state-owned property. [2003 c 334 § 461; 1988 c 209 § 1. Formerly RCW 79.12.015.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.510 Amateur radio electronic repeater sites and units—Reduced rental rates—Frequencies. The department shall determine the lease rate for amateur radio electronic repeater sites and units available for public service communication. For the amateur operator to qualify for a rent of one hundred dollars per year per site, the amateur operator shall do one of the following: (1) Register and remain in good standing with the state's radio amateur civil emergency services and amateur radio emergency services organizations, or (2) if an amateur group, sign a statement of public service developed by the department.

The legislature's biennial appropriations shall account for the estimated difference between the one hundred dollar per year, per site, per lessee paid by the qualified amateur operators and the fair market amateur rent, as established by the department.

The amateur radio regulatory authority approved by the federal communication commission shall assign the radio frequencies used by amateur radio lessees. The department shall develop guidelines to determine which lessees are to receive reduced rental fees as moneys are available by legislative appropriation to pay a portion of the rent for electronic repeaters operated by amateur radio operators. [2003 c 334 § 462; 1995 c 105 § 1; 1988 c 209 § 2. Formerly RCW 79.12.025.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.520 Nonprofit television reception improvements districts—Rental of public lands—Intent. The department shall determine the fair market rental rate for leases to nonprofit television reception improvement districts. It is the intent of the legislature to appropriate general funds to pay a portion of the rent charged to nonprofit television reception improvement districts. It is the further intent of the legislature that such a lessee pay an annual lease rent of fifty percent of the fair market rental rate, as long as there is a general fund appropriation to compensate the trusts for the remainder of the fair market rental rate. [2003 c 334 § 464; 1994 c 294 § 1. Formerly RCW 79.12.055.]

Intent—2003 c 334: See note following RCW 79.02.010.

Effective date—1994 c 294: "This act shall take effect July 1, 1994." [1994 c 294 § 3.]

79.13.530 Geothermal resources—Guidelines for development. In an effort to increase potential revenue to the geothermal account, the department shall, by December 1, 1991, adopt rules providing guidelines and procedures for leasing state-owned land for the development of geothermal resources. [2003 c 334 § 465; 1991 c 76 § 3. Formerly RCW 79.12.095.]

Intent—2003 c 334: See note following RCW 79.02.010.

Geothermal account: Chapter 43.140 RCW.

PART 5 ECOSYSTEM STANDARDS

79.13.600 Findings—Salmon stocks—Grazing lands—Coordinated resource management plans. The legislature finds that many wild stocks of salmonids in the state of Washington are in a state of decline. Stocks of salmon on the Columbia and Snake rivers have been listed under the

federal endangered species act, and the bull trout has been petitioned for listing. Some scientists believe that numerous other stocks of salmonids in the Pacific Northwest are in decline or possibly extinct. The legislature declares that to lose wild stocks is detrimental to the genetic diversity of the fisheries resource and the economy, and will represent the loss of a vital component of Washington's aquatic ecosystems. The legislature further finds that there is a continuing loss of habitat for fish and wildlife. The legislature declares that steps must be taken in the areas of wildlife and fish habitat management, water conservation, wild salmonid stock protection, and education to prevent further losses of Washington's fish and wildlife heritage from a number of causes including urban and rural subdivisions, shopping centers, industrial park, and other land use activities.

The legislature finds that the maintenance and restoration of Washington's rangelands and shrub-steppe vegetation is vital to the long-term benefit of the people of the state. The legislature finds that approximately one-fourth of the state is open range or open-canopied grazable woodland. The legislature finds that these lands provide forage for livestock, habitat for wildlife, and innumerable recreational opportunities including hunting, hiking, and fishing.

The legislature finds that the development of coordinated resource management plans, that take into consideration the needs of wildlife, fish, livestock, timber production, water quality protection, and rangeland conservation on all state-owned grazing lands will improve the stewardship of these lands and allow for the increased development and maintenance of fish and wildlife habitat and other multipurpose benefits the public derives from these lands.

The legislature finds that the state currently provides insufficient technical support for coordinated resource management plans to be developed for all state-owned lands and for many of the private lands desiring to develop such plans. As a consequence of this lack of technical assistance, our state grazing lands, including fish and wildlife habitat and other resources provided by these lands, are not achieving their potential. The legislature also finds that with many state lands being intermixed with private grazing lands, development of coordinated resource management plans on state-owned and managed lands provides an opportunity to improve the management and enhance the conditions of adjacent private lands.

A purpose of chapter 4, Laws of 1993 sp. sess. is to establish state grazing lands as the model in the state for the development and implementation of standards that can be used in coordinated resource management plans and to thereby assist the timely development of coordinated resource management plans for all state-owned grazing lands. Every lessee of state lands who wishes to participate in the development and implementation of a coordinated resource management plan shall have the opportunity to do so. [1996 c 163 § 2. Prior: 1993 sp.s. c 4 § 1. Formerly RCW 79.01.2951.]

79.13.610 Grazing lands—Fish and wildlife goals—Technical advisory committee—Implementation. (1) By December 31, 1993, the department of fish and wildlife shall develop goals for the wildlife and fish that this agency manages, to preserve, protect, and perpetuate wildlife and fish on

shrub steppe habitat or on lands that are presently agricultural lands, rangelands, or grazable woodlands. These goals shall be consistent with the maintenance of a healthy ecosystem.

(2) By July 31, 1993, the conservation commission shall appoint a technical advisory committee to develop standards that achieve the goals developed in subsection (1) of this section. The committee members shall include but not be limited to technical experts representing the following interests: Agriculture, academia, range management, utilities, environmental groups, commercial and recreational fishing interests, the Washington rangelands committee, Indian tribes, the department of fish and wildlife, the department of natural resources, the department of ecology, conservation districts, and the department of agriculture. A member of the conservation commission shall chair the committee.

(3) By December 31, 1994, the committee shall develop standards to meet the goals developed under subsection (1) of this section. These standards shall not conflict with the recovery of wildlife or fish species that are listed or proposed for listing under the federal endangered species act. These standards shall be utilized to the extent possible in development of coordinated resource management plans to provide a level of management that sustains and perpetuates renewable resources, including fish and wildlife, riparian areas, soil, water, timber, and forage for livestock and wildlife. Furthermore, the standards are recommended for application to model watersheds designated by the Northwest power planning council in conjunction with the conservation commission. The maintenance and restoration of sufficient habitat to preserve, protect, and perpetuate wildlife and fish shall be a major component included in the standards and coordinated resource management plans. Application of standards to privately owned lands is voluntary and may be dependent on funds to provide technical assistance through conservation districts.

(4) The conservation commission shall approve the standards and shall provide them to the departments of natural resources and fish and wildlife, each of the conservation districts, and Washington State University cooperative extension service. The conservation districts shall make these standards available to the public and for coordinated resource management planning. Application to private lands is voluntary.

(5) The department of natural resources shall implement practices necessary to meet the standards developed pursuant to this section on department managed agricultural and grazing lands, consistent with the trust mandate of the Washington state Constitution and Title 79 RCW. The standards may be modified on a site-specific basis as needed to achieve the fish and wildlife goals, and as determined by the department of fish and wildlife, and the department of natural resources. Existing lessees shall be provided an opportunity to participate in any site-specific field review. Department agricultural and grazing leases issued after December 31, 1994, shall be subject to practices to achieve the standards that meet those developed pursuant to this section. [1998 c 245 § 162; 1993 sp.s. c 4 § 5. Formerly RCW 79.01.295.]

Findings—Grazing lands—1993 sp.s. c 4: See RCW 79.01.2951.

79.13.620 Purpose—Ecosystem standards. (1) It is the purpose of chapter 163, Laws of 1996 that all state agri-

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cultural lands, grazing lands, and grazeable woodlands shall be managed in keeping with the statutory and constitutional mandates under which each agency operates. Chapter 163, Laws of 1996 is consistent with section 1, chapter 4, Laws of 1993 sp. sess.

(2) The ecosystem standards developed under chapter 4, Laws of 1993 sp. sess. for state-owned agricultural and grazing lands are defined as desired ecological conditions. The standards are not intended to prescribe practices. For this reason, land managers are encouraged to use an adaptive management approach in selecting and implementing practices that work towards meeting the standards based on the best available science and evaluation tools.

(3) For as long as the chapter 4, Laws of 1993 sp. sess. ecosystem standards remain in effect, they shall be applied through a collaborative process that incorporates the following principles:

(a) The land manager and lessee or permittee shall look at the land together and make every effort to reach agreement on management and resource objectives for the land under consideration;

(b) They will then discuss management options and make every effort to reach agreement on which of the available options will be used to achieve the agreed-upon objectives;

(c) No land manager or owner ever gives up his or her management prerogative;

(d) Efforts will be made to make land management plans economically feasible for landowners, managers, and lessees and to make the land management plan compatible with the lessee's entire operation;

(e) Coordinated resource management planning is encouraged where either multiple ownerships, or management practices, or both, are involved;

(f) The department of fish and wildlife shall consider multiple use, including grazing, on lands owned or managed by the department of fish and wildlife where it is compatible with the management objectives of the land; and

(g) The department shall allow multiple use on lands owned or managed by the department where multiple use can be demonstrated to be compatible with RCW 79.10.100, 79.10.110, and 79.10.120.

(4) The ecosystem standards are to be achieved by applying appropriate land management practices on riparian lands and on the uplands in order to reach the desired ecological conditions.

(5) The legislature urges that state agencies that manage grazing lands make planning and implementation of chapter 163, Laws of 1996, using the coordinated resource management and planning process, a high priority, especially where either multiple ownerships, or multiple use resources objectives, or both, are involved. In all cases, the choice of using the coordinated resource management planning process will be a voluntary decision by all concerned parties including agencies, private landowners, lessees, permittees, and other interests. [2003 c 334 § 378; 1996 c 163 § 1. Formerly RCW 79.01.2955.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.14 RCW

MINERAL, COAL, OIL, AND GAS LEASES

(Formerly: Oil and gas leases on state lands)

Intent—2003 c 334: See note following RCW 79.02.010.**1967 c 163 adopted to implement Amendment 42—Severability—1967 c 163:** See notes following RCW 64.16.005.

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PART 1
OIL AND GAS

79.14.010 Definitions. As used in this chapter, "public lands" means lands and areas belonging to or held in trust by the state, including tide and submerged lands of the Pacific Ocean or any arm thereof and lands of every kind and nature including mineral rights reserved to the state. [2003 c 334 § 471; 1967 c 163 § 6; 1955 c 131 § 1. Prior: 1937 c 161 § 1. Formerly RCW 78.28.280.]

79.14.020 Leases authorized—Terms—Duration. The department is authorized to lease public lands for the purpose of prospecting for, developing, and producing oil, gas, or other hydrocarbon substances. Each such lease is to be composed of not more than six hundred forty acres or an entire government surveyed section, except a lease on river bed, lake bed, tide and submerged lands which is to be composed of not more than one thousand nine hundred twenty acres. All leases shall contain such terms and conditions as may be prescribed by the rules adopted by the commissioner in accordance with the provisions of this chapter. Leases may be for an initial term of from five up to ten years and shall be extended for so long thereafter as lessee shall comply with one of the following conditions: (1) Prosecute development on the leased land with the due diligence of a prudent operator upon encountering oil, gas, or other hydrocarbon substances; (2) produce any of said substances from the leased lands; (3) engage in drilling, deepening, repairing, or redrilling any well thereon; or (4) participate in a unit plan to which the commissioner has consented under RCW 78.52.450. [2003 c 334 § 472; 1986 c 34 § 1; 1985 c 459 § 2; 1955 c 131 § 2. Prior: 1937 c 161 §§ 2, 3; 1927 c 255 §§ 175, 176. Formerly RCW 78.28.290.]

Intent—2003 c 334: See note following RCW 79.02.010.**Severability—1985 c 459:** See note following RCW 79.01.668.

79.14.030 Rental fees—Minimum royalties. The department shall require as a prerequisite to the issuing of any lease a rental as set by the board but not less than one dollar and twenty-five cents per acre or such prorated share of the rental per acre as the state's mineral rights ownership for the first year of such lease, payable in advance to the department at the time the lease is awarded and a like rental annually in advance thereafter so long as such lease remains in force. However, the rental shall cease at such time as royalty accrues to the state from production from such lease. Commencing with the lease year beginning on or after oil, gas, or other hydrocarbon substances are first produced in quantities deemed paying quantities by lessee on the land subject to such lease, lessee shall pay a minimum royalty as set by the board but not less than five dollars per acre or fraction thereof or such prorated share of the rental per acre as the state's mineral rights ownership at the expiration of each year. Royalties payable by the lessee shall be the royalties from production as provided for in RCW 79.14.070 or the minimum royalty provided herein, whichever is greater. However, if such a lease is unitized, the minimum royalty shall be payable only on the leased acreage after production is obtained in such paying quantities from such lease. [2003 c 334 § 473; 1985 c 459 § 3; 1980 c 151 § 1; 1955 c 131 § 3. Prior: 1937 c 161 § 4; 1927 c 255 § 176. Formerly RCW 78.28.300.]

Intent—2003 c 334: See note following RCW 79.02.010.**Severability—1985 c 459:** See note following RCW 79.01.668.

79.14.040 Compensation to owners of private rights and to state for surface damage. No lessee shall commence

any operation upon lands covered by the lease until such lessee has provided for compensation to owners of private rights therein according to law, or in lieu thereof, filed a surety bond with the department in an amount sufficient in the opinion of the commissioner to cover such compensation until the amount of compensation is determined by agreement, arbitration, or judicial decision and has provided for compensation to the state of Washington for damage to the surface rights of the state in accordance with the rules adopted by the department. [2003 c 334 § 474; 1955 c 131 § 4. Prior: 1937 c 161 § 6; 1927 c 255 § 175. Formerly RCW 78.28.310.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.080 Leases of land within a geologic structure.

Oil and gas leases shall not be issued on unleased lands which have been classified by the department as being within a known geologic structure of a producing oil or gas field, except as follows: Upon application of any person, the department shall lease in areas not exceeding six hundred forty acres, at public auction, any or all unleased lands within such geologic structure to the person offering the greatest cash bonus therefor at such auction. Notice of the offer of such lands for lease will be given by publication in a newspaper of general circulation in Olympia, Washington, and in such other publications as the department may authorize. The first publication shall be at least thirty days prior to the date of sale. [2003 c 334 § 475; 1955 c 131 § 8. Prior: 1937 c 161 §§ 5, 11. Formerly RCW 78.28.350.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.090 Cancellation or forfeiture of leases—New leases.

The department is authorized to cancel any lease issued as provided in this section for nonpayment of rentals or royalties or nonperformance by the lessee of any provision or requirement of the lease. However, before any such cancellation is made, the department shall mail to the lessee by registered mail, addressed to the post office address of such lessee shown by the records of the department, a notice of intention to cancel such lease specifying the default for which the lease is subject to cancellation. If lessee shall, within thirty days after the mailing of said notice to the lessee, commence and thereafter diligently and in good faith prosecute the remedying of the default specified in such notice, then no cancellation of the lease shall be entered by the department. Otherwise, the cancellation shall be made and all rights of the lessee under the lease shall automatically terminate, except that lessee shall retain the right to continue its possession and operation of any well or wells in regard to which lessee is not in default. Further, failure to pay rental and royalty required under leases within the time prescribed therein shall automatically and without notice work a forfeiture of such leases and of all rights thereunder. Upon the expiration, forfeiture, or surrender of any lease, no new lease covering the lands or any of them embraced by such expired, forfeited, or surrendered lease, shall be issued for a period of ten days following the date of such expiration, forfeiture, or surrender. If more than one application for a lease covering such lands or any of them shall be made during such ten-day period the department shall issue a lease to such lands or any of them to the person offering the greatest cash bonus for such lease at a public auc-

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tion to be held at the time and place and in the manner as the department shall adopt by rule. [2003 c 334 § 476; 1955 c 131 § 9. Prior: 1937 c 161 § 12; 1927 c 255 § 179. Formerly RCW 78.28.360.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.100 Cooperative or unit plans—Communization or drilling agreements. For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area, lessees thereon and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever determined and certified by the department to be necessary or advisable in the public interest. The department is authorized, in its discretion, with the consent of the holders of leases involved, in order to conform with the terms and conditions of any such cooperative or unit plan to establish, alter, change, or revoke exploration, drilling, producing, rental, and royalty requirements of such leases with like consent on the part of the lessees, in connection with the institution and operation of any such cooperative or unit plan as the department may deem necessary or proper to secure the proper protection of the public interest.

When separate tracts cannot be independently developed and operated in conformity with an established well spacing or development program, any lease or any portion thereof may be pooled with other lands, whether or not owned by the state of Washington under a communization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the department to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed thereto.

The term of any lease that has become the subject of any cooperative or unit plan of development or operation of a pool, field, or like area, which plan has the approval of the department, shall continue in force until the termination of such plan, and in the event such plan is terminated prior to the expiration of any such lease, the original term of such lease shall continue. Any lease under this chapter hereinafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan, shall be segregated in separate leases as to the lands committed and the land not committed as of the effective date of unitization. [2003 c 334 § 477; 1955 c 131 § 10. Prior: 1937 c 161 § 14. Formerly RCW 78.28.370.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.110 Customary provisions in leases. The department is authorized to insert in any lease issued under the provisions of this chapter such terms as are customary and proper for the protection of the rights of the state and of the lessee and of the owners of the surface of the leased lands not in conflict with the provisions of this chapter. [2003 c 334 § 478; 1955 c 131 § 11. Prior: 1937 c 161 § 15; 1927 c 255 § 178. Formerly RCW 78.28.380.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.120 Rules. The department is required to adopt and publish, for the information of the public, all reasonable rules necessary for carrying out the provisions of this chapter. The department may amend or rescind any rule adopted under the authority contained in this section. However, no rule or amendment of the same or any order rescinding any rule shall become effective until after thirty days from the adoption of the same by publication in a newspaper of general circulation published at the state capitol and shall take effect and be in force at times specified therein. All rules of the department and all amendments or revocations of existing rules shall be recorded in an appropriate book or books, shall be adequately indexed, and shall be kept in the office of the department and shall constitute a public record. Such rules of the department shall be printed in pamphlet form and furnished to the public free of cost. [2003 c 334 § 479; 1955 c 131 § 12. Prior: 1937 c 161 § 16; 1927 c 255 § 178. Formerly RCW 78.28.390.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.130 Wells to be located minimum distance from boundaries—Exception. Each lease issued under this chapter shall provide that without the approval of the department, no well shall be drilled on the lands demised thereby in such manner or at such location that the producing interval thereof shall be less than three hundred thirty feet from any of the outer boundaries of the demised lands, except that if the right to oil, gas, or other hydrocarbons underlying adjoining lands be vested in private ownership, such approval shall not be required. [2003 c 334 § 480; 1955 c 131 § 13. Prior: 1937 c 161 § 17. Formerly RCW 78.28.400.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.140 Rights of way over public lands—Payment for timber. Any person granted a lease under the provisions of this chapter shall have a right of way over public lands, as provided by law, when necessary, for the drilling, recovering, saving, and marketing of oil, gas, or other hydrocarbons. Before any such right of way grant shall become effective, a written application for, and a plat showing the location of such a right of way and the land necessary for the well site and drilling operations, with reference to adjoining lands, shall be filed with the department. All timber on the right of way and the land necessary for the drilling operation, shall be appraised by the commissioner and paid for in money by the person to whom the lease is granted. [2003 c 334 § 481; 1955 c 131 § 14. Prior: 1937 c 161 § 18. Formerly RCW 78.28.410.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.150 Sales of timber—Rules. All sales of timber, as prescribed in this chapter, shall be made subject to the right, power, and authority of the department to adopt rules governing the manner of the removal of the merchantable timber upon any lands embraced within any lease with the view of protecting the same and other timber against destruction or injury by fire or from other causes. The rules shall be binding upon the lessee, his or her successors in interest, and shall be enforced by the department. [2003 c 334 § 482; 1955

c 131 § 15. Prior: 1937 c 161 § 19. Formerly RCW 78.28.420.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.180 Lands may be withheld from leasing. Nothing contained in this chapter shall be construed as requiring the department to offer any tract or tracts of land for lease; but the department shall have power to withhold any tract or tracts from leasing for oil, gas, or other hydrocarbons, if, in its judgment, the best interest of the state will be served by so doing. [2003 c 334 § 483; 1955 c 131 § 18. Prior: 1937 c 161 § 24. Formerly RCW 78.28.450.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.190 Payment of royalty share—Royalty in kind. The lessee shall pay to the department the market value at the well of the state's royalty share of oil and other hydrocarbons except gas produced and saved and delivered by lessee from the lease. In lieu of receiving payment for the market value of the state's royalty share of oil, the department may elect that such royalty share of oil be delivered in kind at the mouth of the wells into tanks provided by the department. Lessee shall pay to the department the state's royalty share of the sale price received by the lessee for gas produced and saved and sold from the lease. If such gas is not sold but is used by lessee for the manufacture of gasoline or other products, lessee shall pay to the department the market value of the state's royalty share of the residue gas and other products, less a proper allowance for extraction costs. [2003 c 334 § 484; 1955 c 131 § 19. Prior: 1937 c 161 § 25. Formerly RCW 78.28.460.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.200 Prior permits validated—Relinquishment for new leases. All exploration permits issued by the department prior to June 9, 1955, which have not expired or been legally canceled for nonperformance by the permittees, are hereby declared to be valid and existing contracts with the state of Washington, according to their terms and provisions. The obligation of the state to conform to the terms and provisions of such permits is hereby recognized, and the department is directed to accept and recognize all such permits according to their express terms and provisions. No repeal or amendment made by this chapter shall affect any right acquired under the law as it existed prior to such repeal or amendment, and such right shall be governed by the law in effect at time of its acquisition. Any permit recognized and confirmed by this section may be relinquished to the state by the permittee, and a new lease or, if such permit contains more than six hundred forty acres, new leases in the form provided for in this chapter, shall be issued in lieu of same and without bonus therefor; but the new lease or leases so issued shall be as provided for in this chapter and governed by the applicable provisions of this chapter instead of by the law in effect prior thereto. [2003 c 334 § 485; 1955 c 131 § 20. Prior: 1937 c 161 § 26. Formerly RCW 78.28.470.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.210 Assignments and subleases of leases. Any oil or gas lease issued under the authority of this chapter may

be assigned or subleased as to all or part of the acreage included therein, subject to final approval by the department, and as to either a divided or undivided interest therein to any person. Any assignment or sublease shall take effect as of the first day of the lease month following the date of filing with the department. However, at the department's discretion, it may disapprove an assignment of a separate zone or deposit under any lease or of a part of a legal subdivision. Upon approval of any assignment or sublease, the assignee or sublessee shall be bound by the terms of the lease to the same extent as if such assignee or sublessee were the original lessee, any conditions in the assignment or sublease to the contrary notwithstanding. Any partial assignment of any lease shall segregate the assigned and retained portions thereof, and upon approval of such assignment by the department, the assignor shall be released and discharged from all obligations thereafter accruing with respect to the assigned lands. [2003 c 334 § 486; 1955 c 131 § 21. Prior: 1937 c 161 § 27. Formerly RCW 78.28.480.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.220 Appeal from rulings of commissioner. Any applicant for a lease under this chapter, feeling aggrieved by any order, decision, or rule of the commissioner, concerning the same, may appeal therefrom to the superior court of the county wherein such lands are situated, as provided by RCW 79.02.030. [2003 c 334 § 487; 1955 c 131 § 22. Prior: 1937 c 161 § 28. Formerly RCW 78.28.490.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 2 PROSPECTING AND MINING

79.14.300 Prospecting and mining contracts—Authority. The department may issue permits and leases for prospecting, and contracts for the mining of valuable minerals and specified materials, except rock, gravel, sand, silt, coal, or hydrocarbons, upon and from any public lands belonging to or held in trust by the state, or which have been sold and the minerals thereon reserved by the state in tracts not to exceed six hundred forty acres or an entire government-surveyed section. [2003 c 334 § 401; 1987 c 20 § 1; 1965 c 56 § 2; 1927 c 255 § 155; RRS § 7797-155. Prior: 1917 c 148 § 1; 1915 c 152 § 1; 1897 c 102 § 1. Formerly RCW 79.01.616, 78.20.010, part, and 78.20.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.310 Prospecting and mining—Public auction of mining contracts. The department may offer nonrenewable placer mining contracts by public auction for the mining of gold under terms set by the department. In the case of lands known to contain valuable minerals or specified materials in commercially significant quantities, the department may offer mining contracts by public auction. [2003 c 334 § 402; 1987 c 20 § 2. Formerly RCW 79.01.617.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.315 Recreational prospecting permits. The department may issue permits for recreational mineral prospecting in designated areas containing noneconomic mineral

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deposits. The term of a permit shall not exceed one year. Designated areas, equipment allowed, methods of prospecting, as well as other appropriate permit conditions, shall be set in rules adopted by the department. Fees shall be set by the board of natural resources. [1987 c 20 § 15. Formerly RCW 79.01.651.]

79.14.320 Department may adopt rules. The department may adopt rules necessary for carrying out the mineral leasing, contracting, and permitting provisions of RCW 79.14.300 through 79.14.450. Such rules shall be enacted under chapter 34.05 RCW. The department may amend or rescind any rules adopted under this section. The department shall publish these rules in pamphlet form for the information of the public. [2003 c 334 § 403; 1987 c 20 § 3; 1983 c 3 § 200; 1965 c 56 § 3. Formerly RCW 79.01.618.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.330 Prospecting lease—Application fee. Any person desiring to obtain a lease for mineral prospecting purposes upon any lands in which the mineral rights are owned or administered by the department, shall file in the proper office of the department an application or applications therefor, upon the prescribed form, together with application fees. The department may reject an application for a mineral prospecting lease when the department determines rejection to be in the best interests of the state, and in such case shall inform the applicant of the reason for rejection and refund the application fee. The department may also reject the application and declare the application fee forfeited should the applicant fail to execute the lease. [2003 c 334 § 404; 1987 c 20 § 4; 1965 c 56 § 4; 1927 c 255 § 156; RRS § 7797-156. Prior: 1917 c 148 § 2; 1901 c 151 §§ 1, 2; 1897 c 102 §§ 2, 5. Formerly RCW 79.01.620, 78.20.010, part, and RCW 78.20.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.340 Compensation for loss or damage to surface rights. Where the surface rights are held by a third party, the lessee shall not exercise the rights reserved by the state upon lands covered by the lessee's lease or contract until the lessee has provided the department with satisfactory evidence of compliance with the requirements of the state's mineral rights reservations. Where the surface rights are held by the state, the lessee shall not exercise its mineral rights upon lands covered by the lessee's lease or contract until the lessee has made satisfactory arrangements with the department to compensate the state for loss or damage to the state's surface rights. [1987 c 20 § 5; 1965 c 56 § 5; 1927 c 255 § 157; RRS § 7797-157. Prior: 1917 c 148 § 3; 1899 c 147 § 1; 1897 c 102 § 6. Formerly RCW 79.01.624, 78.20.040.]

79.14.350 Prospecting leases—Term—Rent—Conditions. Leases for prospecting purposes may be for a term of up to seven years from the date of the lease. The lessee shall pay an annual lease rental as set by the board of natural resources. The annual lease rental shall be paid in advance. The lessee shall not have the right to extract and remove for commercial sale or use from the leased premises any minerals or specified materials found on the premises except upon

obtaining a mining contract. The lessee shall perform annual prospecting work in cost amounts as set by the board of natural resources. The lessee may make payment to the department in lieu of the performance of annual prospecting work for up to three years during the term of the lease. Prospecting work performed must contribute to the mineral evaluation of the leased premises.

The lessee may at any time give notice of intent to terminate the lease if all of the covenants of the lease including reclamation are met. The notice of termination of lease shall be made by giving written notice together with copies of all information obtained from the premises. The lease shall terminate sixty days thereafter if all arrears and sums which are due under the lease up to the time of termination have been paid. [1987 c 20 § 6; 1965 c 56 § 6; 1945 c 103 § 1; 1927 c 255 § 158; RRS § 7797-158. Prior: 1897 c 102 §§ 4, 5. Formerly RCW 79.01.628, 78.20.050.]

79.14.360 Conversion to mining contract. The holder of any prospecting lease shall have a preference right to a mining contract on the premises described in the lease if application therefor is made to the department at least one hundred eighty days prior to the expiration of the prospecting lease.

A lessee applying for a mining contract shall furnish plans for development leading toward production. The plans shall address the reclamation of the property. A mining contract shall be for a term of twenty years.

The first year of the contract and each year thereafter, the lessee shall perform development work in cost amounts as set by the board. The lessee may make payment to the department in lieu of development work.

The lessee may at any time give notice of intent to terminate the contract if all of the covenants of the contract including reclamation are met. The notice of termination of contract shall be made by giving written notice together with copies of all information obtained from the premises. The contract shall terminate sixty days thereafter if all arrears and sums which are due under the contract up to the time of termination have been paid.

The lessee shall have sixty days from the termination date of the contract in which to remove improvements, except those necessary for the safety and maintenance of mine workings, from the premises without material damage to the land or subsurface covered by the contract. However, the lessee shall upon written request to the department be granted an extension where forces beyond the control of the lessee prevent removal of the improvements within sixty days.

Any lessee not converting a prospecting lease to a mining contract shall not be entitled to a new prospecting lease on the lease premises for one year from the expiration date of the prior lease. Such lands included in the prospecting lease shall be open to application by any person other than the prior lessee, and the lessee's agents or associates during the year period described above. [2003 c 334 § 405; 1987 c 20 § 7; 1965 c 56 § 7; 1927 c 255 § 159; RRS § 7797-159. Prior: 1901 c 151 § 4. Formerly RCW 79.01.632, 78.20.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.370 Prospecting and mining—Lessee's rights and duties. Where the surface rights have been sold and the minerals retained by the state, the state's right of entry to these lands is transferred and assigned to the lessee during the life of the lease or contract. No lessee shall commence any operation upon lands covered by his or her lease or contract until the lessee has complied with RCW 79.14.340. [2003 c 334 § 406; 1987 c 20 § 8; 1965 c 56 § 8. Formerly RCW 79.01.633.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.380 Prospecting and mining—Termination for default. The department shall terminate and cancel a prospecting lease or mining contract upon failure of the lessee to make payment of the annual rental or royalties or comply with the terms and conditions of the lease or contract upon the date such payments and compliances are due. The lessee shall be notified of such termination and cancellation, said notice to be mailed to the last known address of the lessee. Termination and cancellation shall become effective thirty days from the date of mailing the notice. However, the department may, upon written request from the lessee, grant an extension of time in which to make such payment or comply with the terms and conditions. [2003 c 334 § 407; 1987 c 20 § 9; 1965 c 56 § 9. Formerly RCW 79.01.634.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.390 Prospecting leases and mining contracts—Form, terms, conditions. Prospecting leases or mining contracts referred to in chapter 79.14 RCW shall be as prescribed by, and in accordance with rules adopted by the department.

The department may include in any mineral prospecting lease or mining contract to be issued under this chapter such terms and conditions as are customary and proper for the protection of the rights of the state and of the lessee not in conflict with this chapter, or rules adopted by the department.

Any lessee shall have the right to contract with others to work or operate the leased premises or any part thereof or to subcontract the same and the use of the land or any part thereof for the purpose of mining for valuable minerals or specified materials, with the same rights and privileges granted to the lessee. Notice of such contracting or subcontracting with others to work or operate the property shall be made in writing to the department. [2003 c 334 § 408; 1987 c 20 § 10; 1965 c 56 § 11; 1927 c 255 § 161; RRS § 7797-161. Prior: 1917 c 148 § 3; 1899 c 147 § 1; 1897 c 102 § 6. Formerly RCW 79.01.640, 78.20.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.400 Prospecting and mining—Reclamation of premises. At time of termination for any mineral prospecting lease, permit, mining contract, or placer mining contract, the premises shall be reclaimed in accordance with plans approved by the department. [1987 c 20 § 11. Formerly RCW 79.01.642.]

79.14.410 Prospecting and mining—Minimum royalty. Mining contracts entered into as provided in chapter 79.14 RCW shall provide for the payment to the state of production royalties as set by the board. A lessee shall pay in

advance annually a minimum royalty which shall be set by the board. The minimum royalty shall be allowed as a credit against production royalties due during the contract year. [2003 c 334 § 409; 1987 c 20 § 12; 1965 c 56 § 12; 1959 c 257 § 38; 1945 c 103 § 2; 1927 c 255 § 162; Rem. Supp. 1945 § 7797-162. Prior: 1917 c 148 § 4; 1901 c 151 § 3; 1897 c 89 § 7. Formerly RCW 79.01.644, 78.20.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.420 Mining contracts—Renewal of contract.

The lessee may apply for the renewal of a mining contract, except placer mining contracts issued pursuant to RCW 79.14.310, to the department within ninety days before the expiration of the contract. Upon receipt of the application, the department shall make the necessary investigation to determine whether the terms of the contract have been complied with, and if the department finds they have been complied with in good faith, the department shall renew the contract. The terms and conditions of the renewal contract shall remain the same except for royalty rates, which shall be determined by reference to then existing law. [2003 c 334 § 410; 1987 c 20 § 13. Formerly RCW 79.01.645.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.430 Prospecting and mining—Consolidation.

The holders of two or more mining contracts may consolidate the contracts under a common management to permit proper operation of large scale developments. Notification of such consolidation shall be made to the department, together with a statement of plans of operation and proposed consolidation. The department may thereafter make examinations and investigations and if it finds that such consolidation is not in the best interest of the state, it shall disapprove such consolidated operation. [2003 c 334 § 411; 1965 c 56 § 13; 1945 c 103 § 3 (adding a new section to 1927 c 255, section 162-1); Rem. Supp. 1945 § 7797-162a. Formerly RCW 79.01.648, 78.20.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.440 Prospecting and mining—Disclosure of information. Any person designated by the department shall have the right at any time to enter upon the lands and inspect and examine the structures, works, and mines situated thereon, and shall also have the right to examine such books, records, and accounts of the lessee as are directly connected with the determination of royalties on the property under lease from the state but it shall be unlawful for any person so appointed to disclose any information thus obtained to any person other than the departmental officials and employees, except the attorney general and prosecuting attorneys of the state. [2003 c 334 § 412; 1965 c 56 § 14. Formerly RCW 79.01.649.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.450 Prospecting and mining—Disposition of materials not covered by lease or contract. The state shall have the right to sell or otherwise dispose of any surface resource, timber, rock, gravel, sand, silt, coal, or hydrocarbons, except minerals or materials specifically covered by a mineral prospecting lease or mining contract, found upon the

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land during the period covered by the lease or contract. The state shall also have the right to enter upon such land and remove same, and shall not be obliged to withhold from any sale any timber for prospecting or mining purposes. The lessee shall, upon payment to the department, have the right to cut and use timber found on the leased premises for mining purposes as provided in rules adopted by the department. [2003 c 334 § 413; 1987 c 20 § 14; 1965 c 56 § 15. Formerly RCW 79.01.650.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 3 COAL MINING

79.14.470 Leases and option contracts authorized.

The department is authorized to execute option contracts and leases for the mining and extraction of coal from any public lands of the state, or to which it may hereafter acquire title, or from any lands sold or leased by the state the minerals of which have been reserved by the state. [2003 c 334 § 414; 1927 c 255 § 163; RRS § 7797-163. Prior: 1925 ex.s. c 155 § 1. Formerly RCW 79.01.652, 78.24.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.480 Application for option contract—Fee. Any citizen of the United States believing coal to exist upon any of the lands described in RCW 79.14.470 may apply to the department for an option contract for any amount not exceeding one section for prospecting purposes, such application to be made by legal subdivision according to the public land surveys. The applicant shall pay to the department, at the time of filing the application, the sum of one dollar an acre for the lands applied for, but in no case less than fifty dollars. In case of the refusal of the department to execute an option contract for the lands, any remainder of the sum so paid, after deducting the expense incurred by the department in investigating the character of the land, shall be returned to the applicant. [2003 c 334 § 415; 1927 c 255 § 164; RRS § 7797-164. Prior: 1925 ex.s. c 155 § 2. Formerly RCW 79.01.656, 78.24.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.490 Investigation and issue of option contract.

(1) Upon the filing of any such application, the department shall forthwith investigate the character of the lands applied for, and if, from such investigation, it deems it to be in the best interests of the state, it shall enter into an option contract with the applicant.

(2) The holder of any option contract shall be entitled, during the period of one year from the date thereof, to:

(a) Enter upon the lands and carry on such work of exploration, examination, and prospecting for coal as may be necessary to determine the presence of coal upon the lands and the feasibility of mining the same; and

(b) Use such timber found upon the lands and owned by the state as may be necessary for steam purposes and timbering in the examination and prospecting of such lands. However, this provision shall not be construed to require the state to withhold any such timber from sale.

(3) No coal shall be removed from such lands during the period of such option contract except for samples and testing.

(4) At the expiration of the option contract, the applicant shall fill or cover in a substantial manner all prospect holes and shafts, or surround the same with substantial fences, and shall file with the department a report showing in detail the result of the applicant's investigation and prospecting. [2003 c 334 § 416; 1927 c 255 § 165; RRS § 7797-165. Prior: 1925 ex.s. c 155 § 3. Formerly RCW 79.01.660, 78.24.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.500 Damage to surface owner or lessee. In the case of lands which the state may have sold or leased and reserved the mineral rights therein, if the holder of any option contract or lease is unable to agree with the owner or prior lessee of the lands, the holder shall have a right of action in the superior court of the county in which the land is situated to ascertain and determine the amount of damages which will accrue to such owner or lessee of the land by reason of the entry thereon and prospecting for or mining coal, as the case may be. In the event of any such action, the term of the option contract or lease shall begin thirty days after the entry of the final judgment in such action. [2003 c 334 § 417; 1927 c 255 § 166; RRS § 7797-166. Prior: 1925 ex.s. c 155 § 4. Formerly RCW 79.01.664, 78.24.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.510 Lease—Application, terms, royalties. At any time during the life of the option contract, the holder thereof may apply to the department for a coal mining lease of the lands included therein, or such portion thereof as the holder may specify, for the purpose of mining and extraction of coal therefrom. Such coal mining lease shall be for such term, not more than twenty years, and in such form as may be prescribed by the department, shall entitle the lessee to mine and sell and dispose of all coal underlying said lands and to occupy and use so much of the surface thereof as may be necessary for bunkers and other outside works, and for railroads, buildings, appliances, and appurtenances in connection with the mining operations. Such lease shall provide for the payment to the state of a royalty, according to the grade of coal, for each ton of two thousand pounds of merchantable coal taken from the lands, as follows: For lignite coal of the class commonly found in Lewis and Thurston counties, not less than ten cents per ton; for subbituminous coal, not less than fifteen cents per ton; for high grade bituminous and coking coals, not less than twenty cents per ton; but such lease shall provide for the payment each year of a minimum royalty of not less than one nor more than ten dollars an acre for the lands covered thereby. However, the department may agree with the lessee that said minimum royalty shall be graduated for the different years of said lease so that a lower minimum royalty shall be paid during the earlier years of the term. The minimum royalty fixed in the lease shall be paid in advance each year, and the lessee, at stated periods during the term of the lease, fixed by the department, shall furnish to the department a written report under oath showing the amount of merchantable coal taken from the land during the period covered by such report and shall remit therewith such sum in excess of the minimum royalty theretofore paid for the current year

as may be payable as royalty for the period covered by such report.

The department shall incorporate in every lease such provisions and conditions not inconsistent with the provisions of this chapter and not inconsistent with good coal mining practice as it deems necessary and proper for the protection of the state, and, in addition thereto, the department is empowered to adopt such rules, not inconsistent with this chapter and not inconsistent with good mining practice, governing the manner and methods of mining as in its judgment are necessary and proper. [2003 c 334 § 418; 1985 c 459 § 1; 1927 c 255 § 167; RRS § 7797-167. Prior: 1925 ex.s. c 155 § 5. Formerly RCW 79.01.668, 78.24.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—1985 c 459: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 459 § 10.]

79.14.520 Lease without option contract. In the case of lands known to contain workable coal, the department may, in its discretion, issue coal mining leases under the provisions of RCW 79.14.510 although no option contract has been theretofore issued for such lands. [2003 c 334 § 419; 1927 c 255 § 168; RRS § 7797-168. Prior: 1925 ex.s. c 155 § 6. Formerly RCW 79.01.672, 78.24.050.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.530 Confidential information. The commissioner or any person designated by the commissioner has the right at any time to enter upon the lands and inspect and examine the structures, works, and mines situated thereon, and also has the right to examine such books, records, and accounts of the lessee as are directly connected with the operation of the mine on the property under lease from the state; but it shall be unlawful for the commissioner or any person so appointed to disclose any information thus obtained to any person other than the commissioner or an employee of the department, except the attorney general and prosecuting attorneys of the state. [2003 c 334 § 420; 1927 c 255 § 169; RRS § 7797-169. Prior: 1925 ex.s. c 155 § 7. Formerly RCW 79.01.676, 78.24.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.540 Use and sale of materials from land. The state shall have the right to sell or otherwise dispose of any timber, stone, or other valuable materials, except coal, found upon the land during the period covered by any option contract, or lease issued under the foregoing provisions, with the right to enter upon such lands and cut and remove the same, and shall not be obliged to withhold from sale any timber for coal mining or prospecting purposes. However, the lessee shall be permitted to use in mining operations any timber found upon the land, first paying therefor to the department the value thereof as fixed by the department. Further, any bill of sale for the removal of timber, stone, or other material given subsequent to the coal lease shall contain provisions preventing any interference with the operations of the coal lease. [2003 c 334 § 421; 1927 c 255 § 170; RRS § 7797-170. Prior: 1925 ex.s. c 155 § 8. Formerly RCW 79.01.680, 78.24.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.550 Suspension of mining—Termination of lease. Should the lessee for any reason, except strikes or inability to mine or dispose of output without loss, suspend mining operations upon the lands included in a lease, or upon any contiguous lands operated by the lessee in connection therewith, for a period of six months, or should the lessee for any reason suspend mining operations upon the lands included in a lease or in such contiguous lands for a period of twelve months, the department may, at its option, cancel the lease, first giving thirty days' notice in writing to the lessee.

The lessee shall have the right to terminate the lease after thirty days' written notice to the department and the payment of all royalties and rentals then due. [2003 c 334 § 422; 1927 c 255 § 171; RRS § 7797-171. Prior: 1925 ex.s. c 155 § 9. Formerly RCW 79.01.684, 78.24.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.560 Condition of premises on termination. Upon the termination of any lease issued under the foregoing provisions, the lessee shall surrender the lands and premises and leave in good order and repair all shafts, slopes, airways, tunnels, and watercourses then in use. Unless the coal therein is exhausted, the lessee shall also, as far as it is reasonably practicable so to do, leave open to the face all main entries then in use so that the work of further development and operation may not be unnecessarily hampered. The lessee shall also leave on the premises all buildings and other structures, but shall have the right to, without damage to such buildings and structures, remove all tracks, machinery, and other personal property. [2003 c 334 § 423; 1927 c 255 § 172; RRS § 7797-172. Prior: 1925 ex.s. c 155 § 10. Formerly RCW 79.01.688, 78.24.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.570 Re-lease—Procedure—Preference rights. If at the expiration of any lease for the mining and extraction of coal or any renewal thereof the lessee desires to re-lease the lands covered thereby, the lessee may make application to the department for a re-lease. Such application shall be in writing and under oath, setting forth the extent, character, and value of all improvements, development work, and structures existing upon the land. The department may on the filing of such application cause the lands to be inspected, and if the department deems it for the best interests of the state to re-lease said lands, it shall fix the royalties for the ensuing term in accordance with the foregoing provisions relating to original leases, and issue to the applicant a renewal lease for a further term; such application for a release when received from the lessee, or successor of any lessee, who has in good faith developed and improved the property in a substantial manner during the original lease to be given preference on equal terms against the application of any new applicant. [2003 c 334 § 424; 1927 c 255 § 173; RRS § 7797-173. Prior: 1925 ex.s. c 155 § 11. Formerly RCW 79.01.692, 78.24.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.580 Waste prohibited. It shall be unlawful for the holder of any coal mining option contract, or any lessee,

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to commit any waste upon the lands embraced therein, except as may be incident to the work of prospecting or mining by the option contract holder or lessee. [2003 c 334 § 425; 1927 c 255 § 174; RRS § 7797-174. Prior: 1925 ex.s. c 155 § 12. Formerly RCW 79.01.696, 78.24.120.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.15 RCW SALE OF VALUABLE MATERIALS

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PART 1 GENERAL PROVISIONS

79.15.010 Valuable materials sold separately. (1) Valuable materials situated upon state lands and state forest lands may be sold separate from the land, when in the judgment of the department, it is for the best interest of the state so to sell the same.

(2) Sales of valuable materials from any university lands require:

(a) The consent of the board of regents of the University of Washington; or

(b) Legislative directive.

(3) When application is made for the purchase of any valuable materials, the department shall appraise the value of the valuable materials if the department determines it is in the best interest of the state to sell. No valuable materials shall be sold for less than the appraised value thereof. [2003 c 334 § 331; 2001 c 250 § 3; 1982 1st ex.s. c 21 § 154; 1959 c 257 § 12; 1929 c 220 § 1; 1927 c 255 § 31; RRS § 7797-31. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.124, 79.12.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Forests and forest products: Title 76 RCW.

79.15.020 Duties of department. (1) The department shall exercise general supervision and control over the sale of valuable materials.

(2) The department shall maintain all reports, data, and information in its records pertaining to a proposed sale.

(3) The department may hold a sale in abeyance pending further inspection and report and may cause such further inspection and report.

(4) The department shall determine, based on subsection (2) of this section, and if necessary the information provided under subsection (3) of this section, the terms upon which the proposed sales are consummated. [2003 c 334 § 319.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.030 Rules or procedures for removal of valuable materials sold. All sales of valuable materials upon state lands and state forest lands shall be made subject to the right, power, and authority of the department to prescribe rules or procedures governing the manner of the sale and removal of the valuable materials. Such procedures shall be binding when contained within a purchaser's contract for valuable materials and apply to the purchaser's successors in interest and shall be enforced by the department. [2003 c 334 § 339; 2001 c 250 § 5; 1959 c 257 § 15; 1927 c 255 § 40; RRS § 7797-40. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.160, 79.12.190.]

Intent—2003 c 334: See note following RCW 79.02.010.

Forest protection: Chapter 76.04 RCW.

79.15.040 Sale of valuable materials without application or deposit. The department may cause valuable materials on state lands and state forest lands to be inspected and appraised and offered for sale when authorized by the board without an application having been filed, or deposit made, for the purchase of the same. [2003 c 334 § 341; 1961 c 73 § 2; 1959 c 257 § 17; 1927 c 255 § 42; RRS § 7797-42. Prior: 1915 c 147 § 2. Formerly RCW 79.01.168, 79.12.210.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.045 Who may purchase—Fee. A person desiring to purchase valuable materials may make application to the department on forms provided by the department and

accompanied by the fee provided in RCW 79.02.250. [2003 c 334 § 312.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.050 Type of sale—Direct sales. (1) All sales of valuable materials exceeding twenty thousand dollars in appraised value must be at public auction or by sealed bid to the highest bidder, provided that on public lands granted to the state for educational purposes sealed bids may be accepted for sales of timber or stone only.

(2) A direct sale of valuable materials may be sold to the applicant for cash at full appraised value without notice or advertising. The board must, by resolution, establish the value amount of a direct sale not to exceed twenty thousand dollars in appraised sale value, and establish procedures to ensure that competitive market prices and accountability are guaranteed. [2003 c 334 § 353.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.055 Appraisal—Defined. For the purposes of this chapter, "appraisal" means an estimate of the market value of land or valuable materials. The estimate must reflect the value based on market conditions at the time of the sale or transfer offering. The appraisal must reflect the department's best effort to establish a reasonable market value for the purpose of setting a minimum bid at auction or transfer. A purchaser of state lands or valuable materials may not rely upon the appraisal prepared by the department for purposes of deciding whether to make a purchase from the department. All purchasers are required to make their own independent appraisals. [2003 c 334 § 309; 2001 c 250 § 10. Formerly RCW 79.01.082.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.060 Date of sale limited by time of appraisal—Transfer of authority. (1) For the sale of valuable materials under this chapter, if the board is required by law to appraise the sale, the board must establish a minimum appraisal value that is valid for a period of one hundred eighty days, or a longer period as may be established by resolution. The board may reestablish the minimum appraisal value at any time. For any valuable materials sales that the board is required by law to appraise, the board may by resolution transfer this authority to the department.

(2) Where the board has set a minimum appraisal value for a valuable materials sale, the department may set the final appraisal value of valuable materials for auction, which must be equal to or greater than the board's minimum appraisal value. The department may also appraise any valuable materials sale not required by law to be approved by the board. [2003 c 334 § 329.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.070 Time and date of sale. It is the duty of the department to fix the date, time, and place of sale.

(1) All valuable materials shall have been appraised prior to the date fixed for sale as prescribed in RCW 79.15.060.

(2) No sale may be conducted on any day that is a legal holiday.

(3) Sales must be held between the hours of 10:00 a.m. and 4:00 p.m. If all sales cannot be offered within this time period, the sale must continue on the following day between the hours of 10:00 a.m. and 4:00 p.m.

(4) Sales must take place:

(a) At the department's regional office having jurisdiction over the respective sale; or

(b) On county property designated by the board of county commissioners or county legislative authority of the county in which the whole or majority of valuable materials are situated. [2003 c 334 § 350.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.080 Advertising sales of valuable materials. (1)

Sales, other than direct sales, appraised at an amount not exceeding one hundred thousand dollars, when authorized by the board for sale, shall be advertised by publishing not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property from which the valuable material is to be sold.

(2) All other proposed sales of valuable materials must be advertised through individual notice of sale and publication of a statewide list of sales.

(a) The notice of sale:

(i) Must specify the place, date, and time of sale, the appraised value thereof, and describe with particularity each parcel of land from which valuable materials are to be sold. The estimated volume will be identified and the terms of sale will be available in the region headquarters and the department's Olympia office;

(ii) May prescribe that the bid deposit required in RCW 79.15.110 be considered an opening bid;

(iii) Must be published not less than two times during a four-week period prior to the time of sale in at least one newspaper of general circulation where the material is located; and

(iv) Must be posted in a conspicuous place in the department's Olympia office and in the region headquarters administering the sale, and in the office of the county auditor of the county where the material is located.

(b) The department shall print a list of all valuable material on public lands that are to be sold. The list should be organized by county and by alphabetical order.

(i) The list should be published in a pamphlet form, issued at least four weeks prior to the date of any sale and provide sale information to prospective buyers.

(ii) The department must retain for free distribution in the Olympia office and the region offices sufficient copies of the pamphlet, to be kept in a conspicuous place, and, when requested to do so, must mail copies of the pamphlet as issued to any requesting applicant.

(iii) The department may seek additional means of publishing the information in the pamphlet, such as on the internet, to increase the number of prospective buyers.

(3) The department is authorized to expend any sum in additional advertising of the sales as it deems necessary. [2003 c 334 § 347.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.090 Advertisement for informational purposes only. The advertisement of sales is for informational pur-

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poses only, and under no circumstances does the information in the notice of sale constitute a warranty that the purchaser will receive the stated values, volumes, or acreage. All purchasers are expected to make their own measurements, evaluations, and appraisals. [2003 c 334 § 345.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.100 Terms and conditions of sale. (1) Valuable materials may be sold separately from the land as a "lump sum sale" or as a "scale sale."

(a) "Lump sum sale" means any sale offered with a single total price applying to all the material conveyed.

(b) "Scale sale" means any sale offered with per unit prices to be applied to the material conveyed.

(2) Payment for lump sum sales must be made as follows:

(a) Lump sum sales under five thousand dollars appraised value require full payment on the day of sale.

(b) Lump sum sales appraised at over five thousand dollars but under one hundred thousand dollars may require full payment on the day of sale.

(c) Lump sum sales requiring full payment on the day of sale may be paid in cash or by certified check, cashier's check, bank draft, or money order, all payable to the department.

(3) Except for sales paid in full on the day of sale or sales with adequate bid bonds, an initial deposit not to exceed twenty-five percent of the actual or projected purchase price shall be made on the day of sale.

(a) Sales with bid bonds are subject to the day of sale payment and replacement requirements prescribed by RCW 79.15.110.

(b) The initial deposit must be maintained until all contract obligations of the purchaser are satisfied. However, all or a portion of the initial deposit may be applied as the final payment for the valuable materials in the event the department determines that adequate security exists for the performance or fulfillment of any remaining obligations of the purchaser under the sale contract.

(4) Advance payments or other adequate security acceptable to the department is required for valuable materials sold on a scale sale basis or a lump sum sale not requiring full payment on the day of sale.

(a) The purchaser must notify the department before any operation takes place on the sale site.

(b) Upon notification as provided in (a) of this subsection, the department must require advanced payment or may allow purchasers to submit adequate security.

(c) The amount of advanced payments or security must be determined by the department and must at all times equal or exceed the value of timber cut and other valuable materials processed or removed until paid for.

(d) Security may be bank letters of credit, payment bonds, assignments of savings accounts, assignments of certificates of deposit, or other methods acceptable to the department as adequate security.

(5) All valuable material must be removed from the sale area within the period specified in the contract.

(a) The specified period may not exceed five years from date of purchase except for stone, sand, gravel, fill material, or building stone.

(b) The specified period for stone, sand, gravel, fill material, or building stone may not exceed thirty years.

(c) In all cases, any valuable material not removed from the land within the period specified in the contract reverts to the state.

(6) The department may extend a contract beyond the normal termination date specified in the sale contract as the time for removal of valuable materials when, in the department's judgment, the purchaser is acting in good faith and endeavoring to remove the materials. The extension is contingent upon payment of the fees specified below.

(a) The extended time for removal shall not exceed:

(i) Forty years from date of purchase for stone, sand, gravel, fill material, or building stone;

(ii) A total of ten years beyond the original termination date for all other valuable materials.

(b) An extension fee fixed by the department will be charged based on the estimated loss of income per acre to the state resulting from the granting of the extension plus interest on the unpaid portion of the contract. The board must periodically fix and adopt by rule the interest rate, which shall not be less than six percent per annum.

(c) The sale contract shall specify:

(i) The applicable rate of interest as fixed at the day of sale and the maximum extension payment; and

(ii) The method for calculating the unpaid portion of the contract upon which interest is paid.

(d) The minimum extension fee is fifty dollars per extension plus interest on the unpaid portion of the contract.

(e) Moneys received for any extension must be credited to the same fund in the state treasury as was credited the original purchase price of the valuable material sold.

(7) The department may, in addition to any other securities, require a performance security to guarantee compliance with all contract requirements. The security is limited to those types listed in subsection (4) of this section. The value of the performance security will, at all times, equal or exceed the value of work performed or to be performed by the purchaser.

(8) Any time that the department sells timber by contract that includes a performance bond, the department must require the purchaser to present proof of any and all property taxes paid prior to the release of the performance bond. Within thirty days of payment of taxes due by the timber purchaser, the county treasurer must provide certified evidence of property taxes paid, clearly disclosing the sale contract number.

(9) The provisions of this section apply unless otherwise provided by statute. [2003 c 334 § 334.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.110 Conduct of sales. (1) Sales of valuable materials must be conducted under the direction of the department or its authorized representative.

(a) Sales of valuable materials, unless otherwise provided in this chapter, shall be at public auction or by sealed bid to the highest bidder, except that, on public lands granted to the state for educational purposes, sealed bids may be accepted for sales of timber or stone only.

(b) The person conducting the sale is called the auctioneer.

(2) On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer a bid deposit equal to the amount specified in the notice of sale plus any fees required by law for the issuance of contracts or bill of sale.

(a) The bid deposit must meet the requirements of RCW 79.15.100(3).

(b) The deposit may be in cash, or by certified check, cashier's check, or money order, all payable to the department or by bid guarantee in the form of a bid bond acceptable to the department.

(3) The bid deposit, if prescribed in the notice of sale as authorized in RCW 79.15.100, may be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale.

(4) The successful bidder's deposit will be retained by the auctioneer.

(a) Any difference between the bid deposit and the total amount due including any fees required by law shall be paid on the day of sale. Payments may be by cash, certified check, cashier's check, bank draft, or money order payable to the department.

(b) Any amount of the deposit guaranteed by a bid bond must be paid to the department within ten days of the sale day in cash, certified check, cashier's check, money order, or other acceptable payment method.

(c) Other deposits must be returned to the respective bidders at the conclusion of each sale.

(5) The auctioneer must deliver to the purchaser a memorandum of his or her purchase containing a description of the materials purchased, the price bid, and the terms of the sale.

(6) The auctioneer must at once send to the department all payments or bid guarantees received from the purchaser and a copy of the memorandum delivered to the purchaser, together with additional reports of the proceedings as required by the department. [2003 c 334 § 355.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.120 Confirmation of sale. The department shall enter upon its records a confirmation of sale and issue to the purchaser a bill of sale for valuable materials if the following conditions have been met:

(1) No fewer than ten days have passed since the auctioneer's report has been filed;

(2) No affidavit is filed with the department showing that the interests of the state in the sale were injuriously affected by fraud or collusion;

(3) It appears from the auctioneer's report that:

(a) The sale was fairly conducted; and

(b) The purchaser was the highest bidder and the bid was not less than the appraised value of the material sold;

(4) The department is satisfied that the valuable material sold would not, upon being readvertised and offered for sale, sell for at least ten percent more than the price submitted by the apparent high bidder;

(5) The payment required by law to be made at the time of making the sale has been made; and

(6) The department determines the best interests of the state will be served by confirming the sale. [2003 c 334 § 358.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.130 Bill of sale. When valuable materials are sold separately from the land and the purchase price is paid in full, the department shall prepare a bill of sale. The bill of sale shall:

- (1) State the time period for removing the material;
- (2) Be signed by the commissioner and attested by the seal of the commissioner's office upon full payment of the purchase price and fees;
- (3) Be issued to the purchaser upon payment of the fee for the bill of sale; and
- (4) Be recorded in the department. [2003 c 334 § 362; 2001 c 250 § 9; 1927 c 255 § 58; RRS § 7797-58. Formerly RCW 79.01.232, 79.12.420.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.140 Valuable materials contract—Impracticable to perform/cancellation—Substitute valuable materials. (1) In the event that the department determines that regulatory requirements or some other circumstance beyond the control of both the department and the purchaser has made a valuable materials contract wholly or partially impracticable to perform, the department may cancel any portion of the contract which could not be performed. In the event of such a cancellation, the purchaser shall not be liable for the purchase price of any portions of the contract so canceled. Market price fluctuations shall not constitute an impracticable situation for valuable materials contracts.

(2) Alternatively, and notwithstanding any other provision in this title, the department may substitute valuable materials from another site in exchange for any valuable materials which the department determines have become impracticable to remove under the original contract. Any substituted valuable materials must belong to the identical trust involved in the original contract, and the substitute materials shall be determined by the department to have an appraised value that is not greater than the valuable materials remaining under the original contract. The substitute valuable materials and site shall remain subject to all applicable permitting requirements and the state environmental policy act, chapter 43.21C RCW, for the activities proposed at that site. In any such substitution, the value of the materials substituted shall be fixed at the purchase price of the original contract regardless of subsequent market changes. Consent of the purchaser shall be required for any substitution under this section. [2003 c 334 § 364; 2001 c 250 § 18. Formerly RCW 79.01.238.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.150 Reoffer. A sale of valuable materials that has been offered, and for which there are no bids received, shall not be reoffered until it has been readvertised as prescribed in RCW 79.11.130. [2003 c 334 § 351.]

Intent—2003 c 334: See note following RCW 79.02.010.

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PART 2 DAMAGED TIMBER

79.15.210 Findings—Damage to timber. From time to time timber on state land is damaged by events such as fire, wind storms, and flooding. After such events the timber becomes very susceptible to loss of value and quality due to rot and disease. To obtain maximum value for the state, it is important to sell any damaged timber as fast as possible while providing ample protection for the physical environment and recognizing the sensitivity of removing timber from certain locations. [1987 c 126 § 1. Formerly RCW 79.01.790.]

79.15.220 Sale of damaged valuable materials. When the department finds valuable materials on state land that are damaged by fire, wind, flood, or from any other cause, it shall determine if the salvage of the damaged valuable materials is in the best interest of the trust for which the land is held. If salvaging the valuable materials is in the best interest of the trust, the department shall proceed to offer the valuable materials for sale. The valuable materials, when offered for sale, must be sold in the most expeditious and efficient manner as determined by the department. In determining if the sale is in the best interest of the trust the department shall consider the net value of the valuable materials and relevant elements of the physical and social environment. [2001 c 250 § 14; 1987 c 126 § 2. Formerly RCW 79.01.795.]

PART 3 ROCK, GRAVEL, ETC., SALES

79.15.300 Contracts—Forfeiture—Royalties—Monthly reports. (1) The department, upon application by any person, may enter into a contract providing for the sale and removal of rock, gravel, sand, and silt located upon state lands or state forest lands, and providing for payment to be made on a royalty basis.

(2) The issuance of a contract shall be made after public auction and shall not be issued for less than the appraised value of the material.

(3) Each application made pursuant to this section shall:

(a) Set forth the estimated quantity and kind of materials desired to be removed; and

(b) Be accompanied by a map or plat showing the area from which the applicant wishes to remove such materials.

(4) The department may in its discretion include in any contract such terms and conditions required to protect the interests of the state.

(5) Every contract shall provide for a right of forfeiture by the state, upon a failure to operate under the contract or pay royalties for periods therein stipulated. The right of forfeiture is exercised by entry of a declaration of forfeiture in the records of the department.

(6) The department may require a bond with a surety company authorized to transact a surety business in this state, as surety, to secure the performance of the terms and conditions of such contract including the payment of royalties.

(7) The amount of rock, gravel, sand, or silt taken under the contract shall be reported monthly by the purchaser to the department and payment therefor made on the basis of the royalty provided in the contract.

(8) The department may inspect and audit books, contracts, and accounts of each person removing rock, gravel, sand, or silt pursuant to any such contract and make such other investigation and secure or receive any other evidence necessary to determine whether or not the state is being paid the full amount payable to it for the removal of such materials. [2003 c 334 § 335; 1985 c 197 § 1; 1961 c 73 § 11. Formerly RCW 79.01.134.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.320 Road material—Sale to public authorities—Disposition of proceeds. (1) Any county, city, or town may file with the department an application to purchase any stone, rock, gravel, or sand upon any state lands or state forest lands to be used in the construction, maintenance, or repair of any public street, road, or highway within such county, city, or town.

(2) Applications shall set forth the quantity and kind of material desired to be purchased, the location thereof, and the name, or other designation, and location of the street, road, or highway upon which the material is to be used.

(3) The department is authorized to appraise and sell the material in such a manner and upon such terms as the department deems advisable for not less than the fair market value thereof.

(4) The proceeds of any such sale shall be paid into the state treasury and credited to the fund to which the proceeds of the sale of the land upon which the material is situated would belong. [2003 c 334 § 343; 1982 1st ex.s. c 21 § 155; 1927 c 255 § 44; RRS § 7797-44. Prior: 1923 c 71 § 1; 1917 c 148 § 13. Formerly RCW 79.01.176, 79.12.250.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

PART 4 FIREWOOD

79.15.400 License to remove firewood authorized. The department may issue licenses to residents of this state to enter upon lands under the administration or jurisdiction of the department for the purpose of removing therefrom, standing or downed timber which is unfit for any purpose except to be used as firewood. [2003 c 334 § 230; 1975 c 10 § 1; 1945 c 97 § 1; Rem. Supp. 1945 § 7797-40a. Formerly RCW 76.20.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.410 Removal only for personal use. In addition to other matters which may be required to be contained in the application for a license under this chapter the applicant must certify that the wood so removed is to be only for the applicant's own personal use and in his or her own home and that the applicant will not dispose of it to any other person. [2003 c 334 § 231; 1945 c 97 § 2; Rem. Supp. 1945 § 7797-40b. Formerly RCW 76.20.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.420 Issuance of license—Fee. The application may be made to the department, and if deemed proper, the

license may be issued upon the payment of two dollars and fifty cents which shall be paid into the treasury of the state by the officer collecting the same and placed in the resource management cost account or forest development account, as applicable; the license shall be dated as of the date of issuance and authorize the holder thereof to remove between the dates so specified not more than six cords of wood not fit for any use but as firewood for the use of the applicant and his or her family from the premises described in the license under such rules as the department may adopt. [2003 c 334 § 232; 1975 c 10 § 2; 1945 c 97 § 3; Rem. Supp. 1945 § 7797-40c. Formerly RCW 76.20.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.430 Removal of firewood without charge. Whenever the department determines that it is in the best interest of the state and there will be a benefit to the lands involved or a state program affecting such lands it may designate specific areas and authorize the general public to enter upon lands under its jurisdiction for the purposes of cutting and removing standing or downed timber for use as firewood for the personal use of the person so cutting and removing without a charge under such terms and conditions as it may require. [2003 c 334 § 233; 1975 c 10 § 3. Formerly RCW 76.20.035.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.440 Penalty. Any false statement made in the application or any violation of the provisions of RCW 79.15.400 through 79.15.430 shall constitute a gross misdemeanor and be punishable as such. [2003 c 334 § 234; 1945 c 97 § 4; Rem. Supp. 1945 § 7797-40d. Formerly RCW 76.20.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 5 CONTRACT HARVESTING

79.15.500 Contract harvesting—Definitions. The definitions in this section apply throughout *this chapter unless the context clearly requires otherwise.

(1) "Commissioner" means the commissioner of public lands.

(2) "Contract harvesting" means a timber operation occurring on state forest lands, in which the department contracts with a firm or individual to perform all the necessary harvesting work to process trees into logs sorted by department specifications. The department then sells the individual log sorts.

(3) "Department" means the department of natural resources.

(4) "Harvesting costs" are those expenses related to the production of log sorts from a stand of timber. These expenses typically involve road building, labor for felling, bucking, and yarding, as well as the transporting of sorted logs to the forest product purchasers.

(5) "Net proceeds" means gross proceeds from a contract harvesting sale less harvesting costs. [2003 c 313 § 2.]

***Reviser's note:** The reference to "this chapter" should instead refer to RCW 79.15.500 through 79.15.530. RCW 79.15.500 through 79.15.530 were originally created in chapter 313, Laws of 2003. However, chapter

334, Laws of 2003 reorganized numerous statutes governing upland management. The subject of sections 2 through 5 (RCW 79.15.500 through 79.15.530), chapter 313, Laws of 2003 (contract harvesting) is more appropriately codified with the subject (sale of valuable materials) identified in section 559, chapter 334, Laws of 2003.

Findings—2003 c 313: "The legislature finds that it is in the best interest of the trust beneficiaries to capture additional revenues while providing for additional environmental protection on timber sales. Further, the legislature finds that contract harvesting is one method to achieve these desired outcomes. Therefore, the legislature directs the department of natural resources to establish and implement contract harvesting where there exists the ability to increase revenues for the beneficiaries of the trusts while obtaining increases in environmental protection." [2003 c 313 § 1.]

Severability—2003 c 313: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 313 § 15.]

79.15.510 Contract harvesting—Program established. (1) The department may establish a contract harvesting program by directly contracting for the removal of timber and other valuable materials from state lands.

(2) The contract requirements must be compatible with the office of financial management's guide to public service contracts.

(3) The department may not use contract harvesting for more than ten percent of the total annual volume of timber offered for sale. [2003 c 313 § 3.]

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

79.15.520 Contract harvesting revolving account. The contract harvesting revolving account is created in the custody of the state treasurer. All receipts from the gross proceeds of the sale of logs from a contract harvesting must be deposited into the account. Expenditures from the account may be used only for the payment of harvesting costs incurred on contract harvesting sales. Only the commissioner or the commissioner's designee may authorize expenditures from the account. The board of natural resources has oversight of the account, and the commissioner must periodically report to the board of natural resources as to the status of the account, its disbursement, and receipts. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

When the logs from a contract harvesting sale are sold, the gross proceeds must be deposited into the contract harvesting revolving account. Moneys equal to the harvesting costs must be retained in the account and be deducted from the gross proceeds to determine the net proceeds. The net proceeds from the sale of the logs must be distributed in accordance with *RCW 43.85.130(1)(b). The final receipt of gross proceeds on a contract harvesting sale must be retained in the contract harvesting revolving account until all required costs for that sale have been paid. The contract harvesting revolving account is an interest-bearing account and the interest must be credited to the account. The account balance may not exceed one million dollars at the end of each fiscal year. Moneys in excess of one million dollars must be disbursed according to RCW **76.12.030, **76.12.120, and 79.64.040. If the department permanently discontinues the use of contract harvesting sales, any sums remaining in the contract harvesting revolving account must be returned to the

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resource management cost account and the forest development account in proportion to each account's contribution to the initial balance of the contract harvesting revolving account. [2003 c 313 § 4.]

Reviser's note: *(1) RCW 43.85.130 was recodified as RCW 43.30.325 pursuant to 2003 c 334 § 128.

** (2) RCW 76.12.030 and 76.12.120 were recodified as RCW 79.22.040 and 79.22.050 pursuant to 2003 c 334 § 245.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

79.15.530 Contract harvesting—Special appraisal practices. The board of natural resources must determine whether any special appraisal practices are necessary for logs sold by the contract harvesting processes, and if so, must adopt the special appraisal practices or procedures. In its consideration of special appraisal practices, the board of natural resources must consider and adopt procedures to rapidly market and sell any log sorts that failed to receive the required minimum bid at the original auction, which may include allowing the department to set a new appraised value for the unsold sort.

The board of natural resources must establish and adopt policy and procedures by which the department evaluates and selects certified contract harvesters. The procedures must include a method whereby a certified contract harvester may appeal a decision by the department or board of natural resources to not include the certified contract harvester on the list of approved contract harvesters. [2003 c 313 § 5.]

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Chapter 79.17 RCW LAND TRANSFERS

Sections

PART 1 EXCHANGES

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79.17.020	Exchange of lands to consolidate and block up holdings or obtain lands having commercial recreational leasing potential.
79.17.030	University demonstration forest and experiment station.
79.17.040	Exchange of property acquired as administrative sites—Purposes.
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PART 2 PURCHASE OR LEASE OF LAND BY SCHOOL DISTRICTS AND INSTITUTIONS OF HIGHER EDUCATION

79.17.100	Application by school district.
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PART 3 LAND TRANSFER

79.17.200	Real property—Transfer or disposal without public auction.
79.17.210	Real property asset base—Natural resources real property replacement account.

PART 1
EXCHANGES

79.17.010 Exchange of state lands—Purposes—Conditions. (1) The department, with the approval of the board, may exchange any state land and any timber thereon for any land of equal value in order to:

- (a) Facilitate the marketing of forest products of state lands;
- (b) Consolidate and block-up state lands;
- (c) Acquire lands having commercial recreational leasing potential;
- (d) Acquire county-owned lands;
- (e) Acquire urban property which has greater income potential or which could be more efficiently managed by the department in exchange for state urban lands as defined in RCW 79.19.100; or
- (f) Acquire any other lands when such exchange is determined by the board to be in the best interest of the trust for which the state land is held.

(2) Land exchanged under this section shall not be used to reduce the publicly owned forest land base.

(3) The board shall determine that each land exchange is in the best interest of the trust for which the land is held prior to authorizing the land exchange.

(4) During the biennium ending June 30, 2005, the department, with approval of the board, may exchange any state land and any timber thereon for any land and proceeds of equal value. Proceeds may be in the form of cash or services in order to achieve the purposes established in this section. Any cash received as part of an exchange transaction shall be deposited in the resource management cost account to pay for administrative expenses incurred in carrying out an exchange transaction. The amount of proceeds received from the exchange partner may not exceed five percent of the total value of the exchange. The receipt of proceeds shall not change the character of the transaction from an exchange to a sale. [2003 1st sp.s. c 25 § 939; 2003 C 334 § 452; 1987 c 113 § 1; 1983 c 261 § 1; 1973 1st ex.s. c 50 § 2; 1961 c 77 § 4; 1957 c 290 § 1. Formerly RCW 79.08.180.]

Reviser's note: This section was amended by 2003 c 334 § 452 and by 2003 1st sp.s. c 25 § 939, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Intent—2003 c 334: See note following RCW 79.02.010.

Exchange to block up holdings: RCW 79.17.020, 79.17.060.

79.17.020 Exchange of lands to consolidate and block up holdings or obtain lands having commercial recreational leasing potential. (1) The board of county commissioners of any county and/or the mayor and city council or city commission of any city or town and/or the board shall have authority to exchange, each with the other, or with the federal forest service, the federal government or any proper agency thereof and/or with any private landowner, county land of any character, land owned by municipalities of any character, and state forest land owned by the state under the jurisdiction of the department, for real property of equal value for the purpose of consolidating and blocking up the

respective land holdings of any county, municipality, the federal government, or the state of Washington or for the purpose of obtaining lands having commercial recreational leasing potential.

(2) During the biennium ending June 30, 2005, the department, with approval of the board, may exchange any state forest land and any timber thereon for any real property and proceeds of equal value. Proceeds may be in the form of cash or services in order to achieve the purposes established in this section. Any cash received as part of an exchange transaction shall be deposited in the forest development account to pay for administrative expenses incurred in carrying out an exchange transaction. The amount of proceeds received from the exchange partner may not exceed five percent of the total value of the exchange. The receipt of proceeds shall not change the character of the transaction from an exchange to a sale. [2003 1st sp.s. c 25 § 937; 2003 c 334 § 209; 1973 1st ex.s. c 50 § 1; 1961 c 77 § 1; 1937 c 77 § 1; RRS § 5812-3e. Formerly RCW 76.12.050.]

Reviser's note: This section was amended by 2003 c 334 § 209 and by 2003 1st sp.s. c 25 § 937, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Intent—2003 c 334: See note following RCW 79.02.010.

79.17.030 University demonstration forest and experiment station. For the purpose of securing an area suitable for a demonstration forest and forest experiment station for the University of Washington authority is hereby granted the board of regents of the University of Washington and the department with the approval of the board, acting with the advice and approval of the attorney general, to exchange all or any portion of the granted lands of the University of Washington assigned for the support of said university by section 9 of chapter 122 of the act of March 14, 1893, enacted by the legislature of Washington, being entitled, "An act providing for the location, construction and maintenance of the University of Washington, and making an appropriation therefor, and declaring an emergency," for all or any portion of such lands as may be acquired by the state under and by virtue of chapter 102, Laws of 1913, being: "An act relating to lands granted to the state for common schools and for educational, penal, reformatory, charitable, capitol buildings and other purposes providing for the completion of such grants and the relinquishment of certain granted lands; and making an appropriation," approved March 18, 1913, by exchange with the United States in the Pilchuck-Sultan-Wallace watersheds included within the present boundaries of the Snoqualmie national forest. The board of regents and department with the advice and approval required by this section are hereby authorized to execute such agreements, writings, or relinquishments as are necessary or proper for the purpose of carrying said exchange into effect and such agreements or other writings to be executed in duplicate, one to be filed with the department and one to be delivered to the board of regents. The exchange shall be made upon the basis of equal values to be determined by careful valuation of the areas to be exchanged. [2003 c 334 § 446; 1917 c 66 § 1; RRS § 7848. Formerly RCW 79.08.070.]

Reviser's note: 1893 c 122 § 9 referred to herein reads as follows: "That 100,000 acres of the lands granted by section 17 of the enabling act, approved February 22, 1889, for state, charitable, educational, penal and reformatory institutions are hereby assigned for the support of the University of Washington."

Intent—2003 c 334: See note following RCW 79.02.010.

79.17.040 Exchange of property acquired as administrative sites—Purposes. The department may exchange surplus real property previously acquired by the department as administrative sites. The property may be exchanged for any public or private real property of equal value, to preserve archeological sites on trust lands, to acquire land to be held in natural preserves, to maintain habitats for endangered species, or to acquire or enhance sites to be dedicated for recreational purposes. [2003 c 334 § 453; 1979 c 24 § 1. Formerly RCW 79.08.250.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.17.050 Public notice—News release—Hearing. Before a proposed exchange is presented to the board involving an exchange of any lands under the administrative control of the department, the department shall hold a public hearing on the proposal in the county where the state-owned land or the greatest proportion thereof is located. Ten days but not more than twenty-five days prior to such hearing, the department shall publish a paid public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the state-owned land is located. A news release pertaining to the hearing shall be disseminated among printed and electronic media in the area where the state-owned land is located. The public notice and news release also shall identify lands involved in the proposed exchange and describe the purposes of the exchange and proposed use of the lands involved. A summary of the testimony presented at the hearings shall be prepared for the board's consideration when reviewing the department's exchange proposal. If there is a failure to substantially comply with the procedures set forth in this section, then the exchange agreement shall be subject to being declared invalid by a court. Any such suit must be brought within one year from the date of the exchange agreement. [2003 c 334 § 445; 1979 c 54 § 1; 1975 1st ex.s. c 107 § 2. Formerly RCW 79.08.015.]

Intent—2003 c 334: See note following RCW 79.02.010.

Exchange of state land by parks and recreation commission, procedure: RCW 79A.05.180.

79.17.060 Exchange of lands to consolidate and block up holdings—Agreements and deeds by commissioner. The commissioner shall, with the advice and approval of the attorney general, execute such agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to complete an exchange. [2003 c 334 § 210; 1961 c 77 § 2; 1937 c 77 § 2; RRS § 5812-3f. Formerly RCW 76.12.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

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79.17.070 Exchange of lands to consolidate and block up holdings—Lands acquired are subject to same laws and administered for same fund as lands exchanged. Lands acquired by the state of Washington as the result of any exchange shall be held and administered for the benefit of the same fund and subject to the same laws as were the lands exchanged therefor. [2003 c 334 § 211; 1961 c 77 § 3. Formerly RCW 76.12.065.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 2
PURCHASE OR LEASE OF LAND
BY SCHOOL DISTRICTS AND INSTITUTIONS OF
HIGHER EDUCATION

79.17.100 Application by school district. Except as otherwise provided in RCW 79.17.110, upon the application of a school district or any institution of higher education for the purchase or lease of lands granted to the state by the United States, the department may offer such land for sale or lease to such school district or institution of higher education in such acreage as it may determine, consideration being given upon application of a school district to school site criteria established by the state board of education. However, in the event the department thereafter proposes to offer such land for sale or lease at public auction, such school district or institution of higher education shall have a preference right for six months from notice of such proposal to purchase or lease such land at the appraised value determined by the board. [2003 c 334 § 322.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.17.110 School districts—Purchase of leased lands with improvements. Notwithstanding the provisions of RCW 79.11.010 or any other provision of law, any school district or institution of higher education leasing land granted to the state by the United States and on which land such district or institution has placed improvements as defined in RCW 79.02.010 shall be afforded the opportunity by the department at any time to purchase such land, excepting land over which the department retains management responsibilities, for the purposes of schoolhouse construction and/or necessary supporting facilities or structures at the appraised value thereof less the value that any improvements thereon added to the value of the land itself at the time of the sale thereof. [2003 c 334 § 437; 1985 c 200 § 1; 1982 1st ex.s. c 31 § 1; 1980 c 115 § 8; 1971 ex.s. c 200 § 2. Formerly RCW 79.01.770.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—1980 c 115: See note following RCW 28A.335.090.

Severability—1971 ex.s. c 200: See note following RCW 79.01.096.

79.17.120 School districts—Purchases from school construction fund. The purchases authorized under RCW 79.17.110 shall be classified as for the construction of common school plant facilities under RCW 28A.525.010 through 28A.525.222 and shall be payable out of the common school construction fund as otherwise provided for in RCW 28A.515.320 if the school district involved was under emergency school construction classification as established by the

state board of education at any time during the period of its lease of state lands. [2003 c 334 § 438; 1990 c 33 § 596; 1971 ex.s. c 200 § 3. Formerly RCW 79.01.774.]

Intent—2003 c 334: See note following RCW 79.02.010.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability—1971 ex.s. c 200: See note following RCW 79.01.096.

79.17.130 School districts—Extension of contract period. In those cases where the purchases, as authorized by RCW 79.17.110 and 79.17.120, have been made on a ten year contract, the board, if it deems it in the best interest of the state, may extend the term of any such contract to not to exceed an additional ten years under such terms and conditions as the board may determine. [2003 c 334 § 439; 1971 ex.s. c 200 § 4. Formerly RCW 79.01.778.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—1971 ex.s. c 200: See note following RCW 79.01.096.

79.17.140 School districts—Reversion, when. Notwithstanding any other provisions of law, annually the board shall determine if lands purchased or leased by school districts or institutions of higher education under the provisions of RCW 79.11.010 and 79.17.110 are being used for school sites. If such land has not been used for school sites for a period of seven years the title to such land shall revert to the original trust for which it was held. [2003 c 334 § 440; 1971 ex.s. c 200 § 5. Formerly RCW 79.01.780.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—1971 ex.s. c 200: See note following RCW 79.01.096.

PART 3 LAND TRANSFER

79.17.200 Real property—Transfer or disposal without public auction. (1) For the purposes of this section, "public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; and any Indian tribe recognized as such by the federal government.

(2) With the approval of the board of natural resources, the department of natural resources may directly transfer or dispose of real property, without public auction, in the following circumstances:

- (a) Transfers in lieu of condemnations;
- (b) Transfers to public agencies; and
- (c) Transfers to resolve trespass and property ownership disputes.

(3) Real property to be transferred or disposed of under this section shall be transferred or disposed of only after appraisal and for at least fair market value, and only if such transaction is in the best interest of the state or affected trust. [1992 c 167 § 2. Formerly RCW 79.01.009.]

79.17.210 Real property asset base—Natural resources real property replacement account. (1) The legislature finds that the department has a need to maintain the

real property asset base it manages and needs an accounting mechanism to complete transactions without reducing the real property asset base.

(2) The natural resources real property replacement account is created in the state treasury. This account shall consist of funds transferred or paid for the disposal or transfer of real property by the department under RCW 79.17.200. The funds in this account shall be used solely for the acquisition of replacement real property and may be spent only when, and as, authorized by legislative appropriation. [2003 c 334 § 118; 1992 c 167 § 1. Formerly RCW 43.30.265.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.19 RCW LAND BANK

Sections

79.19.010	Legislative finding.
79.19.020	Land bank—Created—Purchase of property authorized.
79.19.030	Exchange or sale of property held in land bank.
79.19.040	Management of property held in land bank.
79.19.050	Appropriation of funds from forest development account or resource management cost account—Use of income.
79.19.060	Reimbursement for costs and expenses.
79.19.070	Land bank technical advisory committee.
79.19.080	Identification of trust lands expected to convert to commercial, residential, or industrial uses—Hearing—Notice—Designation as urban lands.
79.19.090	Exchange of urban land for land bank land—Notification of affected public agencies.
79.19.100	Urban lands—Cooperative planning, development.
79.19.110	Lands for commercial, industrial, or residential use—Payment of in-lieu of property tax—Distribution.
79.19.900	Severability—1984 c 222.
79.19.901	Effective date—1984 c 222.

79.19.010 Legislative finding. The legislature finds that from time to time it may be desirable for the department to sell state lands which have low potential for natural resource management or low income-generating potential or which, because of geographic location or other factors, are inefficient for the department to manage. However, it is also important to acquire lands for long-term management to replace those sold so that the publicly owned land base will not be depleted and the publicly owned forest land base will not be reduced. The purpose of this chapter is to provide a means to facilitate such sales and purchases so that the diversity of public uses on the trust lands will be maintained. In making the determinations, the department shall comply with local land use plans and applicable growth management principles. [2003 c 334 § 525; 1984 c 222 § 1; 1977 ex.s. c 109 § 1. Formerly RCW 79.66.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.020 Land bank—Created—Purchase of property authorized. The department, with the approval of the board, may purchase property at fair market value to be held in a land bank, which is hereby created within the department. Property so purchased shall be property which would be desirable for addition to the public lands of the state because of the potential for natural resource or income production of the property. The total acreage held in the land bank shall not exceed one thousand five hundred acres. [2003 c 334 § 526; 1984 c 222 § 2; 1977 ex.s. c 109 § 2. Formerly RCW 79.66.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.030 Exchange or sale of property held in land bank. The department, with the approval of the board, may:

(1) Exchange property held in the land bank for any other public lands of equal value administered by the department, including any lands held in trust.

(2) Exchange property held in the land bank for property of equal or greater value which is owned publicly or privately, and which has greater potential for natural resource or income production or which could be more efficiently managed by the department, however, no power of eminent domain is hereby granted to the department; and

(3) Sell property held in the land bank in the manner provided by law for the sale of state lands without any requirement of platting and to use the proceeds to acquire property for the land bank which has greater potential for natural resource or income production or which would be more efficiently managed by the department. [2003 c 334 § 527; 1984 c 222 § 3; 1977 ex.s. c 109 § 3. Formerly RCW 79.66.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.040 Management of property held in land bank. The department may manage the property held in the land bank as provided in RCW 79.10.030. However, the properties or interest in such properties shall not be withdrawn, exchanged, transferred, or sold without first obtaining payment of the fair market value of the property or interest therein or obtaining property of equal value in exchange. [2003 c 334 § 528; 1984 c 222 § 4; 1977 ex.s. c 109 § 4. Formerly RCW 79.66.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.050 Appropriation of funds from forest development account or resource management cost account—Use of income. The legislature may authorize appropriation of funds from the forest development account or the resource management cost account for the purposes of this chapter. Income from the sale or management of property in the land bank shall be returned as a recovered expense to the forest development account or the resource management cost account and may be used to acquire property under RCW 79.19.020. [2003 c 334 § 529; 1984 c 222 § 5; 1977 ex.s. c 109 § 5. Formerly RCW 79.66.050.]

Intent—2003 c 334: See note following RCW 79.02.010.

Forest development account: RCW 79.64.100.

Resource management cost account: RCW 79.64.020.

79.19.060 Reimbursement for costs and expenses. The department shall be reimbursed for actual costs and expenses incurred in managing and administering the land bank program under this chapter from the forest development account or the resource management cost account in an amount not to exceed the limits provided in RCW 79.64.040. Reimbursement from proceeds of sales shall be limited to marketing costs provided in RCW 79.10.030. [2003 c 334 § 530; 1984 c 222 § 6. Formerly RCW 79.66.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

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79.19.070 Land bank technical advisory committee.

(1) There is created a land bank technical advisory committee, consisting of three members. Membership shall consist of: One member qualified by experience and training in matters pertaining to land use planning and real estate appointed by the commissioner of public lands, one member qualified by experience and training in public trust matters appointed by the superintendent of public instruction, and one member qualified by experience and training in financial matters appointed by the state treasurer.

(2) The technical advisory committee shall provide professional advice and counsel to the board of natural resources regarding land bank sales, purchases, and exchanges involving urban property.

(3) Members of the technical advisory committee shall be appointed for five-year terms and shall serve until a successor is appointed. In the case of a vacancy the vacancy shall be filled by the appointing authority. The initial term of the appointee of the commissioner shall expire in three years. The initial term of the appointee of the superintendent shall expire in four years. The initial term of the appointee of the treasurer shall expire in five years. All terms expire December 31.

(4) Members of the technical advisory committee shall be reimbursed for travel expenses incurred in the performance of their duties under RCW 43.03.050 and 43.03.060. [1984 c 222 § 7. Formerly RCW 79.66.070.]

79.19.080 Identification of trust lands expected to convert to commercial, residential, or industrial uses—Hearing—Notice—Designation as urban lands. Periodically, at intervals to be determined by the board, the department shall identify trust lands which are expected to convert to commercial, residential, or industrial uses within ten years. The department shall adhere to existing local comprehensive plans, zoning classifications, and duly adopted local policies when making this identification and determining the fair market value of the property.

The department shall hold a public hearing on the proposal in the county where the state land is located. At least fifteen days but not more than thirty days before the hearing, the department shall publish a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the trust land is located. At the same time that the published notice is given, the department shall give written notice of the hearings to the departments of fish and wildlife and general administration, to the parks and recreation commission, and to the county, city, or town in which the property is situated. The department shall disseminate a news release pertaining to the hearing among printed and electronic media in the area where the trust land is located. The public notice and news release also shall identify trust lands in the area which are expected to convert to commercial, residential, or industrial uses within ten years.

A summary of the testimony presented at the hearings shall be prepared for the board's consideration. The board shall designate trust lands which are expected to convert to commercial, residential, or industrial uses as urban land.

Descriptions of lands designated by the board shall be made available to the county and city or town in which the land is situated and for public inspection and copying at the department's administrative office in Olympia, Washington and at each area office.

The hearing and notice requirements of this section apply to those trust lands which have been identified by the department prior to July 1, 1984, as being expected to convert to commercial, residential, or industrial uses within the next ten years, and which have not been sold or exchanged prior to July 1, 1984. [2003 c 334 § 531; 1994 c 264 § 60; 1988 c 36 § 53; 1984 c 222 § 8. Formerly RCW 79.66.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.090 Exchange of urban land for land bank land—Notification of affected public agencies. If the department determines to exchange urban land for land bank land, public agencies defined in RCW 79.17.200 that may benefit from owning the property shall be notified in writing of the determination. The public agencies have sixty days from the date of notice by the department to submit an application to purchase the land and shall be afforded an opportunity of up to one year, as determined by the board, to purchase the land from the land bank at fair market value directly without public auction as authorized under RCW 79.17.200. The board, if it deems it in the best interest of the state, may extend the period under terms and conditions as the board determines. If competing applications are received from governmental entities, the board shall select the application which results in the highest monetary value. [2003 c 334 § 532; 1993 c 265 § 1; 1984 c 222 § 9. Formerly RCW 79.66.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.100 Urban lands—Cooperative planning, development. The purpose of this section is to foster cooperative planning among the state, the department, and local governments as to state-owned lands under the department's jurisdiction situated in urban areas.

At least once a year, prior to finalizing the department's urban land leasing action plan, the department and applicable local governments shall meet to review state and local plans and to coordinate planning in areas where urban lands are located. The department and local governments may enter into formal agreements for the purpose of planning the appropriate development of these state-owned urban lands.

The department shall contact those local governments which have planning, zoning, and land-use regulation authority over areas where urban lands under its jurisdiction are located so as to facilitate these annual or other meetings.

"Urban lands" as used in this section means those areas which within ten years are expected to be intensively used for locations of buildings or structures, and usually have urban governmental services.

"Local government" as used in this section means counties, cities, and towns having planning and land-use regulation authority. [2003 c 334 § 441; 1979 ex.s. c 56 § 1. Formerly RCW 79.01.784.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.110 Lands for commercial, industrial, or residential use—Payment of in-lieu of property tax—Distribution. Lands purchased by the department for commercial, industrial, or residential use shall be subject to payment of in-lieu of real property tax for the period in which they are held in the land bank. The in-lieu payment shall be equal to the property taxes which would otherwise be paid if the land remained subject to the tax. Payment shall be made at the end of the calendar year to the county in which the land is located. If a parcel is not held in the land bank for the entire year, the in-lieu payment shall be reduced proportionately to reflect only that period of time in which the land was held in the land bank. The county treasurer shall distribute the in-lieu payments proportionately in accordance with RCW 84.56.230 as though such moneys were receipts from ad valorem property taxes. [2003 c 334 § 533; 1984 c 222 § 10. Formerly RCW 79.66.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.900 Severability—1984 c 222. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 222 § 15. Formerly RCW 79.66.900.]

79.19.901 Effective date—1984 c 222. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1984. [1984 c 222 § 16. Formerly RCW 79.66.901.]

Chapter 79.22 RCW

ACQUISITION, MANAGEMENT, AND DISPOSITION OF STATE FOREST LANDS

Sections

PART 1 GENERAL PROVISIONS

79.22.010	Powers of department—Acquisition of land for reforestation—Taxes, cancellation.
79.22.020	Acquisition of forest land—Requisites.
79.22.030	Record of proceedings, etc.
79.22.040	Deed of county land to department.
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79.22.080	Utility bonds.
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PART 2 TRANSFERS OF STATE FOREST LANDS FOR PUBLIC PARK PURPOSES

79.22.300	Procedure—Reconveyance back when use ceases.
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79.22.330	Provisions cumulative and nonexclusive.

PART 1
GENERAL PROVISIONS

79.22.010 Powers of department—Acquisition of land for reforestation—Taxes, cancellation. The department has the power to accept gifts and bequests of money or other property, made in its own name, or made in the name of the state, to promote generally the interests of reforestation or for a specific named purpose in connection with reforestation, and to acquire in the name of the state, by purchase or gift, any lands which by reason of their location, topography, or geological formation, are chiefly valuable for purpose of developing and growing timber, and to designate such lands and any lands of the same character belonging to the state as state forest lands; and may acquire by gift or purchase any lands of the same character. The department has the power to seed, plant, and develop forests on any lands, purchased, acquired, or designated by it as state forest lands, and shall furnish such care and fire protection for such lands as it shall deem advisable. Upon approval of the board of county commissioners of the county in which the land is located such gift or donation of land may be accepted subject to delinquent general taxes thereon, and upon such acceptance of such gift or donation subject to such taxes, the department shall record the deed of conveyance thereof and file with the assessor and treasurer of the county wherein such land is situated, written notice of acquisition of such land, and that all delinquent general taxes thereon, except state taxes, shall be canceled, and the county treasurer shall thereupon proceed to make such cancellation in the records of the county treasurer. Thereafter, such lands shall be held in trust, protected, managed, and administered upon, and the proceeds therefrom disposed of, under RCW 79.22.040. [2003 c 334 § 205; 1988 c 128 § 23; 1937 c 172 § 1; 1929 c 117 § 1; 1923 c 154 § 3; RRS § 5812-3. Prior: 1921 c 169 § 1, part. Formerly RCW 76.12.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.020 Acquisition of forest land—Requisites. The department shall take such steps as it deems advisable for locating and acquiring lands suitable for state forests and reforestation. Acquisitions made pursuant to this section shall be at no more than fair market value. No lands shall ever be acquired by the department except upon the approval of the title by the attorney general and on a conveyance being made to the state of Washington by good and sufficient deed. No forest lands shall be designated, purchased, or acquired by the department unless the area so designated or the area to be acquired shall, in the judgment of the department, be of sufficient acreage and so located that it can be economically administered for forest development purposes. [2000 c 148 § 1; 1988 c 128 § 28; 1923 c 154 § 4; RRS § 5812-4. Prior: 1921 c 169 § 1, part. Formerly RCW 76.12.080.]

79.22.030 Record of proceedings, etc. The department shall keep in its office in a permanent bound volume a record of all forest lands acquired by the state and any lands owned by the state and designated as such by the department. The record shall show the date and from whom said lands were acquired; amount and method of payment therefor; the forest within which said lands are embraced; the legal description

of such lands; the amount of money expended, if any, and the date thereof, for seeding, planting, maintenance, or care for such lands; the amount, date, and source of any income derived from such land; and such other information and data as may be required by the department. [2003 c 334 § 223; 1988 c 128 § 34; 1923 c 154 § 9; RRS § 5812-9. Formerly RCW 76.12.155, 43.12.140.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.040 Deed of county land to department. If any land acquired by a county through foreclosure of tax liens, or otherwise, comes within the classification of land described in RCW 79.22.010 and can be used as state forest land and if the department deems such land necessary for the purposes of this chapter, the county shall, upon demand by the department, deed such land to the department and the land shall become a part of the state forest lands.

Such land shall be held in trust and administered and protected by the department in the same manner as other state forest lands.

In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys derived subject to this section are the net proceeds from the contract harvesting sale. [2003 c 334 § 206; 2003 c 313 § 6; 1997 c 370 § 1; 1991 c 363 § 151; 1988 c 128 § 24; 1981 2nd ex.s. c 4 § 4; 1971 ex.s. c 224 § 1; 1969 c 110 § 1; 1957 c 167 § 1; 1951 c 91 § 1; 1935 c 126 § 1; 1927 c 288 § 3, part (adding a new section to 1923 c 154 § 3b); RRS § 5812-36. Formerly RCW 76.12.030.]

Reviser's note: This section was amended by 2003 c 313 § 6 and by 2003 c 334 § 206, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

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

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

79.22.050 Sales and leases of timber, timber land, or products thereon. Except as provided in RCW 79.22.060, all land, acquired or designated by the department as state forest land, shall be forever reserved from sale, but the valuable materials thereon may be sold or the land may be leased in the same manner and for the same purposes as is authorized for state lands if the department finds such sale or lease to be in the best interests of the state and approves the terms and conditions thereof.

In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys received subject to this section are the net proceeds from the contract harvesting sale. [2003 c 334 § 220; 2003 c 313 § 7; 2000 c 148 § 2; 1998 c 71 § 2. Prior: 1988 c 128 § 32; 1988 c 70 § 1; 1980 c 154 § 11; 1971 ex.s. c 123 § 4; 1955 c 116 § 1; 1953 c 21 § 1; 1923 c 154 § 7; RRS § 5812-7. Formerly RCW 76.12.120.]

Reviser's note: This section was amended by 2003 c 313 § 7 and by 2003 c 334 § 220, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82.45 RCW digest.

Christmas trees—Cutting, breaking, removing: RCW 79.02.340 and 79.02.350.

79.22.060 Transfer, disposal of lands without public auction—Requirements. (1) With the approval of the board, the department may directly transfer or dispose of state forest lands without public auction, if such lands consist of ten contiguous acres or less, or have a value of twenty-five thousand dollars or less. Such disposal may only occur in the following circumstances:

(a) Transfers in lieu of condemnation; and

(b) Transfers to resolve trespass and property ownership disputes.

(2) Real property to be transferred or disposed of under this section shall be transferred or disposed of only after appraisal and for at least fair market value, and only if such transaction is in the best interest of the state or affected trust.

(3) The proceeds from real property transferred or disposed of under this section shall be deposited into the park land trust revolving fund and be solely used to buy replacement land within the same county as the property transferred or disposed. [2003 c 334 § 221; 2000 c 148 § 3. Formerly RCW 76.12.125.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.070 Forest and land management—Rules—Penalty. (Effective until July 1, 2004.) State forest lands shall be logged, protected, and cared for in such manner as to ensure natural reforestation of such lands, and to that end the department shall have power, and it shall be its duty to adopt rules, and amendments thereto, governing logging operations on such areas, and to embody in any contract for the sale of timber on such areas, such conditions as it shall deem advisable, with respect to methods of logging, disposition of slashings, and debris, and protection and promotion of new forests. All such rules, or amendments thereto, shall be adopted by the department under chapter 34.05 RCW. Any violation of any such rules shall be a gross misdemeanor unless the department has specified by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW. [2003 c 334 § 222; 2000 c 11 § 10; 1988 c 128 § 33; 1987 c 380 § 17; 1927 c 288 § 3, part (adding a new section to 1923 c 154 § 3a); RRS § 5812-3a. Prior: 1921 c 169 § 2. Formerly RCW 76.12.140.]

Intent—2003 c 334: See note following RCW 79.02.010.

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

79.22.070 Forest and land management—Rules—Penalty. (Effective July 1, 2004.) (1) State forest lands shall be logged, protected, and cared for in such manner as to ensure natural reforestation of such lands, and to that end the department shall have power, and it shall be its duty to adopt rules, and amendments thereto, governing logging operations on such areas, and to embody in any contract for the sale of timber on such areas, such conditions as it shall deem advisable, with respect to methods of logging, disposition of slash-

ings, and debris, and protection and promotion of new forests. All such rules, or amendments thereto, shall be adopted by the department under chapter 34.05 RCW.

(2)(a) Except as provided in (b) of this subsection, any violation of any rule adopted by the department under the authority of this section is a gross misdemeanor.

(b) The department may specify by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW. [2003 c 334 § 222; 2003 c 53 § 369; 2000 c 11 § 10; 1988 c 128 § 33; 1987 c 380 § 17; 1927 c 288 § 3, part (adding a new section to 1923 c 154 § 3a); RRS § 5812-3a. Prior: 1921 c 169 § 2. Formerly RCW 76.12.140.]

Reviser's note: This section was amended by 2003 c 53 § 369 and by 2003 c 334 § 222, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2003 c 334: See note following RCW 79.02.010.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

79.22.080 Utility bonds. For the purpose of acquiring and paying for lands for state forests and reforestation as herein provided the department may issue utility bonds of the state of Washington as may hereafter be authorized by the legislature. The bonds shall be known as state forest utility bonds. The principal or interest of the bonds shall not be a general obligation of the state, but shall be payable only from the forest development account. The department may issue the bonds in exchange for lands selected by it in accordance with RCW 79.64.100 and this chapter, or may sell the bonds in such a manner as it deems advisable, and with the proceeds purchase and acquire such lands. Any of the bonds issued in exchange and payment for any particular tract of lands may be made a first and prior lien against the particular land for which they are exchanged, and upon failure to pay the bonds and interest thereon according to their terms, the lien of the bonds may be foreclosed by appropriate court action. [2003 c 334 § 217; 2000 c 11 § 8; 1988 c 128 § 29; 1937 c 104 § 1; 1923 c 154 § 5; RRS § 5812-5. Formerly RCW 76.12.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.090 Bonds—Purchase price of land limited—Retirement of bonds. For the purpose of acquiring, seeding, reforestation, and administering land for forests and of carrying out RCW 79.64.100 and the provisions of this chapter, the department is authorized to issue and dispose of utility bonds of the state of Washington in an amount not to exceed one hundred thousand dollars in principal during the biennium expiring March 31, 1951. However, no sum in excess of one dollar per acre shall ever be paid or allowed either in cash, bonds, or otherwise, for any lands suitable for forest growth, but devoid of such, nor shall any sum in excess of three dollars per acre be paid or allowed either in cash, bonds, or otherwise, for any lands adequately restocked with young growth.

Any utility bonds issued under the provisions of this section may be retired from time to time, whenever there is sufficient money in the forest development account, said bonds

to be retired at the discretion of the department either in the order of issuance, or by first retiring bonds with the highest rate of interest. [2003 c 334 § 218; 2000 c 11 § 9; 1988 c 128 § 30; 1949 c 80 § 1; 1947 c 66 § 1; 1945 c 13 § 1; 1943 c 123 § 1; 1941 c 43 § 1; 1939 c 106 § 1; 1937 c 104 § 2; 1935 c 126 § 2; 1933 c 117 § 1; Rem. Supp. 1949 § 5812-11. Formerly RCW 76.12.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.100 Reacquisition of lands from federal government. Whenever any forest land which shall have been acquired by any county through the foreclosure of tax liens, or otherwise, and which shall have been acquired by the federal government either from said county or from the state holding said lands in trust, and shall be available for reacquisition, the board and the board of county commissioners of any such county are authorized to enter into an agreement for the reacquisition of such lands as state forest lands in trust for such county. Such agreement shall provide for the price and manner of such reacquisition. The board is authorized to provide in such agreement for the advance of funds available to it for such purpose from the forest development account, all or any part of the price for such reacquisition so agreed upon, which advance shall be repaid at such time and in such manner as provided in the agreement, solely from any distribution to be made to said county under the provisions of RCW 79.22.040; that the title to said lands shall be retained by the state free from any trust until the state shall have been fully reimbursed for all funds advanced in connection with such reacquisition; and that in the event of the failure of the county to repay such advance in the manner provided, the said forest lands shall be retained by the state to be administered and/or disposed of in the same manner as other state forest lands free and clear of any trust interest therein by said county. Such county shall make provisions for the reimbursement of the various funds from any moneys derived from such lands so acquired, or any other county trust forest board lands which are distributable in a like manner, for any sums withheld from funds for other areas which would have been distributed thereto from time to time but for such agreement. [2003 c 334 § 208; 1959 c 87 § 1. Formerly RCW 76.12.035.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.110 Reconveyance to county in certain cases. Whenever any county shall have acquired by tax foreclosure, or otherwise, lands within the classification of RCW 79.22.010 and shall have thereafter contracted to sell such lands to bona fide purchasers before the same may have been selected as forest lands by the department, and has heretofore deeded or shall hereafter deed because of inadvertence or oversight such lands to the state or to the department to be held under RCW 79.22.040 or any amendment thereof; the department upon being furnished with a certified copy of such contract of sale on file in such county and a certificate of the county treasurer showing said contract to be in good standing in every particular and that all due payments and taxes have been made thereon, and upon receipt of a certified copy of a resolution of the board of county commissioners of such county requesting the reconveyance to the county of such lands, is hereby authorized to reconvey such lands to

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such county by quitclaim deed executed by the department. Such reconveyance of lands hereafter so acquired shall be made within one year from the conveyance thereof to the state or department. [2003 c 334 § 212; 1988 c 128 § 27; 1941 c 84 § 1; Rem. Supp. 1941 § 5812-3g. Formerly RCW 76.12.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.120 Reconveyance to county of certain leased lands. If the board of natural resources determines that any forest lands deeded to the board or the state pursuant to this chapter, which are leased to any county for uses which have as one permitted use a sanitary landfill and/or transfer station, are no longer appropriate for management by the board, the board may reconvey all of the lands included within any such lease to that county. Reconveyance shall be by quitclaim deed executed by the chairman of the board. Upon execution of such deed, full legal and equitable title to such lands shall be vested in that county, and any leases on such lands shall terminate. A county that receives any such reconveyed lands shall indemnify and hold the state of Washington harmless from any liability or expense arising out of the reconveyed lands. [1991 c 10 § 1. Formerly RCW 76.12.067.]

PART 2 TRANSFERS OF STATE FOREST LANDS FOR PUBLIC PARK PURPOSES

79.22.300 Procedure—Reconveyance back when use ceases. Whenever the board of county commissioners of any county shall determine that state forest lands, that were acquired from such county by the state pursuant to RCW 79.22.040 and that are under the administration of the department, are needed by the county for public park use in accordance with the county and the state outdoor recreation plans, the board of county commissioners may file an application with the board for the transfer of such state forest lands.

Upon the filing of an application by the board of county commissioners, the department shall cause notice of the impending transfer to be given in the manner provided by RCW 42.30.060. If the department determines that the proposed use is in accordance with the state outdoor recreation plan, it shall reconvey said state forest lands to the requesting county to have and to hold for so long as the state forest lands are developed, maintained, and used for the proposed public park purpose. This reconveyance may contain conditions to allow the department to coordinate the management of any adjacent state owned lands with the proposed park activity to encourage maximum multiple use management and may reserve rights of way needed to manage other state owned lands in the area. The application shall be denied if the department finds that the proposed use is not in accord with the state outdoor recreation plan. If the land is not, or ceases to be, used for public park purposes the land shall be conveyed back to the department upon request of the department. [2003 c 334 § 213; 1983 c 3 § 195; 1969 ex.s. c 47 § 1. Formerly RCW 76.12.072.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.310 Timber resource management. The timber resources on any such state forest land transferred to the counties under RCW 79.22.300 shall be managed by the department to the extent that this is consistent with park purposes and meets with the approval of the board of county commissioners. Whenever the department does manage the timber resources of such lands, it will do so in accordance with the general statutes relative to the management of all other state forest lands. [2003 c 334 § 214; 1969 ex.s. c 47 § 2. Formerly RCW 76.12.073.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.320 Lands transferred by deed. Under provisions mutually agreeable to the board of county commissioners and the board, lands approved for transfer to a county for public park purposes under the provisions of RCW 79.22.300 shall be transferred to the county by deed. [2003 c 334 § 215; 1969 ex.s. c 47 § 3. Formerly RCW 76.12.074.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.330 Provisions cumulative and nonexclusive. The provisions of RCW 79.22.300 through 79.22.330 shall be cumulative and nonexclusive and shall not repeal any other related statutory procedure established by law. [2003 c 334 § 216; 1969 ex.s. c 47 § 4. Formerly RCW 76.12.075.]

Intent—2003 c 334: See note following RCW 79.02.010.

**Chapter 79.24 RCW
CAPITOL BUILDING LANDS**

Sections

79.24.580 Recodified as RCW 79.90.245.

79.24.580 Recodified as RCW 79.90.245. See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 79.28 RCW
LIEU LANDS**

Sections

79.28.010 Recodified as RCW 79.02.120.
79.28.020 Recodified as RCW 79.02.130.
79.28.030 Recodified as RCW 79.02.140.
79.28.040 Recodified as RCW 79.13.380.
79.28.050 Recodified as RCW 79.13.390.
79.28.070 Recodified as RCW 79.13.400.
79.28.080 Recodified as RCW 79.13.410.

79.28.010 Recodified as RCW 79.02.120. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.28.020 Recodified as RCW 79.02.130. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.28.030 Recodified as RCW 79.02.140. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.28.040 Recodified as RCW 79.13.380. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.28.050 Recodified as RCW 79.13.390. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.28.070 Recodified as RCW 79.13.400. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.28.080 Recodified as RCW 79.13.410. See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 79.36 RCW
EASEMENTS OVER PUBLIC LANDS**

Sections

79.36.230 Recodified as RCW 79.36.590.
79.36.240 Recodified as RCW 79.36.600.
79.36.250 Recodified as RCW 79.36.610.
79.36.260 Recodified as RCW 79.36.620.
79.36.270 Recodified as RCW 79.36.630.
79.36.280 Recodified as RCW 79.36.640.
79.36.290 Recodified as RCW 79.36.650.

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79.36.620 Reservations in grants and leases.
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79.36.230 Recodified as RCW 79.36.590. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.36.240 Recodified as RCW 79.36.600. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.36.250 Recodified as RCW 79.36.610. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.36.260 Recodified as RCW 79.36.620. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.36.270 Recodified as RCW 79.36.630. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.36.280 Recodified as RCW 79.36.640. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.36.290 Recodified as RCW 79.36.650. See Supplementary Table of Disposition of Former RCW Sections, this volume.

PART 1 ACQUISITION

79.36.310 Acquisition of property interests for access authorized. Whenever the department finds that it is in the best interests of the state of Washington to acquire any property or use of a road in private ownership to afford access to state timber and other valuable material for the purpose of developing, caring for, or selling the same, the acquisition of such property, or use thereof, is hereby declared to be necessary for the public use of the state of Washington, and the department is authorized to acquire such property or the use of such roads by gift, purchase, exchange, or condemnation, and subject to all of the terms and conditions of such gift, purchase, exchange, or decree of condemnation to maintain such property or roads as part of the department's land management road system. [2003 c 334 § 226; 1963 c 140 § 1; 1945 c 239 § 1; Rem. Supp. 1945 § 5823-30. Formerly RCW 76.16.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

Eminent domain: State Constitution Art. 1 § 16; chapter 8.04 RCW.

State lands subject to easements for removal of materials: RCW 79.36.370 and 79.36.590.

79.36.320 Condemnation—Duty of attorney general. The attorney general of the state of Washington is hereby required and authorized to condemn said property interests found to be necessary for the public purposes of the state of Washington, as provided in RCW 79.36.310, and upon being furnished with a certified copy of the resolution of the department, describing said property interests found to be necessary for the purposes set forth in RCW 79.36.310, the attorney

general shall immediately take steps to acquire said property interests by exercising the state's right of eminent domain under the provisions of chapter 8.04 RCW, and in any condemnation action herein authorized, the resolution so describing the property interests found to be necessary for the purposes set forth above shall, in the absence of a showing of bad faith, arbitrary, capricious, or fraudulent action, be conclusive as to the public use and real necessity for the acquisition of said property interests for a public purpose, and said property interests shall be awarded to the state without the necessity of either pleading or proving that the department was unable to agree with the owner or owners of said private property interest for its purchase. Any condemnation action herein authorized shall have precedence over all actions, except criminal actions, and shall be summarily tried and disposed of. [2003 c 334 § 227; 1963 c 140 § 2; 1945 c 239 § 2; Rem. Supp. 1945 § 5823-31. Formerly RCW 76.16.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.330 Disposal of property interests acquired. In the event the department should determine that the property interests acquired under the authority of this chapter are no longer necessary for the purposes for which they were acquired, the department shall dispose of the same in the following manner, when in the discretion of the department it is to the best interests of the state of Washington to do so, except that property purchased with educational funds or held in trust for educational purposes shall be sold only in the same manner as are public lands of the state:

(1) Where the state property necessitating the acquisition of private property interests for access purposes under authority of this chapter is sold or exchanged, the acquired property interests may be sold or exchanged as an appurtenance of the state property when it is determined by the department that sale or exchange of the state property and acquired property interests as one parcel is in the best interests of the state.

(2) If the acquired property interests are not sold or exchanged as provided in subsection (1) of this section, the department shall notify the person or persons from whom the property interest was acquired, stating that the property interests are to be sold, and that the person or persons shall have the right to purchase the same at the appraised price. The notice shall be given by registered letter or certified mail, return receipt requested, mailed to the last known address of the person or persons. If the address of the person or persons is unknown, the notice shall be published twice in an official newspaper of general circulation in the county where the lands or a portion thereof is located. The second notice shall be published not less than ten nor more than thirty days after the notice is first published. The person or persons shall have thirty days after receipt of the registered letter or five days after the last date of publication, as the case may be, to notify the department, in writing, of their intent to purchase the offered property interest. The purchaser shall include with his or her notice of intention to purchase, cash payment, certified check, or money order in an amount not less than one-third of the appraised price. No instrument conveying property interests shall issue from the department until the full price of the property is received by the department. All costs of publication required under this section shall be added to

the appraised price and collected by the department upon sale of the property interests.

(3) If the property interests are not sold or exchanged as provided in subsections (1) and (2) of this section, the department shall notify the owners of land abutting the property interests in the same manner as provided in subsection (2) of this section and their notice of intent to purchase shall be given in the manner and in accordance with the same time limits as are set forth in subsection (2) of this section. However, if more than one abutting owner gives notice of intent to purchase the property interests, the department shall apportion them in relation to the lineal footage bordering each side of the property interests to be sold, and apportion the costs to the interested purchasers in relation thereto. Further, no sale is authorized by this section unless the department is satisfied that the amounts to be received from the several purchasers will equal or exceed the appraised price of the entire parcel plus any costs of publishing notices.

(4) If no sale or exchange is consummated as provided in subsections (1) through (3) of this section, the department shall sell the properties in the same manner as state lands are sold.

(5) Any disposal of property interests authorized by this chapter shall be subject to any existing rights previously granted by the department. [2003 c 334 § 228; 1963 c 140 § 3; 1945 c 239 § 3; Rem. Supp. 1945 § 5823-32. Formerly RCW 76.16.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.340 Acquisition—Payment. The department in acquiring any property interests under the provisions of this chapter, either by purchase or condemnation, is hereby authorized to pay for the same out of any moneys available to the department for this purpose. [2003 c 334 § 229; 1963 c 140 § 4; 1945 c 239 § 4; Rem. Supp. 1945 § 5823-33. Formerly RCW 76.16.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 2 GRANTING

79.36.350 Application for right of way. Any person, firm, or corporation engaged in the business of logging or lumbering, quarrying, mining or removing sand, gravel, or other valuable materials from land, and desirous of obtaining a right of way for the purpose of transporting or moving timber, minerals, stone, sand, gravel, or other valuable materials from other lands, over and across any state lands, or tide or shore lands belonging to the state, or any such lands sold or leased by the state since the fifteenth day of June, 1911, shall file with the department upon a form to be furnished for that purpose, a written application for such right of way, accompanied by a plat showing the location of the right of way applied for with references to the boundaries of the government section in which the lands over and across which such right of way is desired are located. Upon the filing of such application and plat, the department shall cause the lands embraced within the right of way applied for, to be inspected, and all timber thereon, and all damages to the lands affected which may be caused by the use of such right of way, to be

appraised, and shall notify the applicant of the appraised value of such timber and such appraisal of damages. Upon the payment to the department of the amount of the appraised value of timber and damages, the department shall issue in duplicate a right of way certificate setting forth the terms and conditions upon which such right of way is granted, as provided in the preceding sections, and providing that whenever such right of way shall cease to be used for the purpose for which it was granted, or shall not be used in accordance with such terms and conditions, it shall be deemed forfeited. One copy of such certificate shall be filed in the office of the department and one copy delivered to the applicant. [2003 c 334 § 383; 1927 c 255 § 83; RRS § 7797-83. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45. Formerly RCW 79.01.332, 79.36.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

Similar enactment: RCW 79.36.650.

79.36.355 Grant of easements—Same rights as by eminent domain. The department may grant to any person such easements and rights in state lands or state forest lands as the applicant applying therefor may acquire in privately owned lands through proceedings in eminent domain. No grant shall be made under this section until such time as the full market value of the estate or interest granted together with damages to all remaining property of the state of Washington has been ascertained and safely secured to the state. [2003 c 334 § 396; 1982 1st ex.s. c 21 § 175; 1961 c 73 § 12. Formerly RCW 79.01.414.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.36.360 Condemnation proceedings involving state land. See RCW 8.28.010.

79.36.370 Lands subject to easements for removal of valuable materials. All state lands granted, sold or leased since the fifteenth day of June, 1911, or hereafter granted, sold or leased, containing timber, minerals, stone, sand, gravel, or other valuable materials, or when other state lands contiguous or in proximity thereto contain any such valuable materials, shall be subject to the right of the state, or any grantee or lessee thereof who has acquired such other lands, or any such valuable materials thereon, since the fifteenth day of June, 1911, or hereafter acquiring such other lands or valuable materials thereon, to acquire the right of way over such lands so granted, sold or leased, for private railroads, skid roads, flumes, canals, watercourses or other easements for the purpose of, and to be used in, transporting and moving such valuable materials from such other lands, over and across the lands so granted or leased, upon the state, or its grantee or lessee, paying to the owner of lands so granted or sold, or the lessee of the lands so leased, reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad company seeking to condemn private property. [1982 1st ex.s. c 21 § 167; 1927 c 255 § 78; RRS §

7797-78. Prior: 1911 c 109 § 1. Formerly RCW 79.01.312, 79.36.010.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Railroads, eminent domain: RCW 81.36.010 and 81.53.180.

Similar enactment: RCW 79.36.590.

State lands, eminent domain: RCW 8.28.010.

79.36.380 Private easement subject to common user.

Every grant, deed, conveyance, contract to purchase or lease made since the fifteenth day of June, 1911, or hereafter made to any person, firm, or corporation, for a right of way for a private railroad, skid road, canal, flume, watercourse, or other easement, over or across any state lands for the purpose of, and to be used in, transporting and moving timber, minerals, stone, sand, gravel, or other valuable materials of the land, shall be subject to the right of the state, or any grantee or lessee thereof, or other person who has acquired since the fifteenth day of June, 1911, or shall hereafter acquire, any lands containing valuable materials contiguous to, or in proximity to, such right of way, or who has so acquired or shall hereafter acquire such valuable materials situated upon state lands or contiguous to, or in proximity to, such right of way, of having such valuable materials transported or moved over such private railroad, skid road, flume, canal, watercourse, or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation, or for the use of such private railroad, skid road, flume, canal, watercourse, or other easement, and upon complying with just, reasonable and proper rules and regulations relating to such transportation or use, which rates, rules, and regulations, shall be under the supervision and control of the utilities and transportation commission. [1982 1st ex.s. c 21 § 168; 1927 c 255 § 79; RRS § 7797-79. Prior: 1911 c 109 § 2. Formerly RCW 79.01.316, 79.36.020.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Similar enactment: RCW 79.36.600.

Washington utilities and transportation commission: Chapter 80.01 RCW.

79.36.390 Reasonable facilities and service for transportation must be furnished. Any person, firm or corporation, having acquired such right of way or easement since the fifteenth day of June, 1911, or hereafter acquiring such right of way or easement over any state lands for the purpose of transporting or moving timber, mineral, stone, sand, gravel, or other valuable materials, and engaged in such business thereon, shall accord to the state, or any grantee or lessee thereof, having since the fifteenth day of June, 1911, acquired, or hereafter acquiring, from the state, any state lands containing timber, mineral, stone, sand, gravel, or other valuable materials, contiguous to or in proximity to such right of way or easement, or any person, firm, or corporation, having since the fifteenth day of June, 1911, acquired, or hereafter acquiring, the timber, mineral, stone, sand, gravel, or other valuable materials upon any state lands contiguous to or in proximity to the lands over which such right of way or easement is operated, proper and reasonable facilities and service for transporting and moving such valuable materials, under reasonable rules and regulations and upon payment of

just and reasonable charges therefor, or, if such right of way or other easement is not then in use, shall accord the use of such right of way or easement for transporting and moving such valuable materials, under reasonable rules and regulations and upon the payment of just and reasonable charges therefor. [1982 1st ex.s. c 21 § 169; 1927 c 255 § 80; RRS § 7797-80. Prior: 1911 c 109 § 3. Formerly RCW 79.01.320, 79.36.030.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Similar enactment: RCW 79.36.610.

79.36.400 Duty of utilities and transportation commission. Should the owner or operator of any private railroad, skid road, flume, canal, watercourse or other easement operating over lands acquired since the fifteenth day of June, 1911, or hereafter acquired, from the state, as in the previous sections provided, fail to agree with the state, or any grantee thereof, as to the reasonable and proper rules, regulations and charges, concerning the transportation of timber, mineral, stone, sand, gravel or other valuable materials, from lands contiguous to, or in proximity to, the lands over which such private railroad, skid road, flume, canal, watercourse or other easement, is operated, for transporting or moving such valuable materials, the state, or such person, firm or corporation, owning and desiring to have such valuable materials transported or moved, may apply to the state utilities and transportation commission and have the reasonableness of the rules and regulations and charges inquired into, and it shall be the duty of the utilities and transportation commission to inquire into the same and it is hereby given the same power and authority to investigate the same as it is now authorized to investigate or inquire into the reasonableness of rules, regulations and charges made by railroad companies, and it is authorized and empowered to make any such order as it would make in an inquiry against a railroad company, and in case such private railroad, skid road, flume, canal, watercourse or easement, is not then in use, may make such reasonable, proper and just rules and regulations concerning the use thereof for the purposes aforesaid as may be just and proper, and such order shall have the same force and effect, and be binding upon the parties to such hearing, as though such hearing and order was made affecting a common carrier railroad. [1983 c 4 § 6; 1927 c 255 § 81; RRS § 7797-81. Prior: 1911 c 109 § 4. Formerly RCW 79.01.324, 79.36.040.]

Similar enactment: RCW 79.36.630.

Transportation, general regulations: Chapter 81.04 RCW.

79.36.410 Penalty for violation of orders. In case any person, firm or corporation, owning or operating any private railroad, skid road, flume, canal, watercourse or other easement, over and across any state lands, or any lands acquired since the fifteenth day of June, 1911, or hereafter acquired, from the state, subject to the provisions of the preceding sections, shall violate or fail to comply with any rule, regulation or order made by the utilities and transportation commission, after an inquiry and hearing as provided in the preceding section, such person, firm or corporation, shall be subject to a penalty of not to exceed one thousand dollars for each and every violation thereof, and in addition thereto such right of

way, private road, skid road, flume, canal, watercourse or other easement and all improvements and structures on such right of way, and connected therewith, shall revert to the state or to the owner of the land over which such right of way is located, and may be recovered in an action instituted in any court of competent jurisdiction. [1982 1st ex.s. c 21 § 170; 1927 c 255 § 82; RRS § 7797-82. Prior: 1911 c 109 § 5. Formerly RCW 79.01.328, 79.36.050.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Similar enactment: RCW 79.36.640.

79.36.430 Forfeiture for nonuse. Any such right of way heretofore granted which has never been used, or has ceased to be used for the purpose for which it was granted, for a period of two years, shall be deemed forfeited. The forfeiture of any such right of way heretofore granted, or granted under the provisions of the preceding sections, shall be rendered effective by the mailing of a notice of such forfeiture to the grantee thereof at his or her last known post office address and by stamping a copy of such certificate, or other record of the grant, in the office of the department with the word "canceled", and the date of such cancellation. [2003 c 334 § 384; 1927 c 255 § 84; RRS § 7797-84. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45. Formerly RCW 79.01.336, 79.36.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

Similar enactment: RCW 79.36.650.

79.36.440 Right of way for public roads. Any county or city or the United States of America or state agency desiring to locate, establish, and construct a road or street over and across any state lands of the state of Washington shall by resolution of the board of county commissioners of such county, or city council or other governing body of such city, or proper agency of the United States of America, or state agency, cause to be filed in the office of the department a petition for a right of way for such road or street, setting forth the reasons for the establishment thereof, accompanied by a duly attested copy of a plat made by the county or city engineer or proper agency of the United States of America, or state agency, showing the location of the proposed road or street with reference to the legal subdivisions, or lots and blocks of the official plat, or the lands, over and across which such right of way is desired, the amount of land to be taken and the amount of land remaining in each portion of each legal subdivision or lot or block bisected by such proposed road or street.

Upon the filing of such petition and plat the department, if deemed for the best interest of the state to grant the petition, shall cause the land proposed to be taken to be inspected and shall appraise the value of the land and valuable materials thereon and notify the petitioner of such appraised value.

If there are no valuable materials on the proposed right of way, or upon the payment of the appraised value of the land and valuable materials thereon, to the department in cash, or by certified check drawn upon any bank in this state, or money order, except for all rights of way granted to the department on which the valuable materials, if any, shall be sold at public auction or by sealed bid, the department may approve the plat filed with the petition and file and enter the

same in the records of its office, and such approval and record shall constitute a grant of such right of way from the state. [2003 c 334 § 385; 2001 c 250 § 12; 1982 1st ex.s. c 21 § 171; 1961 c 73 § 5; 1945 c 145 § 1; 1927 c 255 § 85; Rem. Supp. 1945 § 7797-85. Prior: 1917 c 148 § 9; 1903 c 20 § 1; 1897 c 89 § 35; 1895 c 178 § 46. Formerly RCW 79.01.340, 79.36.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.36.450 Railroad right of way. A right of way through, over and across any state lands not held under a contract of sale, is hereby granted to any railroad company organized under the laws of this state, or any state or territory of the United States, or under any act of congress of the United States, to any extent not exceeding fifty feet on either side of the center line of any railroad now constructed, or hereafter to be constructed, and for such greater width as is required for excavations, embankments, depots, station grounds, passing tracks or borrow pits, which extra width shall not in any case exceed two hundred feet on either side of said right of way. [1927 c 255 § 86; RRS § 7797-86. Prior: 1907 c 104 § 1; 1901 c 173 § 1. Formerly RCW 79.01.344, 79.36.090.]

Railroad rights of way: Chapter 81.52 RCW.

79.36.460 Railroad right of way—Procedure to acquire. In order to obtain the benefits of RCW 79.36.450, any railroad company hereafter constructing, or proposing to construct, a railroad, shall file with the department a copy of its articles of incorporation, due proof of organization thereunder, a map or maps, accompanied by the field notes of the survey, showing the location of the line of said railroad, the width of the right of way and extra widths, if any, and shall pay to the department as hereinafter provided the amount of the appraised value of the lands included within the right of way, and extra widths if any are required, and the damages to any lands affected by the right of way or extra widths. [2003 c 334 § 386; 1927 c 255 § 87; RRS § 7797-87. Prior: 1907 c 104 § 1; 1901 c 173 § 1. Formerly RCW 79.01.348, 79.36.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.470 Railroad right of way—Appraisalment. All state lands over which a right of way of any railroad to be hereafter constructed, shall be located, shall be appraised in the same manner as in the case of applications for the purchase of state lands, fixing the appraised value per acre for each lot or block, quarter section or subdivision thereof, less the improvements, if any, and the damages to any state lands affected by such right of way, shall be appraised in like manner, and the appraisalment shall be recorded and the evidence or report upon which the same is based shall be preserved of record, in the office of the department, and the department shall send notice to the railroad company applying for the right of way that such appraisalment has been made. [2003 c 334 § 387; 1927 c 255 § 88; RRS § 7797-88. Prior: 1901 c 173 §§ 2, 5. Formerly RCW 79.01.352, 79.36.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.480 Railroad right of way—Improvements—Appraisal. Should any improvements, made by anyone not holding adversely to the state at the time of making such improvements or made in good faith by a lessee of the state whose lease had not been canceled or was not subject to cancellation for any cause, or made upon the land by mistake, be upon any of such lands at the time of the appraisal, the same shall be separately appraised, together with the damage and waste done to said lands, or to adjacent lands, by the use and occupancy of the same, and after deducting from the amount of the appraisal for improvements the amount of such damage and waste, the balance shall be regarded as the value of said improvements, and the railroad company, if not the owner of such improvements, shall deposit with the department the value of the same, as shown by the appraisal, within thirty days next following the date thereof. The department shall hold such moneys for a period of three months, and unless a demand and proof of ownership of such improvements shall be made upon the department within said period of three months, the same shall be deemed forfeited to the state and deposited with the state treasurer and paid into the general fund. If two or more persons shall file claims of ownership of said improvements, within said period of three months, with the department, the department shall hold such moneys until the claimants agree or a certified copy of the judgment decreeing the ownership of said improvements shall be filed with the department. When notice of agreement or a certified copy of a judgment has been so filed, the department shall pay over to the owner of the improvements the money so deposited. [2003 c 334 § 388; 1927 c 255 § 89; RRS § 7797-89. Prior: 1915 c 147 § 13; 1901 c 173 § 4. Formerly RCW 79.01.356, 79.36.120.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.490 Railroad right of way—Release or payment of damages. When the construction or proposed construction of said railroad affects the value of improvements on state lands not situated on the right of way or extra widths, the applicant for said right of way shall file with the department a valid release of damages duly executed by the owner or owners of such improvements, or a certified copy of a judgment of a court of competent jurisdiction, showing that compensation for the damages resulting to such owner or owners, as ascertained in accordance with existing law, has been made or paid into the registry of such court. [2003 c 334 § 389; 1927 c 255 § 90; RRS § 7797-90. Prior: 1915 c 147 § 13; 1901 c 173 § 4. Formerly RCW 79.01.360, 79.36.130.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.500 Railroad right of way—Certificate. Upon full payment of the appraised value of any right of way for a railroad and of damages to state lands affected, the department shall issue to the railroad company applying for such right of way a certificate in such form as the department may prescribe, in which the terms and conditions of said easement shall be set forth and the lands covered thereby described, and any future grant, or lease, by the state, of the lands crossed or affected by such right of way shall be subject to the easement described in the certificate. [2003 c 334 § 390; 1927 c 255 § 91; RRS § 7797-91. Prior: 1915 c 147 § 14; 1901 c 173 § 7. Formerly RCW 79.01.364, 79.36.140.]

[2003 RCW Supp—page 986]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.510 Utility pipe lines, transmission lines, etc. A right of way through, over, and across any state lands or state forest lands, may be granted to any municipal or private corporation, company, association, individual, or the United States of America, constructing or proposing to construct, or which has heretofore constructed, any telephone line, ditch, flume, or pipe line for the domestic water supply of any municipal corporation or transmission line for the purpose of generating or transmitting electricity for light, heat, or power. [1982 1st ex.s. c 21 § 172; 1961 c 73 § 6; 1945 c 147 § 1; 1927 c 255 § 96; Rem. Supp. 1945 § 7797-96. Prior: 1925 c 6 § 1; 1921 c 148 § 1; 1919 c 97 § 1; 1909 c 188 § 1. Formerly RCW 79.01.384, 79.36.150.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.36.520 Utility pipe lines, transmission lines, etc.—Procedure to acquire. In order to obtain the benefits of the grant made in RCW 79.36.510, the municipal or private corporation or company, association, individual, or the United States of America, constructing or proposing to construct, or which has heretofore constructed, such telephone line, ditch, flume, pipe line, or transmission line, shall file, with the department, a map, accompanied by the field notes of the survey and location of such telephone line, ditch, flume, pipe line, or transmission line, and shall make payment therefor as provided in RCW 79.36.530. The land within the right of way shall be limited to an amount necessary for the construction of said telephone line, ditch, flume, pipe line, or transmission line sufficient for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same, and the grant shall include the right to cut all standing timber, and/or reproduction within said right of way. The grant shall also include the right to cut trees marked as danger trees by the applicant outside of the right of way, which shall be dangerous to the operation and maintenance of the telephone line, ditch, flume, pipe line, or transmission line upon full payment of the appraised value thereof. [2003 c 334 § 391; 1961 c 73 § 7; 1959 c 257 § 35; 1945 c 147 § 2; 1927 c 255 § 97; Rem. Supp. 1945 § 7797-97. Prior: 1921 c 148 § 2; 1919 c 97 § 2; 1909 c 188 § 2. Formerly RCW 79.01.388, 79.36.160.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.530 Utility pipe lines—Appraisal—Certificate—Reversion. Upon the filing of the plat and field notes, as provided in RCW 79.36.520, the land applied for and the valuable materials on the right of way applied for, and the marked danger trees to be felled off the right of way, if any, and the improvements included in the right of way applied for, if any, shall be appraised as in the case of an application to purchase state lands. Upon full payment of the appraised value of the land applied for, or upon payment of an annual rental when the department deems a rental to be in the best interests of the state, and upon full payment of the appraised value of the valuable materials and improvements, if any, the department shall issue to the applicant a certificate of the grant of such right of way stating the terms and conditions thereof and shall enter the same in the abstracts and records in

its office, and thereafter any sale or lease of the lands affected by such right of way shall be subject to the easement of such right of way. Should the corporation, company, association, individual, state agency, political subdivision of the state, or the United States of America, securing such right of way ever abandon the use of the same for a period of sixty months or longer for the purposes for which it was granted, the right of way shall revert to the state, or the state's grantee. [2003 c 334 § 392; 2001 c 250 § 13; 1961 c 73 § 8; 1959 c 257 § 36; 1945 c 147 § 3; 1927 c 255 § 98; Rem. Supp. 1945 § 7797-98. Prior: 1909 c 188 § 3. Formerly RCW 79.01.392, 79.36.170.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.540 Right of way for irrigation, diking, and drainage purposes. A right of way through, over and across any state lands is hereby granted to any irrigation district, or irrigation company duly organized under the laws of this state, and to any association, individual, or the United States of America, constructing or proposing to construct an irrigation ditch or pipe line for irrigation, or to any diking and drainage district or any diking and drainage improvement district proposing to construct a dike or drainage ditch. [1982 1st ex.s. c 21 § 173; 1945 c 147 § 4; 1927 c 255 § 99; Rem. Supp. 1945 § 7797-99. Prior: 1917 c 148 § 6; 1907 c 161 § 1. Formerly RCW 79.01.396, 79.36.180.]

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

79.36.550 Right of way for irrigation, diking, and drainage purposes—Procedure to acquire. In order to obtain the benefits of the grant provided for in RCW 79.36.540, the irrigation district, irrigation company, association, individual, or the United States of America, constructing or proposing to construct such irrigation ditch or pipe line for irrigation, or the diking and drainage district or diking and drainage improvement district constructing or proposing to construct any dike or drainage ditch, shall file with the department a map accompanied by the field notes of the survey and location of the proposed irrigation ditch, pipe line, dike, or drainage ditch, and shall pay to the state as hereinafter provided, the amount of the appraised value of the said lands used for or included within such right of way. The land within said right of way shall be limited to an amount necessary for the construction of the irrigation ditch, pipe line, dike, or drainage ditch for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same. [2003 c 334 § 393; 1945 c 147 § 5; 1927 c 255 § 100; Rem. Supp. 1945 § 7797-100. Prior: 1917 c 148 § 7; 1907 c 161 § 2. Formerly RCW 79.01.400, 79.36.190.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.560 Right of way for irrigation, diking, and drainage purposes—Appraisal—Certificate. Upon the filing of the plat and field notes as provided in RCW 79.36.550, the lands included within the right of way applied for shall be appraised as in the case of an application to purchase such lands, at the full market value thereof. Upon full payment of the appraised value of the lands the department shall issue to

the applicant a certificate of right of way, and enter the same in the records in its office and thereafter any sale or lease by the state of the lands affected by such right of way shall be subject thereto. [2003 c 334 § 394; 1927 c 255 § 101; RRS § 7797-101. Prior: 1907 c 161 § 3. Formerly RCW 79.01.404, 79.36.200.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.570 Grant of overflow rights. The department shall have the power to grant to any person or corporation the right, privilege, and authority to perpetually back and hold water upon or over any state lands, and overflow such lands and inundate the same, whenever the department shall deem it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use, but no such rights shall be granted until the value of the lands to be overflowed and any damages to adjoining lands of the state, appraised as in the case of an application to purchase such lands, shall have been paid by the person or corporation seeking the grant, and if the construction or erection of any such water power plant, reservoir, or works for impounding water for the purposes heretofore specified, shall not be commenced and diligently prosecuted and completed within such time as the department may prescribe at the time of the grant, the same may be forfeited by the department by serving written notice of such forfeiture upon the person or corporation to whom the grant was made, but the department, for good cause shown to its satisfaction, may extend the time within which such work shall be completed. [2003 c 334 § 395; 1982 1st ex.s. c 21 § 174; 1927 c 255 § 102; RRS § 7797-102. Prior: 1915 c 147 §§ 10, 11; 1907 c 125 §§ 1, 2. Formerly RCW 79.01.408, 79.36.210.]

Intent—2003 c 334: See note following RCW 79.02.010.

Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21: See RCW 79.96.901 through 79.96.905.

Operating agencies: Chapter 43.52 RCW.

79.36.580 Construction of foregoing sections. The foregoing sections relating to the acquiring of rights of way and overflow rights through, over and across lands belonging to the state, shall not be construed as exclusive or as affecting the right of municipal and public service corporations to acquire lands belonging to or under control of the state, or rights of way or other rights thereover, by condemnation proceedings. [1927 c 255 § 103; RRS § 7797-103. Formerly RCW 79.01.412, 79.36.220.]

Railroad rights of way: Chapter 81.52 RCW.

79.36.590 Easement reserved in later grants. All state lands hereafter granted, sold or leased shall be subject to the right of the state, or any grantee or lessee or successor in interest thereof hereafter acquiring other state lands, or acquiring the timber, stone, mineral or other natural products thereon, or the manufactured products thereof to acquire the right of way over such lands so granted, for logging and/or lumbering railroads, private railroads, skid roads, flumes, canals, watercourses, or other easements for the purpose of and to be used in the transporting and moving of such timber, stone, mineral or other natural products thereon, and the man-

ufactured products thereof from such state land, and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products over and across the lands so granted or leased, upon the state or its grantee or successor in interest thereof, paying to the owner of the lands so granted, sold, or leased reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad seeking to condemn private property. [1927 c 312 § 1; RRS § 8107-1. Prior: 1911 c 109 § 1. Formerly RCW 79.36.230.]

Severability—1927 c 312: "If any section, subdivision, sentence or clause in this act shall be held invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional." [1927 c 312 § 8.] This applies to RCW 79.36.230 through 79.36.290.

Railroads, eminent domain: RCW 81.36.010 and 81.53.180.

Similar enactment: RCW 79.36.370.

79.36.600 Private easement over state lands. Every grant, deed, conveyance, lease or contract hereafter made to any person, firm or corporation over and across any state lands for the purpose of right of way for any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement to be used in the hauling of timber, stone, mineral or other natural products of the land and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products, shall be subject to the right of the state, or any grantee or successor in interest thereof, owning or hereafter acquiring from the state any timber, stone, mineral, or other natural products, or any state lands containing valuable timber, stone, mineral or other natural products of the land, of having such timber, stone, mineral or other natural products, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products transported or moved over such railroad, skid road, flume, canal, watercourse or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation or for the use of such railroad, skid road, flume, canal, watercourse or other easement, and upon complying with just, reasonable and proper rules affecting such transportation, which rates, rules and regulations shall be under the supervision and control of the utilities and transportation commission of the state of Washington. [1983 c 4 § 7; 1927 c 312 § 2; RRS § 8107-2. Prior: 1911 c 109 § 2. Formerly RCW 79.36.240.]

Similar enactment: RCW 79.36.380.

79.36.610 Easement over public lands subject to common user. Any person, firm or corporation hereafter acquiring the right of way or other easement over state lands or over any tide or shore lands belonging to the state, or over and across any navigable water or stream for the purpose of transporting or moving timber, stone, mineral, or other natural products of the lands, and the manufactured products thereof and engaged in such business thereon, shall accord to the state or any grantee or successor in interest thereof here-

after acquiring state lands containing valuable timber, stone, mineral or other natural products of the land, or any person, firm or corporation hereafter acquiring the timber, stone, mineral or other natural products situate upon state lands, or the manufactured products thereof proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such timber, stone, mineral and other natural products of the land, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products under reasonable rules and regulations upon payment of just and reasonable charges therefor, or, if such right of way or other easement is not then in use to have the right to use such right of way or easement for transporting and moving such products under such reasonable rules and regulations and upon payment of just and reasonable charges therefor. [1927 c 312 § 3; RRS § 8107-3. Prior: 1911 c 109 § 3. Formerly RCW 79.36.250.]

Similar enactment: RCW 79.36.390.

79.36.620 Reservations in grants and leases. Whenever any person, firm, or corporation shall hereafter purchase, lease, or acquire any state lands, or any easement or interest therein, or any timber, stone, mineral, or other natural products thereon, or the manufactured products thereof the purchase, lease, or grant shall be subject to the condition or reservation that such person, firm, or corporation, or their successors in interest, shall, whenever any of the timber, stone, mineral, or other natural products on said lands or the manufactured products thereof are removed, by any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement, owned, leased, or operated by such person, firm, or corporation, or their successors in interest, accord to any other person, firm, or corporation, or their successors in interest, having the right to remove any timber, stone, mineral, or other natural products or the manufactured products thereof from any other lands, owned or formerly owned by the state, proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such other timber, stone, mineral, and other natural products, and the manufactured products thereof and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products under reasonable rules and upon payment of just and reasonable charges therefor; and that any conveyance, lease, or mortgage of such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement, shall be subject to the right of the person, firm, or corporation, or their successors in interest, having the right to remove timber, stone, mineral, or other natural products or the manufactured products thereof from such other state lands, to be accorded such proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such other timber, stone, mineral, and other natural products and the manufactured products thereof and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products under reasonable rules and upon payment of just and reasonable charges therefor; and such purchase,

lease, or grant from the state shall also be subject to the condition or reservation that whenever any of the timber, stone, mineral, or other natural products on such lands or the manufactured products thereof are about to be removed, by means of any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement, not owned, controlled, or operated by the person, firm, or corporation owning or having the right to remove, and about to remove such timber, stone, mineral, or other natural products or the manufactured products thereof shall exact and require from the owners and operators of such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement, which shall be binding upon the successors in interest of such owners and operators, an agreement and promise, as a part of the contract for removal, and by virtue of RCW 79.36.590 through 79.36.650 there shall be deemed to be a part of any such express or implied contract for removal, an agreement, and promise that such owners and operators, and their successors in interest, shall accord to any person, firm, or corporation and their successors in interest, having the right to remove any timber, stone, mineral, or other natural products or the manufactured products thereof from any lands, owned, or formerly owned by the state, proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such timber, stone, mineral, and other natural products and the manufactured products thereof and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products and under reasonable rules and upon payment of just and reasonable charges therefor. [2003 c 334 § 495; 1927 c 312 § 4; RRS § 8107-4. Formerly RCW 79.36.260.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.630 Duty of utilities and transportation commission. Should the owner or operator of any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement operating over lands hereafter acquired from the state, as in RCW 79.36.590 through 79.36.650 set out, fail to agree with the state or with any subsequent grantee or successor in interest thereof as to the reasonable and proper rules and charges concerning the transportation of timber, stone, mineral, or other natural products of the land, or the manufactured products thereof and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products for carrying and transporting such products or for the use of the railroad, skid road, flume, canal, watercourse, or other easement in transporting such products, the state or such person, firm, or corporation owning and desiring to ship such products may apply to the utilities and transportation commission and have the reasonableness of the rules and charges inquired into and it shall be the duty of the utilities and transportation commission to inquire into the same in the same manner, and it is hereby given the same power and authority to investigate the same as it is now authorized to investigate and inquire into the rules and charges made by railroads and is authorized and empowered to make such order as it would make in an inquiry against a railroad, and in case such logging and/or lumbering railroad,

private railroad, skid road, flume, canal, watercourse, or other easement is not then in use, may adopt such reasonable, proper, and just rules concerning the use thereof for the purposes aforesaid as may be just and proper and such order shall have the same force and effect and shall be binding upon the parties to such hearing as though such hearing and order was made affecting a railroad. [2003 c 334 § 496; 1983 c 4 § 8; 1927 c 312 § 5; RRS § 8107-5. Prior: 1911 c 109 § 4. Formerly RCW 79.36.270.]

Intent—2003 c 334: See note following RCW 79.02.010.

Similar enactment: RCW 79.36.400.

79.36.640 Penalty for violating utilities and transportation commission's order. In case any person, firm, or corporation owning and/or operating any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement subject to the provisions of RCW 79.36.590 through 79.36.650 shall fail to comply with any rule or order made by the utilities and transportation commission, after an inquiry as provided for in RCW 79.36.630, each person, firm, or corporation shall be subject to a penalty not exceeding one thousand dollars, and in addition thereto, the right of way over state lands theretofore granted to such person, firm, or corporation, and all improvements and structures on such right of way and connected therewith, shall revert to the state of Washington, and may be recovered by it in an action instituted in any court of competent jurisdiction, unless such state lands have been sold. [2003 c 334 § 497; 1983 c 4 § 9; 1927 c 312 § 7; RRS § 8107-7. Prior: 1911 c 109 § 5. Formerly RCW 79.36.280.]

Intent—2003 c 334: See note following RCW 79.02.010.

Similar enactment: RCW 79.36.410.

79.36.650 Applications—Appraisal—Certificate—Forfeiture—Fee. Any person, firm, or corporation shall have a right of way over public lands, subject to the provisions of RCW 79.36.590 through 79.36.650, when necessary, for the purpose of hauling or removing timber, stone, mineral, or other natural products or the manufactured products thereof of the land. Before, however, any such right of way grant shall become effective, a written application for and a plat showing the location of such right of way, with reference to the adjoining lands, shall be filed with the department, and all timber on the right of way, together with the damages to the land, shall be appraised and paid for in cash by the person, firm, or corporation applying for such right of way. The department shall then cause to be issued in duplicate to such person, firm, or corporation a right of way certificate setting forth the conditions and terms upon which the right of way is granted. Whenever the right of way shall cease to be used, for a period of two years, for the purpose for which it was granted, it shall be deemed forfeited, and the right of way certificate shall contain such a provision. However, any right of way for logging purposes heretofore issued which has never been used, or has ceased to be used, for a period of two years, for the purpose of which it was granted, shall be deemed forfeited and shall be canceled upon the records of the department. One copy of each certificate shall be filed with the department and one copy delivered to the applicant. The forfeiture of the right of way, as herein pro-

vided, shall be rendered effective by the mailing of notice of such a forfeiture to the grantee thereof to his or her last known post office address and by stamping the copy of the certificate in the department canceled and the date of such cancellation. For the issuance of such a certificate the same fee shall be charged as provided in the case of certificates for railroad rights of way. [2003 c 334 § 498; 1988 c 128 § 65; 1927 c 312 § 6; RRS § 8107-6. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45. Formerly RCW 79.36.290.]

Intent—2003 c 334: See note following RCW 79.02.010.

Certificates for railroad rights of way: RCW 79.36.500.

Fees, generally: RCW 79.02.240.

Similar enactment: RCW 79.36.350 and 79.36.430.

Chapter 79.38 RCW ACCESS ROADS

Sections

79.38.010	Acquisition of property for access to public lands.
79.38.030	Use of roads by purchasers of valuable materials.
79.38.040	Permits for use of roads.
79.38.050	Access road revolving fund.
79.38.060	Use of moneys not deposited in revolving fund.
79.38.070	Department-county agreements for improvement of access roads.

79.38.010 Acquisition of property for access to public lands. In addition to any authority otherwise granted by law, the department shall have the authority to acquire lands, interests in lands, and other property for the purpose of affording access by road to public lands or state forest lands from any public highway. [2003 c 334 § 499; 1961 c 44 § 1.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.38.030 Use of roads by purchasers of valuable materials. Purchasers of valuable materials from public lands or state forest lands may use access roads or public roads for the removal of such materials where the rights acquired by the state will permit, but use shall be subject to the right of the department:

(1) To impose reasonable terms for the use, construction, reconstruction, maintenance, and repair of such access roads; and

(2) To impose reasonable charges for the use of such access roads or public roads which have been constructed or reconstructed through funding by the department. [2003 c 334 § 500; 1981 c 204 § 2; 1961 c 44 § 3.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.38.040 Permits for use of roads. Whenever the department finds that it is for the best interest of the state and where the rights acquired by the state will permit, the department may grant permits for the use of access roads to any person. Any permit issued under the authority of this section shall be subject to reasonable regulation by the department. Such regulation shall include, but is not limited to, the following matters:

(1) Requirements for construction, reconstruction, maintenance, and repair;

(2) Limitations as to extent and time of use;

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(3) Provision for revocation at the discretion of the department; and

(4) Charges for use. [2003 c 334 § 501; 1961 c 44 § 4.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.38.050 Access road revolving fund. The department shall create, maintain, and administer a revolving fund, to be known as the access road revolving fund in which shall be deposited all moneys received by it from users of access roads as payment for costs incurred or to be incurred in maintaining, repairing, and reconstructing access roads, or public roads used to provide access to public lands or state forest lands. The department may use moneys in the fund for the purposes for which they were obtained without appropriation by the legislature. [2003 c 334 § 502; 1981 c 204 § 3; 1961 c 44 § 5.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.38.060 Use of moneys not deposited in revolving fund. All moneys received by the department from users of access roads that are not deposited in the access road revolving fund shall be paid as follows:

(1) To reimburse the state fund or account from which expenditures have been made for the acquisition, construction, or improvement of the access road or public road, and upon full reimbursement, then

(2) To the funds or accounts for which the public lands and state forest lands, to which access is provided, are pledged by law or constitutional provision, in which case the department shall make an equitable apportionment between funds and accounts so that no fund or account shall benefit at the expense of another. [2003 c 334 § 503; 1981 c 204 § 4; 1961 c 44 § 6.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.38.070 Department-county agreements for improvement of access roads. The department may enter into agreements with the county to:

(1) Identify public roads used to provide access to state forest lands in need of improvement;

(2) Establish a time schedule for the improvements;

(3) Advance payments to the county to fund the road improvements. However, no more than fifty percent of the access road revolving fund shall be eligible for use as advance payments to counties. The department shall assess the fund on January 1st and July 1st of each year to determine the amount that may be used as advance payments to counties for road improvements; and

(4) Determine the equitable distribution, if any, of costs of such improvements between the county and the state through negotiation of terms and conditions of any resulting repayment to the fund or funds financing the improvements. [2003 c 334 § 224; 1981 c 204 § 5. Formerly RCW 76.12.180.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.40 RCW TRESPASS

Sections

79.40.070 Recodified as RCW 79.02.340.
79.40.080 Recodified as RCW 79.02.350.

79.40.070 Recodified as RCW 79.02.340. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.40.080 Recodified as RCW 79.02.350. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 79.44 RCW

ASSESSMENTS AND CHARGES AGAINST STATE LANDS

Sections

79.44.020 State to be charged its proportion of cost—Construction of chapter.
79.44.030 Apportioning cost on leaseholds.
79.44.060 Payment procedure—Lands not subject to lien, exception.
79.44.120 When assessments need not be added in certain cases.

79.44.020 State to be charged its proportion of cost—Construction of chapter. In all local improvement assessment districts in any assessing district in this state, property in such district, held or owned by the state shall be assessed and charged for its proportion of the cost of such local improvements in the same manner as other property in such district, it being the intention of this chapter that the state shall bear its just and equitable proportion of the cost of local improvements specially benefiting lands of the state. However, none of the provisions of this chapter shall have the effect, or be construed to have the effect, to alter or modify in any particular any existing lease of any lands or property owned by the state, or release or discharge any lessee of any such lands or property from any of the obligations, covenants, or conditions of the contract under which any such lands or property are leased or held by any such lessee. [2003 c 334 § 506; 1963 c 20 § 3; 1919 c 164 § 2; RRS § 8126. Cf. 1909 c 154 § 5.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.44.030 Apportioning cost on leaseholds. Where lands of the state are under lease, the proportionate amounts to be assessed against the leasehold interest, and the fee simple interest of the state, shall be fixed with reference to the life of the improvement and the period for which the lease has yet to run. [2003 c 334 § 507; 1919 c 164 § 3; RRS § 8127. Cf. 1909 c 154 § 3; 1907 c 74 § 3.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.44.060 Payment procedure—Lands not subject to lien, exception. When the chief administrative officer of an agency of state government is satisfied that an assessing district has complied with all the conditions precedent to the levy of assessments for district purposes, pursuant to this chapter against lands occupied, used, or under the jurisdiction of the officer's agency, he or she shall pay them, together with any interest thereon from any funds specifically appropriated to the agency therefor or from any funds of the agency which under existing law have been or are required to be expended to pay assessments on a current basis. In all other cases, the

chief administrative officer shall certify to the director of financial management that the assessment is one properly chargeable to the state. The director of financial management shall pay such assessments from funds available or appropriated for this purpose.

Except as provided in RCW 79.44.190 no lands of the state shall be subject to a lien for unpaid assessments, nor shall the interest of the state in any land be sold for unpaid assessments where assessment liens attached to the lands prior to state ownership. [2003 c 334 § 508; 1979 c 151 § 179; 1971 ex.s. c 116 § 2; 1963 c 20 § 6; 1947 c 205 § 1; Rem. Supp. 1947 § 8136a.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.44.120 When assessments need not be added in certain cases. Whenever any state school, granted, tide, or other public lands of the state shall have been charged with local improvement assessments under any local improvement assessment district in any incorporated city, town, irrigation, diking, drainage, port, weed, or pest district, or any other district now authorized by law to levy assessments against lands of the state, where such assessments are required under existing statutes to be returned to the fund of the state treasury from which the assessments were originally paid, the department may, and is hereby authorized, to sell such lands for their appraised valuation without regard to such assessments, anything to the contrary in the existing statutes notwithstanding. However, nothing in this section shall be construed to alter in any way any existing statute providing for the method of procedure in levying assessments against lands of the state in any of such local improvement assessment districts. [2003 c 334 § 509; 1937 c 80 § 1; RRS § 7797-192a.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.60 RCW

SUSTAINED YIELD COOPERATIVE AGREEMENTS

Sections

79.60.010 Recodified as RCW 79.10.400.
79.60.020 Recodified as RCW 79.10.410.
79.60.030 Recodified as RCW 79.10.420.
79.60.040 Recodified as RCW 79.10.430.
79.60.050 Recodified as RCW 79.10.440.
79.60.060 Recodified as RCW 79.10.450.
79.60.070 Recodified as RCW 79.10.460.
79.60.080 Recodified as RCW 79.10.470.
79.60.090 Recodified as RCW 79.10.480.

79.60.010 Recodified as RCW 79.10.400. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.60.020 Recodified as RCW 79.10.410. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.60.030 Recodified as RCW 79.10.420. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.60.040 Recodified as RCW 79.10.430. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.60.050 Recodified as RCW 79.10.440. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.60.060 Recodified as RCW 79.10.450. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.60.070 Recodified as RCW 79.10.460. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.60.080 Recodified as RCW 79.10.470. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.60.090 Recodified as RCW 79.10.480. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 79.64 RCW FUNDS FOR MANAGING AND ADMINISTERING LANDS

Sections

PART 1 STATE LANDS

- 79.64.010 Definitions.
- 79.64.020 Resource management cost account—Use.
- 79.64.030 Expenditures of certain funds in the resource management cost account to be for trust lands—Use for other lands—Repayment—Ordinary cost not deductible from sale proceeds—Accounting.
- 79.64.040 Deductions from proceeds of all transactions authorized—Limitations.
- 79.64.050 Deductions to be paid into resource management cost account.
- 79.64.090 Agricultural college trust management account—Creation.

PART 2 STATE FOREST LANDS

- 79.64.100 Forest development account.
- 79.64.110 Revenue distribution.
- 79.64.120 Retirement of interfund loans—Transfer of timber cutting rights on state forest lands acquired under RCW 79.22.010 to the federal land grant trusts—Distribution of revenue from timber management activities.

PART 1 STATE LANDS

79.64.010 Definitions. As used in this chapter, "rule" means rule as that term is defined by RCW 34.05.010. [2003 c 334 § 519; 1967 ex.s. c 63 § 1; 1961 c 178 § 1.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.64.020 Resource management cost account—Use. A resource management cost account in the state treasury is created to be used solely for the purpose of defraying the costs and expenses necessarily incurred by the department in managing and administering public lands and the making and administering of leases, sales, contracts, licenses, permits, easements, and rights of way as authorized under the provisions of this title. Appropriations from the resource management cost account to the department shall be expended for no other purposes. Funds in the resource management cost

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account may be appropriated or transferred by the legislature for the benefit of all of the trusts from which the funds were derived. [2003 c 334 § 520; 1993 c 460 § 1; 1985 c 57 § 80; 1981 c 4 § 2; 1961 c 178 § 2.]

Intent—2003 c 334: See note following RCW 79.02.010.

Effective date—1993 c 460: "This act shall take effect July 1, 1994." [1993 c 460 § 3.]

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

Severability—1981 c 4: See note following RCW 28A.515.320.

79.64.030 Expenditures of certain funds in the resource management cost account to be for trust lands—Use for other lands—Repayment—Ordinary cost not deductible from sale proceeds—Accounting. Funds in the resource management cost account from the moneys received from leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department and affecting school lands, university lands, scientific school lands, normal school lands, capitol building lands, or institutional lands shall be pooled and expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in managing and administering all of the trust lands enumerated in this section. Such funds may be used for similar costs and expenses in managing and administering other lands managed by the department provided that such expenditures that have been or may be made on such other lands shall be repaid to the resource management cost account together with interest at a rate determined by the board.

Costs and expenses necessarily incurred in managing and administering agricultural college lands shall not be deducted from proceeds received from the sale of such lands or from the sale of resources that are part of the lands. Costs and expenses incurred in managing and administering agricultural college trust lands shall be funded by appropriation under RCW 79.64.090.

An accounting shall be made annually of the accrued expenditures from the pooled trust funds in the account. In the event the accounting determines that expenditures have been made from moneys received from trust lands for the benefit of other lands, such expenditure shall be considered a debt and an encumbrance against the property benefitted, including state forest lands. The results of the accounting shall be reported to the legislature at the next regular session. The state treasurer is authorized, upon request of the department, to transfer funds between the forest development account and the resource management cost account solely for purpose of repaying loans pursuant to this section. [2003 c 334 § 521; 2001 c 250 § 15; 1999 c 279 § 1; 1993 c 460 § 2; 1988 c 70 § 4; 1977 ex.s. c 159 § 2; 1961 c 178 § 3.]

Intent—2003 c 334: See note following RCW 79.02.010.

Effective date—1999 c 279: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 c 279 § 4.]

Effective date—1993 c 460: See note following RCW 79.64.020.

Forest development account: RCW 79.64.100.

79.64.040 Deductions from proceeds of all transactions authorized—Limitations. The board shall determine the amount deemed necessary in order to achieve the purposes of this chapter and shall provide by rule for the deduc-

tion of this amount from the moneys received from all leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department and affecting public lands, provided that no deduction shall be made from the proceeds from agricultural college lands. Moneys received as deposits from successful bidders, advance payments, and security under RCW 79.15.100, 79.15.080, and 79.11.150 prior to December 1, 1981, which have not been subjected to deduction under this section are not subject to deduction under this section. The deductions authorized under this section shall in no event exceed twenty-five percent of the moneys received by the department in connection with any one transaction pertaining to public lands other than second class tide and shore lands and the beds of navigable waters, and fifty percent of the moneys received by the department pertaining to second class tide and shore lands and the beds of navigable waters.

In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys received subject to this section are the net proceeds from the contract harvesting sale. [2003 c 334 § 522; 2003 c 313 § 8; 2001 c 250 § 16; 1999 c 279 § 2; 1981 2nd ex.s. c 4 § 3; 1971 ex.s. c 224 § 2; 1967 ex.s. c 63 § 2; 1961 c 178 § 4.]

Reviser's note: This section was amended by 2003 c 313 § 8 and by 2003 c 334 § 522, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Effective date—1999 c 279: See note following RCW 79.64.030.

Deductions authorized relating to common school lands—Temporary discontinued deductions for common school construction fund—1983 1st ex.s. c 17: "(1) The deductions authorized in RCW 79.64.040 relating to common school lands may be increased by the board of natural resources to one hundred percent after temporary discontinued deductions result in a transfer to the common school construction fund in the amount of approximately fourteen million dollars or so much thereof as may be necessary to maintain a positive cash balance in the common school construction fund. The increased deductions shall continue until the additional amounts received from the increased rate equal the amounts of the deductions that were discontinued or transferred under subsection (2) of this section. Thereafter the deductions shall be as otherwise provided for in RCW 79.64.040.

(2) If the discontinued deductions will not result in a transfer of fourteen million dollars or so much thereof as may be necessary to maintain a positive balance in the common school construction fund in the biennium ending June 30, 1983, the state treasurer shall transfer the difference from the resource management cost account to the common school construction fund." [1983 1st ex.s. c 17 § 3.]

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

79.64.050 Deductions to be paid into resource management cost account. All deductions from moneys received made in accordance with RCW 79.64.040 shall be paid into the resource management cost account and the balance shall be paid into the state treasury to the credit of the fund otherwise entitled to the proceeds. [2003 c 334 § 523; 2001 c 250 § 17; 1961 c 178 § 5.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.64.090 Agricultural college trust management account—Creation. The agricultural college trust management account is created in the state treasury. To this account shall be deposited such funds as the legislature directs or

appropriates. Moneys in the agricultural college trust management account may be spent only after appropriation. Expenditures from this account may be used only for the costs of managing the assets of the agricultural school trust. [2003 c 334 § 524; 1999 c 279 § 3.]

Intent—2003 c 334: See note following RCW 79.02.010.

Effective date—1999 c 279: See note following RCW 79.64.030.

PART 2 STATE FOREST LANDS

79.64.100 Forest development account. There is created a forest development account in the state treasury. The state treasurer shall keep an account of all sums deposited therein and expended or withdrawn therefrom. Any sums placed in the forest development account shall be pledged for the purpose of paying interest and principal on the bonds issued by the department under RCW 79.22.080 and 79.22.090 and the provisions of this chapter, and for the purchase of land for growing timber. Any bonds issued shall constitute a first and prior claim and lien against the account for the payment of principal and interest. No sums for the above purposes shall be withdrawn or paid out of the account except upon approval of the department.

Appropriations may be made by the legislature from the forest development account to the department for the purpose of carrying on the activities of the department on state forest lands, lands managed on a sustained yield basis as provided for in RCW 79.10.320, and for reimbursement of expenditures that have been made or may be made from the resource management cost account in the management of state forest lands. [2003 c 334 § 219; 2000 2nd sp.s. c 1 § 915; 1999 sp.s. c 13 § 18; 1998 c 347 § 55; 1988 c 128 § 31; 1985 c 57 § 75; 1977 ex.s. c 159 § 1; 1959 c 314 § 1; 1951 c 149 § 1; 1933 c 118 § 2; 1923 c 154 § 6; RRS § 5812-6. Formerly RCW 76.12.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

Effective date—1998 c 347: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 3, 1998]." [1998 c 347 § 56.]

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

79.64.110 Revenue distribution. Any moneys derived from the lease of state forest lands or from the sale of valuable materials, oils, gases, coal, minerals, or fossils from those lands, must be distributed as follows:

(1) State forest lands acquired through RCW 79.22.040 or by exchange for lands acquired through RCW 79.22.040:

(a) The expense incurred by the state for administration, reforestation, and protection, not to exceed twenty-five percent, which rate of percentage shall be determined by the board, must be returned to the forest development account in the state general fund.

(b) Any balance remaining must be paid to the county in which the land is located to be paid, distributed, and prorated, except as otherwise provided in this section, to the various

funds in the same manner as general taxes are paid and distributed during the year of payment.

(c) Any balance remaining, paid to a county with a population of less than sixteen thousand, must first be applied to the reduction of any indebtedness existing in the current expense fund of the county during the year of payment.

(d) With regard to moneys remaining under this subsection (1), within seven working days of receipt of these moneys, the department shall certify to the state treasurer the amounts to be distributed to the counties. The state treasurer shall distribute funds to the counties four times per month, with no more than ten days between each payment date.

(2) State forest lands acquired through RCW 79.22.010 or by exchange for lands acquired through RCW 79.22.010, except as provided in RCW 79.64.120:

(a) Fifty percent shall be placed in the forest development account.

(b) Fifty percent shall be prorated and distributed to the state general fund, to be dedicated for the benefit of the public schools, and the county in which the land is located according to the relative proportions of tax levies of all taxing districts in the county. The portion to be distributed to the state general fund shall be based on the regular school levy rate under RCW 84.52.065 and the levy rate for any maintenance and operation special school levies. With regard to the portion to be distributed to the counties, the department shall certify to the state treasurer the amounts to be distributed within seven working days of receipt of the money. The state treasurer shall distribute funds to the counties four times per month, with no more than ten days between each payment date. The money distributed to the county must be paid, distributed, and prorated to the various other funds in the same manner as general taxes are paid and distributed during the year of payment. [2003 c 334 § 207.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.64.120 Retirement of interfund loans—Transfer of timber cutting rights on state forest lands acquired under RCW 79.22.010 to the federal land grant trusts—Distribution of revenue from timber management activities. (1) The department is authorized to:

(a) Determine the total present account balance with interest of the interfund loans made by the resource management cost account to the forest development account in accordance with generally accepted accounting principles;

(b) Subject to approval of the board, effectuate a transfer of timber cutting rights on state forest lands acquired under RCW 79.22.010 to the federal land grant trusts in such proportion that each trust receives full and fair market value for the interfund loans and is fully repaid or so much thereof as possible within distribution constraints described in subsection (2) of this section.

(2) After the effective date of the transfer authorized by subsection (1)(b) of this section and until the exercise of the cutting rights on the timber transferred has been fully satisfied, the distribution of revenue from timber management activities on state forest lands acquired under RCW 79.22.010 on which cutting rights have been transferred shall be as follows:

(a) As determined by the board, an amount no greater than thirty-three and three-tenths percent to be distributed to

the federal land grant trust accounts and resource management cost account as directed by RCW 79.64.040 and 79.64.050;

(b) As determined by the board, an amount not less than sixteen and seven-tenths percent to the forest development account;

(c) Fifty percent to be distributed as provided in RCW 79.64.110. [2003 c 334 § 463; 1988 c 70 § 3. Formerly RCW 79.12.035.]

Intent—2003 c 334: See note following RCW 79.02.010.

Purpose—1988 c 70 § 3: "The purpose of RCW 79.12.035 is to provide a means to retire interfund loans authorized by RCW 79.64.030 from the resource management cost account to the forest development account. The resource management cost account is an asset of the federal land grant trusts. Section 3 of this act is intended to authorize a process by which the interfund loans may be repaid such that the federal land grant trusts will receive full fair market value without disruption in income to counties and the state general fund from management activities on state forest lands managed pursuant to chapter 79.12 RCW." [1988 c 70 § 2.]

Chapter 79.66 RCW LAND BANK

Sections

79.66.010	Recodified as RCW 79.19.010.
79.66.020	Recodified as RCW 79.19.020.
79.66.030	Recodified as RCW 79.19.030.
79.66.040	Recodified as RCW 79.19.040.
79.66.050	Recodified as RCW 79.19.050.
79.66.060	Recodified as RCW 79.19.060.
79.66.070	Recodified as RCW 79.19.070.
79.66.080	Recodified as RCW 79.19.080.
79.66.090	Recodified as RCW 79.19.090.
79.66.100	Recodified as RCW 79.19.110.
79.66.900	Recodified as RCW 79.19.900.
79.66.901	Recodified as RCW 79.19.901.

79.66.010 Recodified as RCW 79.19.010. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.66.020 Recodified as RCW 79.19.020. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.66.030 Recodified as RCW 79.19.030. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.66.040 Recodified as RCW 79.19.040. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.66.050 Recodified as RCW 79.19.050. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.66.060 Recodified as RCW 79.19.060. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.66.070 Recodified as RCW 79.19.070. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.66.080 Recodified as RCW 79.19.080. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.66.090 Recodified as RCW 79.19.090. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.66.100 Recodified as RCW 79.19.110. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.66.900 Recodified as RCW 79.19.900. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.66.901 Recodified as RCW 79.19.901. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 79.68 RCW

MULTIPLE USE CONCEPT IN MANAGEMENT AND ADMINISTRATION OF STATE-OWNED LANDS

Sections

79.68.010	Recodified as RCW 79.10.100.
79.68.020	Recodified as RCW 79.10.110.
79.68.030	Recodified as RCW 79.10.310.
79.68.035	Recodified as RCW 79.10.300.
79.68.040	Recodified as RCW 79.10.320.
79.68.045	Recodified as RCW 79.10.330.
79.68.050	Recodified as RCW 79.10.120.
79.68.060	Recodified as RCW 79.10.210.
79.68.070	Recodified as RCW 79.10.130.
79.68.080	Recodified as RCW 79.90.456.
79.68.090	Recodified as RCW 79.10.200.
79.68.100	Recodified as RCW 79.10.220.
79.68.110	Recodified as RCW 79.10.060.
79.68.120	Recodified as RCW 79.10.280.
79.68.900	Recodified as RCW 79.10.240.
79.68.910	Recodified as RCW 79.10.250.

79.68.010 Recodified as RCW 79.10.100. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.68.020 Recodified as RCW 79.10.110. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.68.030 Recodified as RCW 79.10.310. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.68.035 Recodified as RCW 79.10.300. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.68.040 Recodified as RCW 79.10.320. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.68.045 Recodified as RCW 79.10.330. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.68.050 Recodified as RCW 79.10.120. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.68.060 Recodified as RCW 79.10.210. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.68.070 Recodified as RCW 79.10.130. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.68.080 Recodified as RCW 79.90.456. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.68.090 Recodified as RCW 79.10.200. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.68.100 Recodified as RCW 79.10.220. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.68.110 Recodified as RCW 79.10.060. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.68.120 Recodified as RCW 79.10.280. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.68.900 Recodified as RCW 79.10.240. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.68.910 Recodified as RCW 79.10.250. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 79.70 RCW

NATURAL AREA PRESERVES

Sections

79.70.020	Definitions.
79.70.030	Powers of department.
79.70.090	Dedication of property as natural area.

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

(1) "Department" means the department of natural resources.

(2) "Natural areas" and "natural area preserves" include such public or private areas of land or water which have retained their natural character, although not necessarily completely natural and undisturbed, or which are important

in preserving rare or vanishing flora, fauna, geological, natural historical or similar features of scientific or educational value and which are acquired or voluntarily registered or dedicated by the owner under this chapter.

(3) "Public lands" and "state lands" have the meaning set out in RCW 79.02.010.

(4) "Council" means the natural heritage advisory council as established in RCW 79.70.070.

(5) "Commissioner" means the commissioner of public lands.

(6) "Instrument of dedication" means any written document intended to convey an interest in real property pursuant to chapter 64.04 RCW.

(7) "Natural heritage resources" means the plant community types, aquatic types, unique geologic types, and special plant and animal species and their critical habitat as defined in the natural heritage plan established under RCW 79.70.030.

(8) "Plan" means the natural heritage plan as established under RCW 79.70.030.

(9) "Program" means the natural heritage program as established under RCW 79.70.030.

(10) "Register" means the Washington register of natural area preserves as established under RCW 79.70.030. [2003 c 334 § 548; 1981 c 189 § 1; 1972 ex.s. c 119 § 2.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.70.030 Powers of department. In order to set aside, preserve, and protect natural areas within the state, the department is authorized, in addition to any other powers, to:

(1) Establish the criteria for selection, acquisition, management, protection, and use of such natural areas, including:

(a) Limiting public access to natural area preserves consistent with the purposes of this chapter. Where appropriate, and on a case-by-case basis, a buffer zone with an increased low level of public access may be created around the environmentally sensitive areas;

(b) Developing a management plan for each designated natural area preserve. The plan must identify the significant resources to be conserved consistent with the purposes of this chapter and identify the areas with potential for low-impact public and environmental educational uses. The plan must specify the types of management activities and public uses that are permitted, consistent with the purposes of this chapter. The department must make the plans available for review and comment by the public, and state, tribal, and local agencies, prior to final approval;

(2) Cooperate or contract with any federal, state, or local governmental agency, private organizations, or individuals in carrying out the purpose of this chapter;

(3) Consistent with the plan, acquire by gift, devise, purchase, grant, dedication, or means other than eminent domain, the fee or any lesser right or interest in real property which shall be held and managed as a natural area;

(4) Acquire by gift, devise, grant, or donation any personal property to be used in the acquisition and/or management of natural areas;

(5) Inventory existing public, state, and private lands in cooperation with the council to assess possible natural areas to be preserved within the state;

(6) Maintain a natural heritage program to provide assistance in the selection and nomination of areas containing natural heritage resources for registration or dedication. The program shall maintain a classification of natural heritage resources, an inventory of their locations, and a data bank for such information. The department shall cooperate with the department of fish and wildlife in the selection and nomination of areas from the data bank that relate to critical wildlife habitats. Information from the data bank shall be made available to public and private agencies and individuals for environmental assessment and proprietary land management purposes. Usage of the classification, inventory, or data bank of natural heritage resources for any purpose inconsistent with the natural heritage program is not authorized;

(7) Prepare a natural heritage plan which shall govern the natural heritage program in the conduct of activities to create and manage a system of natural areas that includes natural resources conservation areas, and may include areas designated under the research natural area program on federal lands in the state;

(a) The plan shall list the natural heritage resources to be considered for registration and shall provide criteria for the selection and approval of natural areas under this chapter;

(b) The department shall provide opportunities for input, comment, and review to the public, other public agencies, and private groups with special interests in natural heritage resources during preparation of the plan;

(c) Upon approval by the council and adoption by the department, the plan shall be updated and submitted biennially to the appropriate committees of the legislature for their information and review. The plan shall take effect ninety days after the adjournment of the legislative session in which it is submitted unless the reviewing committees suggest changes or reject the plan; and

(8) Maintain a state register of natural areas containing significant natural heritage resources to be called the Washington register of natural area preserves. Selection of natural areas for registration shall be in accordance with criteria listed in the natural heritage plan and accomplished through voluntary agreement between the owner of the natural area and the department. No privately owned lands may be proposed to the council for registration without prior notice to the owner or registered without voluntary consent of the owner. No state or local governmental agency may require such consent as a condition of any permit or approval of or settlement of any civil or criminal proceeding or to penalize any landowner in any way for failure to give, or for withdrawal of, such consent.

(a) The department shall adopt rules as authorized by RCW 43.12.065 and 79.70.030(1) and chapter 34.05 RCW relating to voluntary natural area registration.

(b) After approval by the council, the department may place sites onto the register or remove sites from the register.

(c) The responsibility for management of registered natural area preserves shall be with the preserve owner. A voluntary management agreement may be developed between the department and the owners of the sites on the register.

(d) Any public agency may register lands under provisions of this chapter. [2003 c 334 § 549; 2002 c 284 § 1; 1994 c 264 § 61; 1988 c 36 § 54; 1981 c 189 § 3; 1972 ex.s. c 119 § 3.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.70.090 Dedication of property as natural area. (1)

The owner of a registered natural area, whether a private individual or an organization, may voluntarily agree to dedicate the area as a natural area by executing with the state an instrument of dedication in a form approved by the council. The instrument of dedication shall be effective upon its recording in the real property records of the appropriate county or counties in which the natural area is located. The county assessor in computing assessed valuation shall take into consideration any reductions in property values and/or highest and best use which result from natural area dedication.

(2) A public agency owning or managing a registered natural area preserve may dedicate lands under the provisions of this chapter.

(3) The department shall adopt rules as authorized by RCW 43.12.065 and 79.70.030(1) relating to voluntary natural area dedication and defining:

(a) The types of real property interests that may be transferred;

(b) Real property transfer methods and the types of consideration of payment possible;

(c) Additional dedication provisions, such as natural area management, custody, use, and rights and privileges retained by the owner; and

(d) Procedures for terminating dedication arrangements. [2003 c 334 § 550; 1981 c 189 § 6.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.73 RCW

MILWAUKEE ROAD CORRIDOR

Sections

79.73.010	Management and control. (<i>Contingent expiration date.</i>)
79.73.010	Management and control. (<i>Contingent effective date.</i>)
79.73.020	Recreational use—Permit—Rules—Fees.
79.73.030	Powers.
79.73.040	Leasing—Duties with respect to unleased portions.
79.73.050	Authority to terminate or modify leases—Notice.
79.73.060	Milwaukee Road corridor—Cross-state trail—Land transfers—Rail carrier franchise.

79.73.010 Management and control. (*Contingent expiration date.*) Except as provided in RCW 79A.05.120 and 79A.05.125, the portion of the Milwaukee Road corridor from the west end of the bridge structure over the Columbia river, which point is located in section 34, township 16 north, range 23 east, W.M., to the Idaho border purchased by the state shall be under the management and control of the department. [2003 c 334 § 455; 2000 c 11 § 23; 1996 c 129 § 8; 1989 c 129 § 2; 1984 c 174 § 6. Formerly RCW 79.08.275.]

Intent—2003 c 334: See note following RCW 79.02.010.

Contingent expiration date—1996 c 129 §§ 7, 8: See note following RCW 79A.05.315.

Intent—Effective date—Severability—1996 c 129: See notes following RCW 79A.05.115.

Construction—1989 c 129: See note following RCW 79A.05.315.

Purpose—1984 c 174: See note following RCW 79A.05.315.

79.73.010 Management and control. (*Contingent effective date.*) The portion of the Milwaukee Road corridor

from the west end of the bridge structure over the Columbia river, which point is located in section 34, township 16 north, range 23 east, W.M., to the Idaho border purchased by the state shall be under the management and control of the department. [2003 c 334 § 456; 1989 c 129 § 2; 1984 c 174 § 6. Formerly RCW 79.08.275.]

Intent—2003 c 334: See note following RCW 79.02.010.

Construction—1989 c 129: See note following RCW 79A.05.315.

Purpose—1984 c 174: See note following RCW 79A.05.315.

79.73.020 Recreational use—Permit—Rules—Fees.

The portion of the Milwaukee Road corridor under management and control of the department shall be open to individuals or organized groups that obtain permits from the department to travel the corridor for recreational purposes. The department shall, for the purpose of issuing permits for corridor use, adopt rules necessary for the orderly and safe use of the corridor and protection of adjoining landowners. Permit fees shall be established at a level that will cover costs of issuance. Upon request of abutting landowners, the department shall notify the landowners of permits issued for use of the corridor adjacent to their property. [2003 c 334 § 457; 1984 c 174 § 7. Formerly RCW 79.08.277.]

Intent—2003 c 334: See note following RCW 79.02.010.

Purpose—1984 c 174: See note following RCW 79A.05.315.

79.73.030 Powers. The department may do the following with respect to the portion of the Milwaukee Road corridor under its control:

(1) Enter into agreements to allow the realignment or modification of public roads, farm crossings, water conveyance facilities, and other utility crossings;

(2) Regulate activities and restrict uses, including, but not limited to, closing portions of the corridor to reduce fire danger or protect public safety in consultation with local legislative authorities or fire districts;

(3) Place hazard warning signs and close hazardous structures;

(4) Renegotiate deed restrictions upon agreement with affected parties; and

(5) Approve and process the sale or exchange of lands or easements if (a) such a sale or exchange will not adversely affect the recreational, transportation, or utility potential of the corridor and (b) the department has not entered into a lease of the property in accordance with RCW 79.73.040. [2003 c 334 § 458; 1984 c 174 § 8. Formerly RCW 79.08.279.]

Intent—2003 c 334: See note following RCW 79.02.010.

Purpose—1984 c 174: See note following RCW 79A.05.315.

79.73.040 Leasing—Duties with respect to unleased portions.

(1) The department shall offer to lease, and shall subsequently lease if a reasonable offer is made, portions of the Milwaukee Road corridor under its control to the person who owns or controls the adjoining land for periods of up to ten years commencing with June 7, 1984. The lessee shall assume the responsibility for fire protection, weed control, and maintenance of water conveyance facilities and culverts. The leases shall follow standard department leasing procedures, with the following exceptions:

(a) The lessee may restrict public access pursuant to RCW 79.73.020 and subsection (3) of this section.

(b) The right of renewal shall be to the current lessee if the lessee still owns or controls the adjoining lands.

(c) If two persons own or control opposite sides of the corridor, each person shall be eligible for equal portions of the available property.

(2) The department has the authority to renew leases in existence on June 7, 1984.

(3) The leases shall contain a provision allowing the department to issue permits to travel the corridor for recreational purposes.

(4) Unleased portions of the Milwaukee Road property under this section shall be managed by the department. On these unleased portions, the department solely shall be responsible for weed control, culvert, bridge, and other necessary maintenance and fire protection services. The department shall place hazard warning signs and close hazardous structures on unleased portions and shall regulate activities and restrict uses, including closing the corridor during seasons of high fire danger. [2003 c 334 § 459; 1984 c 174 § 9. Formerly RCW 79.08.281.]

Intent—2003 c 334: See note following RCW 79.02.010.

Purpose—1984 c 174: See note following RCW 79A.05.315.

79.73.050 Authority to terminate or modify leases—Notice. The state, through the department, shall reserve the right to terminate a lease entered into pursuant to RCW 79.73.040 or modify authorized uses of the corridor for future recreation, transportation, or utility uses. If the state elects to terminate the lease, the state shall provide the lessee with a minimum of six months' notice. [2003 c 334 § 460; 1984 c 174 § 10. Formerly RCW 79.08.283.]

Intent—2003 c 334: See note following RCW 79.02.010.

Purpose—1984 c 174: See note following RCW 79A.05.315.

79.73.060 Milwaukee Road corridor—Cross-state trail—Land transfers—Rail carrier franchise. See RCW 79A.05.115 through 79A.05.130.

Chapter 79.76 RCW

GEOTHERMAL RESOURCES

Sections

79.76.010	Recodified as RCW 78.60.010.
79.76.020	Recodified as RCW 78.60.020.
79.76.030	Recodified as RCW 78.60.030.
79.76.040	Recodified as RCW 78.60.040.
79.76.050	Recodified as RCW 78.60.050.
79.76.060	Recodified as RCW 78.60.060.
79.76.070	Recodified as RCW 78.60.070.
79.76.080	Recodified as RCW 78.60.080.
79.76.090	Recodified as RCW 78.60.090.
79.76.100	Recodified as RCW 78.60.100.
79.76.110	Recodified as RCW 78.60.110.
79.76.120	Recodified as RCW 78.60.120.
79.76.130	Recodified as RCW 78.60.130.
79.76.140	Recodified as RCW 78.60.140.
79.76.150	Recodified as RCW 78.60.150.
79.76.160	Recodified as RCW 78.60.160.
79.76.170	Recodified as RCW 78.60.170.
79.76.180	Recodified as RCW 78.60.180.
79.76.190	Recodified as RCW 78.60.190.
79.76.200	Recodified as RCW 78.60.200.
79.76.210	Recodified as RCW 78.60.210.
79.76.220	Recodified as RCW 78.60.220.
79.76.230	Recodified as RCW 78.60.230.

79.76.240	Recodified as RCW 78.60.240.
79.76.250	Recodified as RCW 78.60.250.
79.76.260	Recodified as RCW 78.60.260.
79.76.270	Recodified as RCW 78.60.270.
79.76.280	Recodified as RCW 78.60.280.
79.76.290	Recodified as RCW 78.60.290.
79.76.300	Recodified as RCW 78.60.300.
79.76.900	Recodified as RCW 78.60.900.

79.76.010 Recodified as RCW 78.60.010. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.020 Recodified as RCW 78.60.020. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.030 Recodified as RCW 78.60.030. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.040 Recodified as RCW 78.60.040. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.050 Recodified as RCW 78.60.050. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.060 Recodified as RCW 78.60.060. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.070 Recodified as RCW 78.60.070. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.080 Recodified as RCW 78.60.080. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.090 Recodified as RCW 78.60.090. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.100 Recodified as RCW 78.60.100. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.110 Recodified as RCW 78.60.110. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.120 Recodified as RCW 78.60.120. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.130 Recodified as RCW 78.60.130. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.140 Recodified as RCW 78.60.140. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.150 Recodified as RCW 78.60.150. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.160 Recodified as RCW 78.60.160. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.170 Recodified as RCW 78.60.170. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.180 Recodified as RCW 78.60.180. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.190 Recodified as RCW 78.60.190. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.200 Recodified as RCW 78.60.200. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.210 Recodified as RCW 78.60.210. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.220 Recodified as RCW 78.60.220. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.230 Recodified as RCW 78.60.230. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.240 Recodified as RCW 78.60.240. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.250 Recodified as RCW 78.60.250. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.260 Recodified as RCW 78.60.260. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.270 Recodified as RCW 78.60.270. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.280 Recodified as RCW 78.60.280. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.290 Recodified as RCW 78.60.290. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.300 Recodified as RCW 78.60.300. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.76.900 Recodified as RCW 78.60.900. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 79.81 RCW MARINE PLASTIC DEBRIS

Sections

79.81.010	Recodified as RCW 79.97.010.
79.81.020	Recodified as RCW 79.97.020.
79.81.030	Recodified as RCW 79.97.030.
79.81.040	Recodified as RCW 79.97.040.
79.81.050	Recodified as RCW 79.97.050.
79.81.060	Recodified as RCW 79.97.060.
79.81.900	Recodified as RCW 79.97.900.

79.81.010 Recodified as RCW 79.97.010. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.81.020 Recodified as RCW 79.97.020. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.81.030 Recodified as RCW 79.97.030. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.81.040 Recodified as RCW 79.97.040. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.81.050 Recodified as RCW 79.97.050. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.81.060 Recodified as RCW 79.97.060. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.81.900 Recodified as RCW 79.97.900. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 79.90 RCW AQUATIC LANDS—IN GENERAL

Sections

79.90.150	Material removed for channel or harbor improvement or flood control—Use for public purpose.
79.90.215	Highest responsible bidder—Determination.
79.90.245	Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account.
79.90.270	Sale procedure—Reservation in contract.

79.90.325	Contract for sale of rock, gravel, etc.—Royalties—Consideration of flood protection value.
79.90.330	Leases and permits for prospecting and contracts for mining valuable minerals and specific materials from aquatic lands.
79.90.340	Option contracts for prospecting and leases for mining and extraction of coal from aquatic lands.
79.90.380	Abstracts of state-owned aquatic lands.
79.90.400	Aquatic lands—Court review of actions.
79.90.456	Fostering use of aquatic environment—Limitation.
79.90.458	Exchange of bedlands—Cowlitz river.
79.90.480	Determination of annual rent rates for lease of aquatic lands for water-dependent uses—Marina leases.
79.90.580	Gifts of aquatic land—Procedures and criteria.

79.90.150 Material removed for channel or harbor improvement or flood control—Use for public purpose.

When gravel, rock, sand, silt or other material from any aquatic lands is removed by any public agency or under public contract for channel or harbor improvement, or flood control, use of such material may be authorized by the department of natural resources for a public purpose on land owned or leased by the state or any municipality, county, or public corporation: PROVIDED, That when no public land site is available for deposit of such material, its deposit on private land with the landowner's permission is authorized and may be designated by the department of natural resources to be for a public purpose. Prior to removal and use, the state agency, municipality, county, or public corporation contemplating or arranging such use shall first obtain written permission from the department of natural resources. No payment of royalty shall be required for such gravel, rock, sand, silt, or other material used for such public purpose, but a charge will be made if such material is subsequently sold or used for some other purpose: PROVIDED, That the department may authorize such public agency or private landowner to dispose of such material without charge when necessary to implement disposal of material. No charge shall be required for any use of the material obtained under the provisions of this chapter when used solely on an authorized site. No charge shall be required for any use of the material obtained under the provisions of this chapter if the material is used for public purposes by local governments. Public purposes include, but are not limited to, construction and maintenance of roads, dikes, and levies. Nothing in this section shall repeal or modify the provisions of RCW 77.55.100 or eliminate the necessity of obtaining a permit for such removal from other state or federal agencies as otherwise required by law. [2003 c 39 § 41; 1991 c 337 § 1; 1982 1st ex.s. c 21 § 21.]

79.90.215 Highest responsible bidder—Determination. (1) To determine the "highest responsible bidder" under RCW 79.90.210, the department of natural resources shall be entitled to consider, in addition to price, the following:

- The financial and technical ability of the bidder to perform the contract;
- Whether the bid contains material defects;
- Whether the bidder has previously or is currently complying with terms and conditions of any other contracts with the state or relevant contracts with entities other than the state;
- Whether the bidder was the "highest responsible bidder" for a sale within the previous five years but failed to complete the sale, such as by not entering into a resulting contract or by not paying the difference between the deposit

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and the total amount due. However, sales that were bid prior to January 1, 2003, may not be considered for the purposes of this subsection (1)(d);

(e) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" shall include a guilty plea, or unvacated forfeiture of bail;

(f) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and

(g) Whether the subcontractors of the bidder, if any, are responsible under this statute.

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW 79.90.240. [2003 c 28 § 1; 1990 c 163 § 2.]

79.90.245 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account. After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.92.110(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to such lands; and for volunteer cooperative fish and game projects.

In providing grants for aquatic lands enhancement projects, the department shall require grant recipients to incorporate the environmental benefits of the project into their grant applications, and the department shall utilize the statement of environmental benefits in its prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grants. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section.

During the fiscal biennium ending June 30, 2003, the funds may be appropriated for boating safety and shellfish management, enforcement, and enhancement. [2002 c 371 § 923; 2001 c 227 § 7; 1999 c 309 § 919; 1997 c 149 § 913; 1995 2nd sp.s. c 18 § 923; 1994 c 219 § 12; 1993 sp.s. c 24 § 927; 1987 c 350 § 1; 1985 c 57 § 79; 1984 c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9. Formerly RCW 79.24.580.]

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Severability—Effective date—1997 c 149: See notes following RCW 43.08.250.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Finding—1994 c 219: See note following RCW 43.88.030.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.165.070.

Effective date—1987 c 350: "This act shall take effect July 1, 1989." [1987 c 350 § 3.]

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

Severability—Effective date—1984 c 221: See RCW 79.90.901 and 79.90.902.

79.90.270 Sale procedure—Reservation in contract.

Each and every contract for the sale of (and each deed to) tidelands or shorelands belonging to the state, otherwise permitted under RCW 79.94.150 to be sold, shall contain the reservation contained in RCW 79.11.210. [2003 c 334 § 601; 1982 1st ex.s. c 21 § 33.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.90.325 Contract for sale of rock, gravel, etc.—Royalties—Consideration of flood protection value. Whenever, pursuant to RCW 79.15.300, the commissioner enters into a contract for the sale and removal of rock, gravel, sand, or silt out of a riverbed, the commissioner shall, when establishing a royalty, take into consideration flood protection value to the public that will arise as a result of such removal. [2003 c 334 § 602; 1984 c 212 § 10. Formerly RCW 79.01.135.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.90.330 Leases and permits for prospecting and contracts for mining valuable minerals and specific materials from aquatic lands. The department may issue permits and leases for prospecting, placer mining contracts, and contracts for the mining of valuable minerals and specific materials, except rock, gravel, sand, silt, coal, or hydrocarbons, upon and from any aquatic lands belonging to the state, or which have been sold and the minerals thereon reserved by the state in tracts not to exceed six hundred forty acres or an entire government-surveyed section. The procedures contained at RCW 79.14.300 through 79.14.450, inclusive, shall apply thereto. [2003 c 334 § 603; 1987 c 20 § 16; 1982 1st ex.s. c 21 § 39.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.90.340 Option contracts for prospecting and leases for mining and extraction of coal from aquatic lands. The department is authorized to execute option contracts for prospecting purposes and leases for the mining and extraction of coal from any aquatic lands owned by the state or from which it may hereafter acquire title, or from any aquatic lands sold or leased by the state the minerals of which have been reserved by the state. The procedures contained at RCW 79.14.470 through 79.14.580, inclusive, shall apply thereto. [2003 c 334 § 604; 1982 1st ex.s. c 21 § 40.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.90.380 Abstracts of state-owned aquatic lands. The department shall cause full and correct abstracts of all

aquatic lands, to be made and kept in the same manner as provided for in RCW 79.02.200. [2003 c 334 § 605; 1982 1st ex.s. c 21 § 44.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.90.400 Aquatic lands—Court review of actions.

Any applicant to purchase, or lease, any aquatic lands of the state, or any valuable materials thereon, and any person whose property rights or interest will be affected by such sale or lease, feeling himself or herself aggrieved by any order or decision of the board, or the commissioner, concerning the same, may appeal therefrom in the manner provided in RCW 79.02.030. [2003 c 334 § 606; 1982 1st ex.s. c 21 § 46.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.90.456 Fostering use of aquatic environment—Limitation. The department shall foster the commercial and recreational use of the aquatic environment for production of food, fibre, income, and public enjoyment from state-owned aquatic lands under its jurisdiction and from associated waters, and to this end the department may develop and improve production and harvesting of seaweeds and sealife attached to or growing on aquatic land or contained in aquaculture containers, but nothing in this section shall alter the responsibility of other state agencies for their normal management of fish, shellfish, game, and water. [2003 c 334 § 541; 1971 ex.s. c 234 § 8. Formerly RCW 79.68.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.90.458 Exchange of bedlands—Cowlitz river. (1) The department is authorized to exchange bedlands abandoned through rechanneling of the Cowlitz river near the confluence of the Columbia river so that the state obtains clear title to the Cowlitz river as it now exists or where it may exist in the future through the processes of erosion and accretion.

(2) The department is also authorized to exchange bedlands and enter into boundary line agreements to resolve any disputes that may arise over the location of state-owned lands now comprising the dike that was created in the 1920s.

(3) For purposes of chapter 150, Laws of 2001, "Cowlitz river near the confluence of the Columbia river" means those tidelands and bedlands of the Cowlitz river fronting and abutting sections 10, 11, and 14, township 7 north, range 2 west, Willamette Meridian and fronting and abutting the Huntington Donation Land Claim No. 47 and the Blakeny Donation Land Claim No. 43, township 7 north, range 2 west, Willamette Meridian.

(4) Nothing in chapter 150, Laws of 2001 shall be deemed to convey to the department the power of eminent domain. [2003 c 334 § 454; 2001 c 150 § 2. Formerly RCW 79.08.260.]

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—2001 c 150: "(1) The legislature finds that in the 1920s the Cowlitz river near the confluence of the Columbia river in Longview, Washington was diverted from its original course by dredging and construction of a dike. As a result, a portion of the original bed of the Cowlitz river became a nonnavigable body of shallow water. Another portion of the original bed of the Cowlitz river became part of a dike and is indistinguishable from existing islands. The main channel of the Cowlitz river was diverted over uplands to the south of the original bed and has continued as a navigable channel.

(2) The legislature finds that continued ownership of the nonnavigable

portion of the original bed of the Cowlitz river near the confluence of the Columbia river no longer serves the state's interest in navigation. Ownership of the existing navigable bed of the Cowlitz river would better serve the state's interest in navigation. It is also in the state's interest to resolve any disputes that have arisen because state-owned land is now indistinguishable from privately owned land within the dike." [2001 c 150 § 1.]

Severability—2001 c 150: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 150 § 3.]

79.90.480 Determination of annual rent rates for lease of aquatic lands for water-dependent uses—Marina leases. Except as otherwise provided by this chapter, annual rent rates for the lease of state-owned aquatic lands for water-dependent uses shall be determined as follows:

(1)(a) The assessed land value, exclusive of improvements, as determined by the county assessor, of the upland tax parcel used in conjunction with the leased area or, if there are no such uplands, of the nearest upland tax parcel used for water-dependent purposes divided by the parcel area equals the upland value.

(b) The upland value times the area of leased aquatic lands times thirty percent equals the aquatic land value.

(2) As of July 1, 1989, and each July 1 thereafter, the department shall determine the real capitalization rate to be applied to water-dependent aquatic land leases commencing or being adjusted under subsection (3)(a) of this section in that fiscal year. The real capitalization rate shall be the real rate of return, except that until June 30, 1989, the real capitalization rate shall be five percent and thereafter it shall not change by more than one percentage point in any one year or be more than seven percent or less than three percent.

(3) The annual rent shall be:

(a) Determined initially, and redetermined every four years or as otherwise provided in the lease, by multiplying the aquatic land value times the real capitalization rate; and

(b) Adjusted by the inflation rate each year in which the rent is not determined under subsection (3)(a) of this section.

(4) If the upland parcel used in conjunction with the leased area is not assessed or has an assessed value inconsistent with the purposes of the lease, the nearest comparable upland parcel used for similar purposes shall be substituted and the lease payment determined in the same manner as provided in this section.

(5) For the purposes of this section, "upland tax parcel" is a tax parcel, some portion of which has upland characteristics. Filled tidelands or shorelands with upland characteristics which abut state-owned aquatic land shall be considered as uplands in determining aquatic land values.

(6) The annual rent for filled state-owned aquatic lands that have the characteristics of uplands shall be determined in accordance with RCW 79.90.500 in those cases in which the state owns the fill and has a right to charge for the fill.

(7)(a) For leases for marina uses only, as of July 1, 2004, lease rates will be a percentage of the annual gross revenues generated by that marina. It is the intent of the legislature that additional legislation be enacted prior to July 1, 2004, to establish the percentage of gross revenues that will serve as the basis for a marina's rent and a definition of gross revenues. Annual rent must be recalculated each year based upon

the marina's gross revenues from the previous year, as reported to the department consistent with this subsection (7).

(b) By December 31, 2003, the department will develop a recommended formula for calculating marina rents consistent with this subsection (7) and report the recommendation to the legislature. The formula recommended by the department must include a percentage or a range of percentages of gross revenues, a system for implementing such percentages, and the designation of revenue sources to be considered for rent calculation purposes. The department must also ensure, given the available information, that the rent formula recommended by the department is initially calculated to maintain state proceeds from marina rents as of July 1, 2003, and that if the department does not receive income reporting forms representing at least ninety percent of the projected annual marina revenue and at least seventy-five percent of all marinas, the current model for calculating marina rents, as described in subsections (1) through (6) of this section, will continue to be the method used to calculate marina rents, and the income method, as described in (a) of this subsection, will not be applied. In addition to the percent of marina income, the department shall determine its direct administrative costs (cost of hours worked directly on applications and leases, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs) to calculate, audit, execute, and monitor marina leases, and shall recover these costs from lessees. All administrative costs recovered by the department must be deposited into the resource management cost account created in RCW 79.64.020. Prior to making recommendations to the legislature, a work session consisting of the department, marina owners, and stakeholders must be convened to discuss the rate-setting criteria. The legislature directs the department to deliver recommendations to the legislature by December 2003, including any minority reports by the participating parties.

(c) When developing its recommendation for a marina lease formula consistent with this subsection (7), the department shall ensure that the percentage of revenue established is applied to the income of the direct lessee, as well as to the income of any person or entity that subleases, or contracts to operate the marina, with the direct lessee, less the amount paid by the sublease to the direct lessee.

(d) All marina operators under lease with the department must return to the department an income reporting form, provided by the department, and certified by a licensed certified public accountant, before July 1, 2003, and again annually on a date set by the department. On the income reporting form, the department may require a marina to disclose to the department any information about income from all marina-related sources, excluding restaurants and bars. All income reports submitted to the department are subject to either audit or verification, or both, by the department, and the department may inspect all of the lessee's books, records, and documents, including state and federal income tax returns relating to the operation of the marina and leased aquatic lands at all reasonable times. If the lessee fails to submit the required income reporting form once the new method for calculating marina rents is effective, the department may conduct an audit at the lessee's expense or cancel the lease.

(e) Initially, the marina rent formula developed by the department pursuant to (b) of this subsection will be applied

to each marina on its anniversary date, beginning on July 1, 2004, and will be based on that marina's 2003 income information. Thereafter, rents will be recalculated each year, based on the marina's gross revenue from the previous year.

(f) No marina lease may be for less than five hundred dollars plus direct administrative costs.

(8) For all new leases for other water-dependent uses, issued after December 31, 1997, the initial annual water-dependent rent shall be determined by the methods in subsections (1) through (6) of this section. [2003 c 310 § 1; 1998 c 185 § 2; 1984 c 221 § 7.]

Effective date—2003 c 310: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2003]." [2003 c 310 § 2.]

Findings—Report—1998 c 185: "(1) The legislature finds that the current method for determining water-dependent rental rates for aquatic land leases may not be achieving the management goals in RCW 79.90.455. The current method for setting rental rates, as well as alternatives to the current methods, should be evaluated in light of achieving management goals for aquatic lands leases. The legislature further finds that there should be no further increases in water-dependent rental rates for marina leases before the completion of this evaluation.

(2) The department of natural resources shall study and prepare a report to the legislature on alternatives to the current method for determination of water-dependent rent set forth in RCW 79.90.480. The report shall be prepared with the assistance of appropriate outside economic expertise and stakeholder involvement. Affected stakeholders shall participate with the department by providing information necessary to complete this study. For each alternative, the report shall:

- (a) Describe each method and the costs and benefits of each;
- (b) Compare each with the current method of calculating rents;
- (c) Provide the private industry perspective;
- (d) Describe the public perspective;
- (e) Analyze the impact on state lease revenue;
- (f) Evaluate the impacts of water-dependent rates on economic development in economically distressed counties; and
- (g) Evaluate the ease of administration.

(3) The report shall be presented to the legislature by November 1, 1998, with the recommendations of the department clearly identified. The department's recommendations shall include draft legislation as necessary for implementation of its recommendations." [1998 c 185 § 1.]

79.90.580 Gifts of aquatic land—Procedures and criteria. (1) The department is authorized to accept gifts of aquatic land within the state, including tidelands, shorelands, harbor areas, and the beds of navigable waters, which shall become part of the state-owned aquatic land base. Consistent with RCW 79.90.455, the department must develop procedures and criteria that state the manner in which gifts of aquatic land, received after July 27, 2003, may occur. No gift of aquatic land may be accepted until: (a) An appraisal of the value of the land has been prepared; (b) an environmental site assessment has been conducted; and (c) the title property report has been examined and approved by the attorney general of the state. The results of the appraisal, the site assessment, and the examination of the title property report must be submitted to the board of natural resources before the department may accept a gift of aquatic land.

(2) The authorization to accept gifts of aquatic land within the state extends to aquatic land accepted as gifts prior to July 27, 2003. [2003 c 176 § 1.]

Chapter 79.91 RCW

AQUATIC LANDS—EASEMENTS AND RIGHTS OF WAY

Sections

79.91.010	Certain aquatic lands subject to easements for removal of valuable materials.
79.91.030	Certain state and aquatic lands subject to easements for removal of valuable materials—Reasonable facilities and service for transporting must be furnished.
79.91.040	Certain state and aquatic lands subject to easements for removal of valuable materials—Duty of utilities and transportation commission.
79.91.050	Certain state and aquatic lands subject to easements for removal of valuable materials—Penalty for violation of orders.
79.91.060	Certain state and aquatic lands subject to easements for removal of valuable materials—Application for right of way.
79.91.080	United States of America, state agency, county, or city right of way for roads and streets over, and wharves over and upon aquatic lands.
79.91.190	Grant of overflow rights.
79.91.210	Grant of such easements and rights of way as applicant may acquire in private lands by eminent domain.

79.91.010 Certain aquatic lands subject to easements for removal of valuable materials. All tide and shore lands originally belonging to the state, and which were granted, sold, or leased at any time after June 15, 1911, and which contain any valuable materials or are contiguous to or in proximity of state lands or other tide or shore lands which contain any valuable materials, shall be subject to the right of the state or any grantee or lessee thereof who has acquired such other lands, or any valuable materials thereon, after June 15, 1911, to acquire the right of way over such lands so granted, sold, or leased, for private railroads, skid roads, flumes, canals, watercourses, or other easements for the purpose of, and to be used in, transporting and moving such valuable materials from such other lands, over and across the lands so granted or leased in accordance with the provisions of RCW 79.36.370. [2003 c 334 § 607; 1982 1st ex.s. c 21 § 48.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.91.030 Certain state and aquatic lands subject to easements for removal of valuable materials—Reasonable facilities and service for transporting must be furnished. Any person having acquired a right of way or easement as provided in RCW 79.91.010 and 79.91.020 over any tidelands or shorelands belonging to the state or over or across beds of any navigable water or stream for the purpose of transporting or moving valuable materials and being engaged in such business, or any grantee or lessee thereof acquiring after June 15, 1911, state lands or tide or shore lands containing valuable materials, where said land is contiguous to or in proximity of such right of way or easement, shall accord to the state or any person acquiring after June 15, 1911, valuable materials upon any such lands, proper and reasonable facilities and service for transporting and moving such valuable materials under reasonable rules and upon payment of just and reasonable charges thereof in accordance with the provisions of RCW 79.36.390. [2003 c 334 § 608; 1982 1st ex.s. c 21 § 50.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.91.040 Certain state and aquatic lands subject to easements for removal of valuable materials—Duty of utilities and transportation commission. Should the owner or operator of any private railroad, skid road, flume, canal, watercourse, or other right of way or easement provided for in RCW 79.91.020 and 79.91.030 fail to agree with the state or any grantee or lessee thereof, as to the reasonable and proper rules and charges, concerning the transportation and movement of valuable materials from those lands contiguous to or in proximity to the lands over which such private right of way or easement is operated, the state or any grantee or lessee thereof, owning and desiring to have such valuable materials transported or moved, may apply to the Washington state utilities and transportation commission for an inquiry into the reasonableness of the rules, investigate the same, and make such binding reasonable, proper, and just rates and regulations in accordance with the provisions of RCW 79.36.400. [2003 c 334 § 609; 1982 1st ex.s. c 21 § 51.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.91.050 Certain state and aquatic lands subject to easements for removal of valuable materials—Penalty for violation of orders. Any person owning or operating any right of way or easement subject to the provisions of RCW 79.91.020 through 79.91.040, over and across any tidelands or shorelands belonging to the state or across any beds of navigable waters, and violating or failing to comply with any rule or order made by the utilities and transportation commission, after inquiry, investigation, and a hearing as provided in RCW 79.91.040, shall be subject to the same penalties provided in RCW 79.36.410. [2003 c 334 § 610; 1982 1st ex.s. c 21 § 52.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.91.060 Certain state and aquatic lands subject to easements for removal of valuable materials—Application for right of way. Any person engaged in the business of logging or lumbering, quarrying, mining, or removing sand, gravel, or other valuable materials from land, and desirous of obtaining a right of way or easement provided for in RCW 79.91.010 through 79.91.030 over and across any tide or shore lands belonging to the state, or beds of navigable waters or any such lands sold or leased by the state since June 15, 1911, shall file with the department upon a form to be furnished for that purpose, a written application for such right of way in accordance with the provisions of RCW 79.36.350. [2003 c 334 § 611; 1982 1st ex.s. c 21 § 53.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.91.080 United States of America, state agency, county, or city right of way for roads and streets over, and wharves over and upon aquatic lands. Any county or city or the United States of America or any state agency desiring to locate, establish, and construct a road or street over and across any aquatic lands, or wharf over any tide or shore lands, belonging to the state, shall by resolution of the legislative body of such county, or city council or other governing body of such city, or proper agency of the United States of America or state agency, cause to be filed with the depart-

ment a petition for a right of way for such road or street or wharf in accordance with the provisions of RCW 79.36.440.

The department may grant the petition if it deems it in the best interest of the state and upon payment for such right of way and any damages to the affected aquatic lands. [2003 c 334 § 612; 1982 1st ex.s. c 21 § 55.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.91.190 Grant of overflow rights. The department shall have the power and authority to grant to any person, the right, privilege, and authority to perpetually back and hold water upon or over any state-owned tidelands or shorelands, and to overflow and inundate the same, whenever the department shall deem it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use in accordance with the provisions of RCW 79.36.570. [2003 c 334 § 613; 1982 1st ex.s. c 21 § 66.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.91.210 Grant of such easements and rights of way as applicant may acquire in private lands by eminent domain. The department may grant to any person such easements and rights in tidelands and shorelands and oyster reserves owned by the state as the applicant may acquire in privately or publicly owned lands through proceedings in eminent domain in accordance with the provisions of RCW 79.36.355. [2003 c 334 § 614; 1982 1st ex.s. c 21 § 68.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.94 RCW AQUATIC LANDS—TIDELANDS AND SHORELANDS

Sections

79.94.175	Grant of lands for city park or playground purposes.
79.94.181	Exchange of lands to secure city parks and playgrounds.
79.94.185	Director of ecology to assist city parks.
79.94.390	Certain tidelands reserved for recreational use and taking of fish and shellfish.
79.94.450	United States Navy base—Exchange of property—Procedure.

79.94.175 Grant of lands for city park or playground purposes. Whenever application is made to the department by any incorporated city or town or metropolitan park district for the use of any state owned tide or shore lands within the corporate limits of said city or town or metropolitan park district for municipal park and/or playground purposes, the department shall cause such application to be entered in the records of its office, and shall then forward the same to the governor, who shall appoint a committee of five representative citizens of the city or town, in addition to the commissioner and the director of ecology, both of whom shall be ex officio members of the committee, to investigate the lands and determine whether they are suitable and needed for such purposes; and, if they so find, the commissioner shall certify to the governor that the property shall be deeded, when in accordance with RCW 79.94.150 and 79.94.160, to the city or town or metropolitan park district and the governor shall then execute a deed in the name of the state of Washington, attested by the secretary of state, conveying the use of such

lands to the city or town or metropolitan park district for said purposes for so long as it shall continue to hold, use, and maintain the lands for such purposes. [2003 c 334 § 447; 1988 c 127 § 33; 1939 c 157 § 1; RRS § 7993-1. Formerly RCW 79.08.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.94.181 Exchange of lands to secure city parks and playgrounds. In the event there are no state-owned tide or shore lands in any such city or town or metropolitan park district suitable for the purposes of RCW 79.94.175 and the committee finds other lands therein which are suitable and needed therefor, the department is hereby authorized to secure the same by exchanging state-owned tide or shore lands in the same county of equal value therefor, and the use of the lands so secured shall be conveyed to any such city or town or metropolitan park district as provided for in RCW 79.94.175. In all such exchanges the department is hereby authorized and directed, with the assistance of the attorney general, to execute such agreements, writings, relinquishments, and deeds as are necessary or proper for the purpose of carrying such exchanges into effect. Upland owners shall be notified of such state-owned tide or shore lands to be exchanged. [2003 c 334 § 448; 1939 c 157 § 2; RRS § 7993-2. Formerly RCW 79.08.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.94.185 Director of ecology to assist city parks. The director of ecology, in addition to serving as an ex officio member of any such committee, is hereby authorized and directed to assist any such city or town or metropolitan park district in the development and decoration of any lands so conveyed and to furnish trees, grass, flowers and shrubs therefor. [1988 c 127 § 34; 1939 c 157 § 3; RRS § 7993-3. Formerly RCW 79.08.100.]

79.94.390 Certain tidelands reserved for recreational use and taking of fish and shellfish. The following described tidelands, being public lands of the state, are withdrawn from sale or lease and reserved as public areas for recreational use and for the taking of fish and shellfish for personal use as defined in RCW 77.08.010:

Parcel No. 1. (Point Whitney) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to or abutting upon lots 3, 4, and 5, section 7, township 26 north, range 1 west, W.M., with a frontage of 72.45 lineal chains, more or less.

Excepting, however, those portions of the above described tidelands of the second class conveyed to the state of Washington, department of fish and wildlife through deed issued May 14, 1925, under application No. 8136, records of department of public lands.

Parcel No. 2. (Point Whitney) The tidelands of the second class lying below the line of mean low tide, owned by the state of Washington, situate in front of lot 1, section 6, township 26 north, range 1 west, W.M., with a frontage of 21.00 lineal chains, more or less; also

The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to or abutting upon lots 6 and 7, and that portion of lot 5, section 1, township 26

north, range 1 west, W.M., lying south of a line running due west from a point on the government meander line which is S 22° E 1.69 chains from an angle point in said meander line which is S 15° W 1.20 chains, more or less, from the point of intersection of the north line of said lot 5 and said meander line, with a frontage of 40.31 lineal chains, more or less.

Parcel No. 3. (Toandos Peninsula) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, and 3, section 5, lots 1, 2, and 3, section 4, and lot 1, section 3, all in township 25 north, range 1 west, W.M., with a frontage of 158.41 lineal chains, more or less.

Parcel No. 4. (Shine) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, 3 and that portion of lot 4 lying north of the south 8.35 chains thereof as measured along the government meander line, all in section 35, township 28 north, range 1 east, W.M., with a frontage of 76.70 lineal chains, more or less.

Subject to an easement for right of way for county road granted to Jefferson county December 8, 1941 under application No. 1731, records of department of public lands.

Parcel No. 5. (Lilliwaup) The tidelands of the second class, owned by the state of Washington, lying easterly of the east line of vacated state oyster reserve plat No. 133 produced southerly and situate in front of, adjacent to or abutting upon lot 9, section 30, lot 8, section 19 and lot 5 and the south 20 acres of lot 4, section 20, all in township 23 north, range 3 west, W.M., with a frontage of 62.46 lineal chains, more or less.

Subject to easements for rights of way for state road granted through the filing of state road plats No. 374 December 15, 1930, No. 661, March 29, 1949, and No. 666 August 25, 1949, records of department of public lands.

Parcel No. 6. (Nemah) Those portions of the tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 5, 6, and 7, section 3 and lots 1, 2, and 3, section 4, township 12 north, range 10 west, W.M., lots 1, 2, 3, and 4, section 34, section 27 and lots 1, 2, 3 and 4, section 28, township 13 north, range 10 west, W.M., lying easterly of the easterly line of the Nemah Oyster reserve and easterly of the easterly line of a tract of tidelands of the second class conveyed through deed issued July 28, 1938, pursuant to the provisions of chapter 24, Laws of 1895, under application No. 9731, with a frontage of 326.22 lineal chains, more or less.

Parcels No. 7 and 8. (Penn Cove) The unplatted tidelands of the first class, and tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1 and 2, section 33, lots 1, 2, 3, and 4, section 32, lots 2 and 3 and the B.P. Barstow D.L.C. No. 49, sections 30 and 31 and that portion of the R.H. Lansdale D.L.C. No. 54 in section 30, lying west of the east 3.00 chains thereof as measured along the government meander line, all in township 32 north, range 1 east, W.M., with a frontage of 260.34 lineal chains, more or less.

Excepting, however, the tidelands above the line of mean low tide in front of said lot 1, section 32 which were conveyed as tidelands of the second class through deed issued

December 29, 1908, application No. 4957, records of department of public lands.

Subject to an easement for right of way for transmission cable line granted to the United States of America Army Engineers June 7, 1943, under application No. 17511, records of department of public lands.

Parcel No. 9. (South of Penn Cove) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 2, 3 and 4, section 17 and lots 1, 2 and 3, section 20, township 31 north, range 2 east, W.M., with a frontage of 129.97 lineal chains, more or less.

Parcel No. 10. (Mud Bay—Lopez Island) The tidelands of the second class, owned by the state of Washington situate in front of, adjacent to, or abutting upon lots 5, 6 and 7, section 18, lot 5, section 7 and lots 3, 4, and 5, section 8, all in township 34 north, range 1 west, W.M., with a frontage of 172.11 lineal chains, more or less.

Excepting, however, any tideland of the second class in front of said lot 3, section 8 conveyed through deeds issued April 14, 1909, pursuant to the provisions of chapter 24, Laws of 1895, under application No. 4985, records of department of public lands.

Parcel No. 11. (Cattle Point) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lot 1, section 6, lots 1, 3, 4, 5, 6, 7, 8, 9, and 10, section 7, lots 1, 2, 3, 4, 5, 6 and 7, section 8 and lot 1, section 5, all in township 34 north, range 2 west, W.M., with a frontage of 463.88 lineal chains, more or less.

Excepting, however, any tidelands of the second class in front of said lot 10, section 7 conveyed through deed issued June 1, 1912, under application No. 6906, records of department of public lands.

Parcel No. 12. (Spencer Spit) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 3, and 4, section 7, and lot 5, section 18 all in township 35 north, range 1 west, W.M., with a frontage of 118.80 lineal chains, more or less. [2003 c 39 § 42; 1994 c 264 § 66; 1983 1st ex.s. c 46 § 181; 1982 1st ex.s. c 21 § 124.]

Tidelands—Upland owner use: "The state department of fisheries is authorized to permit designated portions of the following described tidelands to be used by the upland owners thereof for the purpose of building and maintaining docks: Tidelands of the second class owned by the state of Washington situated in front of, adjacent to, or abutting upon, the entire west side of lot 1, section 5, Township 34 North, Range 2 West, W.M., to the northernmost tip of said lot, and lots 2 and 3, section 8, Township 34 North, Range 2 West, W.M. (Cattle Point)." [1967 ex.s. c 128 § 1.]

79.94.450 United States Navy base—Exchange of property—Procedure. The department is authorized to deed, by exchanges of property, to the United States Navy those tidelands necessary to facilitate the location of the United States Navy base in Everett. In carrying out this authority, the department shall request that the governor execute the deed in the name of the state attested to by the secretary of state. The department will follow the requirements outlined in RCW 79.17.050 in making the exchange. The department must exchange the state's tidelands for lands of equal value, and the land received in the exchange must be suitable for natural preserves, recreational purposes, or have commercial value. The lands must not have been previously

used as a waste disposal site. Choice of the site must be made with the advice and approval of the board. [2003 c 334 § 615; 1987 c 271 § 4.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—1987 c 271: See note following RCW 79.95.050.

Chapter 79.96 RCW

AQUATIC LANDS—OYSTERS, GEODUCKS, SHELLFISH, AND OTHER AQUACULTURAL USES

Sections

79.96.080	Geoduck harvesting—Agreements, regulation.
79.96.200	Seaweed—Marine aquatic plants defined.
79.96.210	Seaweed—Personal use limit—Commercial harvesting prohibited—Exception—Import restriction.
79.96.220	Seaweed—Harvest and possession violations—Penalties and damages. (<i>Effective until July 1, 2004.</i>)
79.96.220	Seaweed—Harvest and possession violations—Penalties and damages. (<i>Effective July 1, 2004.</i>)
79.96.230	Seaweed—Enforcement.

79.96.080 Geoduck harvesting—Agreements, regulation. (1) Geoducks shall be sold as valuable materials under the provisions of chapter 79.90 RCW. After confirmation of the sale, the department of natural resources may enter into an agreement with the purchaser for the harvesting of geoducks. The department of natural resources may place terms and conditions in the harvesting agreements as the department deems necessary. The department of natural resources may enforce the provisions of any harvesting agreement by suspending or canceling the harvesting agreement or through any other means contained in the harvesting agreement. Any geoduck harvester may terminate a harvesting agreement entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the harvester, its agents, or its employees, prohibit harvesting, for a period exceeding thirty days during the term of the harvesting agreement, except as provided within the agreement. Upon such termination of the agreement by the harvester, the harvester shall be reimbursed by the department of natural resources for the cost paid to the department on the agreement, less the value of the harvest already accomplished by the harvester under the agreement.

(2) Harvesting agreements under this title for the purpose of harvesting geoducks shall require the harvester and the harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists or as hereafter amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.): PROVIDED, That for the purposes of this section and RCW 77.60.070 as now or hereafter amended, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the harvesting agreement: PROVIDED FURTHER, That for the purposes of this subsection if the harvester contracts with another person or entity for the harvesting of geoducks, the harvesting agreement shall not be suspended or canceled if the harvester terminates its business relationship with such entity until compliance with this subsection is

secured. [2003 c 39 § 43; 1990 c 163 § 4; 1982 1st ex.s. c 21 § 141.]

79.96.200 Seaweed—Marine aquatic plants defined.

Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Marine aquatic plants" means saltwater marine plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free-floating state. Marine aquatic plants include but are not limited to seaweed of the classes Chlorophyta, Phaeophyta, and Rhodophyta. [1993 c 283 § 2. Formerly RCW 79.01.800.]

Findings—1993 c 283: "The legislature finds that the plant resources of marine aquatic ecosystems have inherent value and provide essential habitat. These resources are also becoming increasingly valuable as economic commodities and may be declining. The legislature further finds that the regulation of harvest of these resources is currently inadequate to afford necessary protection." [1993 c 283 § 1.]

79.96.210 Seaweed—Personal use limit—Commercial harvesting prohibited—Exception—Import restriction.

(1) The maximum daily wet weight harvest or possession of seaweed for personal use from all aquatic lands as defined under RCW 79.90.010 and all privately owned tidelands is ten pounds per person. The department in cooperation with the department of fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

(2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from aquatic lands as defined under RCW 79.90.010, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.

(3) Upon mutual approval by the department and the department of fish and wildlife, seaweed species of the genus *Macrocystis* may be commercially harvested for use in the herring spawn-on-kelp fishery.

(4) Importation of seaweed species of the genus *Macrocystis* into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies of the department of fish and wildlife. *Macrocystis* shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with *Macrocystis*. The department shall incorporate this policy on *Macrocystis* importation into its overall fish and shellfish disease control policies. [2003 c 334 § 442; 1996 c 46 § 1; 1994 c 286 § 1; 1993 c 283 § 3. Formerly RCW 79.01.805.]

Intent—2003 c 334: See note following RCW 79.02.010.

Effective date—1994 c 286: "This act shall take effect July 1, 1994." [1994 c 286 § 6.]

Findings—1993 c 283: See note following RCW 79.01.800.

79.96.220 Seaweed—Harvest and possession violations—Penalties and damages. (Effective until July 1, 2004.)

It is unlawful to exceed the harvest and possession restrictions imposed under RCW 79.96.210. A violation of this section is a misdemeanor punishable in accordance with

RCW 9.92.030, and a violation taking place on aquatic lands is subject to the provisions of RCW 79.02.300. A person committing a violation of this section on private tidelands which he or she owns is liable to the state for treble the amount of damages to the seaweed resource, and a person trespassing on private tidelands and committing a violation of this section is liable to the private tideland owner for treble the amount of damages to the seaweed resource. Damages recoverable include, but are not limited to, damages for the market value of the seaweed, for injury to the aquatic ecosystem, and for the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs. [2003 c 334 § 443; 1994 c 286 § 2; 1993 c 283 § 4. Formerly RCW 79.01.810.]

Intent—2003 c 334: See note following RCW 79.02.010.

Effective date—1994 c 286: See note following RCW 79.01.805.

Findings—1993 c 283: See note following RCW 79.01.800.

79.96.220 Seaweed—Harvest and possession violations—Penalties and damages. (Effective July 1, 2004.)

(1) It is unlawful to exceed the harvest and possession restrictions imposed under RCW 79.96.210.

(2) A violation of this section is a misdemeanor, and a violation taking place on aquatic lands is subject to the provisions of RCW 79.02.300.

(3) A person committing a violation of this section on private tidelands which he or she owns is liable to the state for treble the amount of damages to the seaweed resource, and a person trespassing on private tidelands and committing a violation of this section is liable to the private tideland owner for treble the amount of damages to the seaweed resource. Damages recoverable include, but are not limited to, damages for the market value of the seaweed, for injury to the aquatic ecosystem, and for the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs. [2003 c 334 § 443; 2003 c 53 § 380; 1994 c 286 § 2; 1993 c 283 § 4. Formerly RCW 79.01.810.]

Reviser's note: This section was amended by 2003 c 53 § 380 and by 2003 c 334 § 443, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2003 c 334: See note following RCW 79.02.010.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—1994 c 286: See note following RCW 79.01.805.

Findings—1993 c 283: See note following RCW 79.01.800.

79.96.230 Seaweed—Enforcement. The department of fish and wildlife and law enforcement authorities may enforce the provisions of RCW 79.96.210 and 79.96.220. [2003 c 334 § 444; 1994 c 286 § 3; 1993 c 283 § 5. Formerly RCW 79.01.815.]

Intent—2003 c 334: See note following RCW 79.02.010.

Effective date—1994 c 286: See note following RCW 79.01.805.

Findings—1993 c 283: See note following RCW 79.01.800.

Chapter 79.97 RCW
MARINE PLASTIC DEBRIS

Sections

79.97.010	Intent.
79.97.020	Definitions.
79.97.030	Coordinating implementation—Rules.
79.97.040	Agreements with other entities.
79.97.050	Employees—Information clearinghouse contracts.
79.97.060	Grants, funds, or gifts.
79.97.900	Severability—1989 c 23.

79.97.010 Intent. The legislature finds that the public health and safety is threatened by an increase in the amount of plastic garbage being deposited in the waters and on the shores of the state. To address this growing problem, the commissioner of public lands appointed the marine plastic debris task force which presented a state action plan in October 1988. It is necessary for the state of Washington to implement the action plan in order to:

- (1) Cleanup and prevent further pollution of the state's waters and aquatic lands;
- (2) Increase public awareness;
- (3) Coordinate federal, state, local, and private efforts;
- (4) Foster the stewardship of the aquatic lands of the state. [1989 c 23 § 1. Formerly RCW 79.81.010.]

79.97.020 Definitions. As used in this chapter:

- (1) "Department" means the department of natural resources.
- (2) "Action plan" means the marine plastic debris action plan of October 1988 as presented to the commissioner of public lands by the marine plastic debris task force. [1989 c 23 § 2. Formerly RCW 79.81.020.]

79.97.030 Coordinating implementation—Rules. The department shall have the authority to coordinate implementation of the plan with appropriate state agencies including the parks and recreation commission and the departments of ecology and fish and wildlife. The department is authorized to promulgate, in consultation with affected agencies, the necessary rules to provide for the cleanup and to prevent pollution of the waters of the state and aquatic lands by plastic and other marine debris. [1994 c 264 § 65; 1989 c 23 § 3. Formerly RCW 79.81.030.]

79.97.040 Agreements with other entities. The department may enter into intergovernmental agreements with federal or state agencies and agreements with private parties deemed necessary by the department to carry out the provisions of this chapter. [1989 c 23 § 4. Formerly RCW 79.81.040.]

79.97.050 Employees—Information clearinghouse contracts. The department is the designated agency to coordinate implementation of the action plan and is authorized to hire such employees as are necessary to coordinate the plan among state and federal agencies, the private sector, and interested public groups and organizations. The department is authorized to contract, through an open bidding process, with interested parties to act as the information clearinghouse for

marine plastic debris related issues. [1989 c 23 § 5. Formerly RCW 79.81.050.]

79.97.060 Grants, funds, or gifts. The department is authorized to accept, receive, disburse, and administer grants or funds or gifts from any source including private individuals, public entities, and the federal government to supplement the funds hereby appropriated to carry out the purposes of this chapter. [1989 c 23 § 6. Formerly RCW 79.81.060.]

79.97.900 Severability—1989 c 23. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 23 § 7. Formerly RCW 79.81.900.]

Title 79A

PUBLIC RECREATIONAL LANDS

Chapters

- 79A.05 Parks and recreation commission.**
79A.15 Acquisition of habitat conservation and outdoor recreation lands.
79A.25 Interagency committee for outdoor recreation.
79A.60 Regulation of recreational vessels.

Chapter 79A.05 RCW

PARKS AND RECREATION COMMISSION

Sections

79A.05.070	Further powers—Director of parks and recreation—Salaries.
79A.05.165	Penalties. (<i>Effective July 1, 2004.</i>)
79A.05.380	Water trail recreation program—Created.
79A.05.385	Water trail recreation program—Powers and duties.
79A.05.400	Water trail recreation program—Permits.
79A.05.405	Repealed.
79A.05.410	Water trail recreation program—Rules.
79A.05.420	Repealed.
79A.05.425	Water trail recreation program—Disposition of funds.
79A.05.630	Sale, lease, and disposal of lands within the Seashore Conservation Area. (<i>Expires June 30, 2005.</i>)

79A.05.070 Further powers—Director of parks and recreation—Salaries. The commission may:

- (1) Make rules and regulations for the proper administration of its duties;
- (2) Accept any grants of funds made with or without a matching requirement by the United States, or any agency thereof, for purposes in keeping with the purposes of this chapter; accept gifts, bequests, devises and endowments for purposes in keeping with such purposes; enter into cooperative agreements with and provide for private nonprofit groups to use state park property and facilities to raise money to contribute gifts, grants, and support to the commission for the purposes of this chapter. The commission may assist the nonprofit group in a cooperative effort by providing necessary agency personnel and services, if available. However, none of the moneys raised may inure to the benefit of the nonprofit group, except in furtherance of its purposes to benefit the commission as provided in this chapter. The agency and the private nonprofit group shall agree on the nature of any project to be supported by such gift or grant prior to the use of any agency property or facilities for raising money. Any

such gifts may be in the form of recreational facilities developed or built in part or in whole for public use on agency property, provided that the facility is consistent with the purposes of the agency;

(3) Require certification by the commission of all parks and recreation workers employed in state aided or state controlled programs;

(4) Act jointly, when advisable, with the United States, any other state agencies, institutions, departments, boards, or commissions in order to carry out the objectives and responsibilities of this chapter;

(5) Grant franchises and easements for any legitimate purpose on parks or parkways, for such terms and subject to such conditions and considerations as the commission shall specify;

(6) Charge such fees for services, utilities, and use of facilities as the commission shall deem proper;

(7) Enter into agreements whereby individuals or companies may rent undeveloped parks or parkway land for grazing, agricultural, or mineral development purposes upon such terms and conditions as the commission shall deem proper, for a term not to exceed forty years;

(8) Determine the qualifications of and employ a director of parks and recreation who shall receive a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 and determine the qualifications and salary of and employ such other persons as may be needed to carry out the provisions hereof; and

(9) Without being limited to the powers hereinbefore enumerated, the commission shall have such other powers as in the judgment of a majority of its members are deemed necessary to effectuate the purposes of this chapter: PROVIDED, That the commission shall not have power to supervise directly any local park or recreation district, and no funds shall be made available for such purpose. [2003 c 186 § 1; 1999 c 249 § 307; 1995 c 211 § 3; 1993 c 156 § 1; 1987 c 225 § 3; 1980 c 89 § 2; 1969 c 99 § 1; 1965 c 8 § 43.51.060. Prior: 1961 c 307 § 12; 1955 c 391 § 3; 1947 c 271 § 5; RRS § 10768-4. Formerly RCW 43.51.060.]

Severability—1999 c 249: See note following RCW 79A.05.010.

Findings—Intent—1995 c 211: "The legislature finds that during the past fourteen years, the Washington state parks and recreation commission has endured a steady erosion of general fund operating support, which has caused park closures, staff reductions, and growing backlog of deferred maintenance projects. The legislature also finds that the growth of parks revenue has been constrained by staff limitations and by transfers of that revenue into the general fund.

The legislature intends to reverse the decline in operating support to its state parks, stabilize the system's level of general fund support, and inspire system employees and park visitors to enhance these irreplaceable resources and ensure their continuing availability to current and future state citizens and visitors. To achieve these goals, the legislature intends to dedicate park revenues to park operations, developing and renovating park facilities, undertaking deferred maintenance, and improving park stewardship. The legislature clearly intends that such revenues shall complement, not supplant, future general fund support." [1995 c 211 § 1.]

Effective date—1995 c 211: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 211 § 8.]

Severability—1995 c 211: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 211 § 9.]

Effective date—1969 c 99: "This 1969 amendatory act shall take effect July 1, 1969." [1969 c 99 § 12.]

79A.05.165 Penalties. (Effective July 1, 2004.) (1) Every person is guilty of a misdemeanor who:

(a) Cuts, breaks, injures, destroys, takes, or removes any tree, shrub, timber, plant, or natural object in any park or parkway except in accordance with such rules as the commission may prescribe; or

(b) Kills, or pursues with intent to kill, any bird or animal in any park or parkway; or

(c) Takes any fish from the waters of any park or parkway, except in conformity with such general rules as the commission may prescribe; or

(d) Willfully mutilates, injures, defaces, or destroys any guidepost, notice, tablet, fence, inclosure, or work for the protection or ornamentation of any park or parkway; or

(e) Lights any fire upon any park or parkway, except in such places as the commission has authorized, or willfully or carelessly permits any fire which he or she has lighted or which is under his or her charge, to spread or extend to or burn any of the shrubbery, trees, timber, ornaments, or improvements upon any park or parkway, or leaves any campfire which he or she has lighted or which has been left in his or her charge, unattended by a competent person, without extinguishing it; or

(f) Places within any park or parkway or affixes to any object therein contained, without a written license from the commission, any word, character, or device designed to advertise any business, profession, article, thing, exhibition, matter, or event.

(2)(a) Except as provided in (b) of this subsection, a person who violates any rule adopted, promulgated, or issued by the commission pursuant to the provisions of this chapter is guilty of a misdemeanor.

(b) The commission may specify by rule, when not inconsistent with applicable statutes, that violation of the rule is an infraction under chapter 7.84 RCW. [2003 c 53 § 382; 1997 c 214 § 1; 1987 c 380 § 15; 1965 c 8 § 43.51.180. Prior: 1921 c 149 § 8; RRS § 10948. Formerly RCW 43.51.180.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

79A.05.380 Water trail recreation program—Created. The legislature recognizes the increase in water-oriented recreation by users of human and wind-powered, beachable vessels such as kayaks, canoes, or day sailors on Washington's waters. These recreationists frequently require overnight camping facilities along the shores of public or private beaches. The legislature now creates a water trail recreation program, to be administered by the Washington state parks and recreation commission. The legislature recognizes that the effort to develop water trail sites is a continuing need and that the commission provides beneficial expertise and consultation to water trail user groups, agencies, and private landowners for the existing Cascadia marine trail and Willapa Bay water trail. [2003 c 338 § 1; 1993 c 182 § 1. Formerly RCW 43.51.440.]

79A.05.385 Water trail recreation program—Powers and duties. In addition to its other powers, duties, and functions, the commission may:

(1) Plan, construct, and maintain suitable facilities for water trail activities on lands administered or acquired by the commission or as authorized on lands administered by tribes or other public agencies or private landowners by agreement.

(2) Compile, publish, distribute, and charge a fee for maps or other forms of public information indicating areas and facilities suitable for water trail activities.

(3) Contract with a public agency, private entity, or person for the actual conduct of these duties.

(4) Work with individuals or organizations who wish to volunteer their time to support the water trail recreation program.

(5) Provide expertise and consultation to individuals, agencies, and organizations in the continued development of water trail sites in this state. [2003 c 338 § 2; 2003 c 126 § 601; 1993 c 182 § 2. Formerly RCW 43.51.442.]

Reviser's note: This section was amended by 2003 c 126 § 601 and by 2003 c 338 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings not law—2003 c 126: "Part headings used in this act are not any part of the law." [2003 c 126 § 1001.]

Effective date—2003 c 126: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 126 § 1003.]

79A.05.400 Water trail recreation program—Permits.

Reviser's note: RCW 79A.05.400 was amended by 2003 c 126 § 602 without reference to its repeal by 2003 c 338 § 5. It has been decodified for publication purposes under RCW 1.12.025.

79A.05.405 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79A.05.410 Water trail recreation program—Rules. The commission may adopt rules to administer the water trail program and facilities on areas owned or administered by the commission. Where water trail facilities administered by other public or private entities are incorporated into the water trail system, the rules adopted by those entities shall prevail. The commission is not responsible or liable for enforcement of these alternative rules. [2003 c 338 § 3; 2003 c 126 § 603; 1993 c 182 § 7. Formerly RCW 43.51.452.]

Part headings not law—Effective date—2003 c 126: See notes following RCW 79A.05.385.

79A.05.420 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79A.05.425 Water trail recreation program—Disposition of funds. Any unspent balance of funds in the water trail program account created in *RCW 79A.05.405 as of June 30, 2003, must be transferred to the state parks renewal and stewardship account created in RCW 79A.05.215. All receipts from sales of materials under RCW 79A.05.385 and all monetary civil penalties collected under RCW 79A.05.415 must be deposited in the state parks renewal and

stewardship account. Any gifts, grants, donations, or moneys from any source received by the commission for the water trail program must also be deposited in the state parks renewal and stewardship account. Funds transferred or deposited into the state parks renewal and stewardship account under this section must be used solely for water trail program purposes. [2003 c 338 § 4.]

***Reviser's note:** RCW 79A.05.405 was repealed by 2003 c 338 § 5.

79A.05.630 Sale, lease, and disposal of lands within the Seashore Conservation Area. (Expires June 30, 2005.)

(1) Lands within the Seashore Conservation Area shall not be sold, leased, or otherwise disposed of, except as provided in this section. The commission may, under authority granted in RCW 79A.05.175 and 79A.05.180, exchange state park lands in the Seashore Conservation Area for lands of equal value to be managed by the commission consistent with this chapter. Only state park lands lying east of the Seashore Conservation Line, as it is located at the time of exchange, may be so exchanged. The department of natural resources may lease the lands within the Washington State Seashore Conservation Area as well as the accreted lands along the ocean in state ownership for the exploration and production of oil and gas. However, oil drilling rigs and equipment will not be placed on the Seashore Conservation Area or state-owned accreted lands.

(2) Sale of sand from accretions shall be made to supply the needs of cranberry growers for cranberry bogs in the vicinity and shall not be prohibited if found by the commission to be reasonable, and not generally harmful or destructive to the character of the land. However, the commission may grant leases and permits for the removal of sands for construction purposes from any lands within the Seashore Conservation Area if found by the commission to be reasonable and not generally harmful or destructive to the character of the land. The net income from such leases shall be deposited in the state parks renewal and stewardship account.

(3) For the 2003-05 fiscal biennium, at the request of the city of Long Beach, the state parks and recreation commission shall convey to the city of Long Beach all commission-owned lands lying between 5th street southwest and 4th street northwest, and lying between 8th street northwest and 14th street northwest, all lying between the 1889 ordinary high tide line (also known as the western boundary of upland ownership) and the line of ordinary high tide of the Pacific ocean, and all lying within sections 8 and 17, township 10 north, range 11, west, W.M., Pacific county, Washington. The city of Long Beach must maintain these lands for city park purposes, including open space, parks, interpretive centers, or museums. The title, and any other documents necessary for the transfer of these lands, will include covenants ensuring that the city of Long Beach will maintain all conveyed land as a city park and that if the city of Long Beach breaches these covenants, ownership of all park lands conveyed under this subsection reverts to the state parks and recreation commission. [2003 1st sp.s. c 26 § 929; 2000 c 11 § 50; 1997 c 137 § 4; 1995 c 203 § 1; 1988 c 75 § 18; 1969 ex.s. c 55 § 6; 1967 c 120 § 8. Formerly RCW 43.51.685.]

Expiration date—Severability—Effective dates—2003 1st sp.s. c 26: See notes following RCW 43.135.045.

Effective date—1997 c 137: See note following RCW 79A.05.055.

Effective date—1995 c 203: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 1, 1995]." [1995 c 203 § 2.]

Effective date—1988 c 75: See note following RCW 79A.05.635.

Construction—1969 ex.s. c 55: See note following RCW 79A.05.605.

Chapter 79A.15 RCW

ACQUISITION OF HABITAT CONSERVATION AND OUTDOOR RECREATION LANDS

Sections

79A.15.050 Outdoor recreation account—Distribution and use of moneys.

79A.15.050 Outdoor recreation account—Distribution and use of moneys. (1) Moneys appropriated for this chapter to the outdoor recreation account shall be distributed in the following way:

(a) Not less than twenty-five percent to the state parks and recreation commission for the acquisition and development of state parks, with at least seventy-five percent of this money for acquisition costs. However, between July 27, 2003, and June 30, 2009, at least fifty percent of this money for the acquisition and development of state parks must be used for acquisition costs;

(b) Not less than twenty-five percent for the acquisition, development, and renovation of local parks, with at least fifty percent of this money for acquisition costs;

(c) Not less than fifteen percent for the acquisition and development of trails;

(d) Not less than ten percent for the acquisition and development of water access sites, with at least seventy-five percent of this money for acquisition costs; and

(e) The remaining amount shall be considered unallocated and shall be distributed by the committee to state and local agencies to fund high priority acquisition and development needs for parks, trails, and water access sites.

(2) In distributing these funds, the committee retains discretion to meet the most pressing needs for state and local parks, trails, and water access sites, and is not required to meet the percentages described in subsection (1) of this section in any one biennium.

(3) Only local agencies may apply for acquisition, development, or renovation funds for local parks under subsection (1)(b) of this section.

(4) State and local agencies may apply for funds for trails under subsection (1)(c) of this section.

(5) State and local agencies may apply for funds for water access sites under subsection (1)(d) of this section. [2003 c 184 § 1; 1999 c 379 § 941; 1999 c 379 § 920; 1990 1st ex.s. c 14 § 6. Formerly RCW 43.98A.050.]

Effective date—1999 c 379: See note following RCW 79A.15.040.

Chapter 79A.25 RCW

INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION

Sections

79A.25.070 Recreation resource account, motor vehicle fund—Transfers of moneys from marine fuel tax account.

79A.25.240 Grants and loan administration.

79A.25.800 Intent. (*Contingent expiration date.*)

79A.25.810 Repealed.

79A.25.820 Strategic plan—Funding eligibility—Regional coordination and cooperative efforts—Data collection and exchange. (*Contingent expiration date.*)

79A.25.070 Recreation resource account, motor vehicle fund—Transfers of moneys from marine fuel tax account. Upon expiration of the time limited by RCW 82.36.330 for claiming of refunds of tax on marine fuel, the state of Washington shall succeed to the right to such refunds. The director of licensing, after taking into account past and anticipated claims for refunds from and deposits to the marine fuel tax refund account and the costs of carrying out the provisions of RCW 79A.25.030, shall request the state treasurer to transfer monthly from the marine fuel tax refund account an amount equal to the proportion of the moneys in the account representing a motor vehicle fuel tax rate of: (1) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (2) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (3) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (4) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (5) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, to the recreation resource account and the remainder to the motor vehicle fund. [2003 c 361 § 409; 2000 c 11 § 73; 1995 c 166 § 4; 1990 c 42 § 116; 1979 c 158 § 111; 1965 c 5 § 7 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.070.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

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

79A.25.240 Grants and loan administration. The interagency committee for outdoor recreation shall provide necessary grants and loan administration support to the salmon recovery funding board as provided in RCW 77.85.120. The committee shall also be responsible for tracking salmon recovery expenditures under RCW 77.85.140. The committee shall provide all necessary administrative support to the board, and the board shall be located with the committee. The committee shall provide necessary information to the salmon recovery office. [2003 c 39 § 44; 2000 c 11 § 78; 1999 sp.s. c 13 § 17.]

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 75.46.005.

79A.25.800 Intent. (*Contingent expiration date.*) (1) The legislature recognizes that coordinated funding efforts are needed to maintain, develop, and improve the state's community outdoor athletic fields. Rapid population growth and increased urbanization have caused a decline in suitable outdoor fields for community athletic activities and has resulted in overcrowding and deterioration of existing surfaces. Lack of adequate community outdoor athletic fields directly affects the health and well-being of all citizens of the state, reduces the state's economic viability, and prevents Washington from maintaining and achieving the quality of life that it deserves. Therefore, it is the policy of the state and its agencies to maintain, develop, fund, and improve youth or community

athletic facilities, including but not limited to community outdoor athletic fields.

(2) In carrying out this policy, the legislature intends to promote the building of new community outdoor athletic fields, the upgrading of existing community outdoor athletic fields, and the maintenance of existing community outdoor athletic fields across the state of Washington. [2003 c 126 § 701; 2000 c 11 § 80; 1998 c 264 § 1. Formerly RCW 43.99.800.]

Contingent expiration date—2003 c 126 §§ 701 and 702: "Sections 701 and 702 of this act expire one year after *RCW 82.14.0494 expires." [2003 c 126 § 1002.]

***Reviser's note:** RCW 82.14.0494 has a contingent effective date. See RCW 82.14.0494(5).

Part headings not law—Effective date—2003 c 126: See notes following RCW 79A.05.385.

Severability—1998 c 264: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 264 § 5.]

Contingent expiration date—1998 c 264: "Sections 1 through 4 of this act expire one year after RCW 82.14.0494 expires." [1998 c 264 § 6.]

79A.25.810 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79A.25.820 Strategic plan—Funding eligibility—Regional coordination and cooperative efforts—Data collection and exchange. (*Contingent expiration date.*) Subject to available resources, the interagency committee for outdoor recreation may:

(1) Prepare and update a strategic plan for the development, maintenance, and improvement of community outdoor athletic fields in the state. In the preparation of such plan, the interagency committee for outdoor recreation may use available data from federal, state, and local agencies having community outdoor athletic responsibilities, user groups, private sector interests, and the general public. The plan may include, but is not limited to:

(a) An inventory of current community outdoor athletic fields;

(b) A forecast of demand for these fields;

(c) An identification and analysis of actual and potential funding sources; and

(d) Other information the interagency committee for outdoor recreation deems appropriate to carry out the purposes of RCW 79A.25.800 through 79A.25.830;

(2) Determine the eligibility requirements for cities, counties, and qualified nonprofit organizations to access funding from the youth athletic facility account created in RCW 43.99N.060(4);

(3) Encourage and provide opportunities for interagency and regional coordination and cooperative efforts between public agencies and between public entities and nonprofit organizations involved in the maintenance, development, and improvement of community outdoor athletic fields; and

(4) Create and maintain data, studies, research, and other information relating to community outdoor athletic fields in the state, and to encourage the exchange of this information. [2003 c 126 § 702; 2000 c 11 § 81; 1998 c 264 § 3. Formerly RCW 43.99.820.]

Contingent expiration date—2003 c 126 §§ 701 and 702: See note following RCW 79A.25.800.

Part headings not law—Effective date—2003 c 126: See notes following RCW 79A.05.385.

Severability—Contingent expiration date—1998 c 264: See notes following RCW 79A.25.800.

Chapter 79A.60 RCW

REGULATION OF RECREATIONAL VESSELS

Sections

79A.60.010 Definitions.

79A.60.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Boat wastes" includes, but is not limited to, sewage, garbage, marine debris, plastics, contaminated bilge water, cleaning solvents, paint scrapings, or discarded petroleum products associated with the use of vessels.

(2) "Boater" means any person on a vessel on waters of the state of Washington.

(3) "Carrying passengers for hire" means carrying passengers in a vessel on waters of the state for valuable consideration, whether given directly or indirectly or received by the owner, agent, operator, or other person having an interest in the vessel. This shall not include trips where expenses for food, transportation, or incidentals are shared by participants on an even basis. Anyone receiving compensation for skills or money for amortization of equipment and carrying passengers shall be considered to be carrying passengers for hire on waters of the state.

(4) "Commission" means the state parks and recreation commission.

(5) "Darkness" means that period between sunset and sunrise.

(6) "Environmentally sensitive area" means a restricted body of water where discharge of untreated sewage from boats is especially detrimental because of limited flushing, shallow water, commercial or recreational shellfish, swimming areas, diversity of species, the absence of other pollution sources, or other characteristics.

(7) "Guide" means any individual, including but not limited to subcontractors and independent contractors, engaged for compensation or other consideration by a whitewater river outfitter for the purpose of operating vessels. A person licensed under RCW 77.65.480 or 77.65.440 and acting as a fishing guide is not considered a guide for the purposes of this chapter.

(8) "Marina" means a facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

(9) "Motor driven boats and vessels" means all boats and vessels which are self propelled.

(10) "Muffler" or "muffler system" means a sound suppression device or system, including an underwater exhaust system, designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and that prevents excessive or unusual noise.

(11) "Operate" means to steer, direct, or otherwise have physical control of a vessel that is underway.

(12) "Operator" means an individual who steers, directs, or otherwise has physical control of a vessel that is underway or exercises actual authority to control the person at the helm.

(13) "Observer" means the individual riding in a vessel who is responsible for observing a water skier at all times.

(14) "Owner" means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

(15) "Person" means any individual, sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, or other legal entity located within or outside this state.

(16) "Personal flotation device" means a buoyancy device, life preserver, buoyant vest, ring buoy, or buoy cushion that is designed to float a person in the water and that is approved by the commission.

(17) "Personal watercraft" means a vessel of less than sixteen feet that uses a motor powering a water jet pump, as its primary source of motive power and that is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(18) "Polluted area" means a body of water used by boaters that is contaminated by boat wastes at unacceptable levels, based on applicable water quality and shellfish standards.

(19) "Public entities" means all elected or appointed bodies, including tribal governments, responsible for collecting and spending public funds.

(20) "Reckless" or "recklessly" means acting carelessly and heedlessly in a willful and wanton disregard of the rights, safety, or property of another.

(21) "Sewage pumpout or dump unit" means:

(a) A receiving chamber or tank designed to receive vessel sewage from a "porta-potty" or a portable container; and

(b) A stationary or portable mechanical device on land, a dock, pier, float, barge, vessel, or other location convenient to boaters, designed to remove sewage waste from holding tanks on vessels.

(22) "Underway" means that a vessel is not at anchor, or made fast to the shore, or aground.

(23) "Vessel" includes every description of watercraft on the water, other than a seaplane, used or capable of being used as a means of transportation on the water. However, it does not include inner tubes, air mattresses, sailboards, and small rafts or flotation devices or toys customarily used by swimmers.

(24) "Water skiing" means the physical act of being towed behind a vessel on, but not limited to, any skis, aquaplane, kneeboard, tube, or any other similar device.

(25) "Waters of the state" means any waters within the territorial limits of Washington state.

(26) "Whitewater river outfitter" means any person who is advertising to carry or carries passengers for hire on any whitewater river of the state, but does not include any person whose only service on a given trip is providing instruction in canoeing or kayaking skills.

(27) "Whitewater rivers of the state" means those rivers and streams, or parts thereof, within the boundaries of the

state as listed in RCW 79A.60.470 or as designated by the commission under RCW 79A.60.495. [2003 c 39 § 45; 2000 c 11 § 92; 1998 c 219 § 5; 1997 c 391 § 1; 1993 c 244 § 5; 1933 c 72 § 1; RRS § 9851-1. Formerly RCW 88.12.010.]

Intent—1993 c 244: "It is the intent of the legislature that the boating safety laws administered by the state parks and recreation commission provide Washington's citizens with clear and reasonable boating safety regulations and penalties. Therefore, the legislature intends to recodify, clarify, and partially decriminalize the statewide boating safety laws in order to help the boating community understand and comply with these laws.

It is also the intent of the legislature to increase boat registration fees in order to provide additional funds to local governments for boating safety enforcement and education programs. The funds are to be used for enforcement, education, training, and equipment, including vessel noise measurement equipment. The legislature encourages programs that provide boating safety education in the primary and secondary school system for boat users and potential future boat users. The legislature also encourages boating safety programs that use volunteer and private sector efforts to enhance boating safety and education." [1993 c 244 § 1.]

Title 80

PUBLIC UTILITIES

Chapters

80.01 Utilities and transportation commission.

80.04 Regulations—General.

80.24 Regulatory fees.

80.28 Gas, electrical, and water companies.

80.36 Telecommunications.

Chapter 80.01 RCW

UTILITIES AND TRANSPORTATION COMMISSION

Sections

80.01.080 Public service revolving fund.

80.01.080 Public service revolving fund. There is created in the state treasury a public service revolving fund. Regulatory fees payable by all types of public service companies shall be deposited to the credit of the public service revolving fund. Except for expenses payable out of the pipeline safety account, all expense of operation of the Washington utilities and transportation commission shall be payable out of the public service revolving fund.

During the 2003-2005 fiscal biennium, the legislature may transfer from the public service revolving fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2003 1st sp.s. c 25 § 940; 2002 c 371 § 924; 2001 c 238 § 8; 1961 c 14 § 80.01.080. Prior: 1949 c 117 § 11; Rem. Supp. 1949 § 10964-115-11. Formerly RCW 43.53.090.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

Chapter 80.04 RCW

REGULATIONS—GENERAL

Sections

80.04.130 Suspension of tariff change—Mandatory measured telecommunications service—Washington telephone assistance pro-

gram service—Effect of abandonment of electrical generation facility on which tax exemption for pollution control equipment is claimed.

80.04.130 Suspension of tariff change—Mandatory measured telecommunications service—Washington telephone assistance program service—Effect of abandonment of electrical generation facility on which tax exemption for pollution control equipment is claimed. (1)

Except as provided in subsection (2) of this section, whenever any public service company shall file with the commission any schedule, classification, rule, or regulation, the effect of which is to change any rate, charge, rental, or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof. Pending such hearing and the decision thereon, the commission may suspend the operation of such rate, charge, rental, or toll for a period not exceeding ten months from the time the same would otherwise go into effect. After a full hearing, the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective.

(2)(a) The commission shall not suspend a tariff that makes a decrease in a rate, charge, rental, or toll filed by a telecommunications company pending investigation of the fairness, justness, and reasonableness of the decrease when the filing does not contain any offsetting increase to another rate, charge, rental, or toll and the filing company agrees to not file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year.

(i) The filing company shall file with any decrease sufficient information as the commission by rule may require to demonstrate the decreased rate, charge, rental, or toll is above the long run incremental cost of the service. A tariff decrease that results in a rate that is below long run incremental cost, or is contrary to commission rule or order, or the requirements of this chapter, shall be rejected for filing and returned to the company.

(ii) The commission may prescribe a different rate to be effective on the prospective date stated in its final order after its investigation, if it concludes based on the record that the originally filed and effective rate is unjust, unfair, or unreasonable.

(b) The commission shall not suspend a promotional tariff. For the purposes of this section, "promotional tariff" means a tariff that, for a period of up to ninety days, waives or reduces charges or conditions of service for existing or new subscribers for the purpose of retaining or increasing the number of customers who subscribe to or use a service.

(3) The commission may suspend the initial tariff filing of any water company removed from and later subject to commission jurisdiction because of the number of customers or the average annual gross revenue per customer provisions of RCW 80.04.010. The commission may allow temporary rates during the suspension period. These rates shall not exceed the rates charged when the company was last regulated. Upon a showing of good cause by the company, the commission may establish a different level of temporary rates.

(4) At any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.

(5) The implementation of mandatory local measured telecommunications service is a major policy change in available telecommunications service. The commission shall not accept for filing a price list, nor shall it accept for filing or approve, prior to June 1, 2004, a tariff filed by a telecommunications company which imposes mandatory local measured service on any customer or class of customers, except that, upon finding that it is in the public interest, the commission may accept for filing a price list or it may accept for filing and approve a tariff that imposes mandatory measured service for a telecommunications company's extended area service or foreign exchange service. This subsection does not apply to land, air, or marine mobile service, or to pay telephone service, or to any service which has been traditionally offered on a measured service basis.

(6) The implementation of Washington telephone assistance program service is a major policy change in available telecommunications service. The implementation of Washington telephone assistance program service will aid in achieving the stated goal of universal telephone service.

(7) If a utility claims a sales or use tax exemption on the pollution control equipment for an electrical generation facility and abandons the generation facility before the pollution control equipment is fully depreciated, any tariff filing for a rate increase to recover abandonment costs for the pollution control equipment shall be considered unjust and unreasonable for the purposes of this section. [2003 c 189 § 1; 2001 c 267 § 1; 1998 c 110 § 1; 1997 c 368 § 14; 1993 c 311 § 1; 1992 c 68 § 1; 1990 c 170 § 1; 1989 c 101 § 13. Prior: 1987 c 333 § 1; 1987 c 229 § 2; prior: 1985 c 450 § 12; 1985 c 206 § 1; 1985 c 161 § 2; 1984 c 3 § 2; 1961 c 14 § 80.04.130; prior: 1941 c 162 § 1; 1937 c 169 § 2; 1933 c 165 § 3; 1915 c 133 § 1; 1911 c 117 § 82; Rem. Supp. 1941 § 10424.]

Effective date—2001 c 267: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2001]." [2001 c 267 § 2.]

Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368: See notes following RCW 82.08.810.

Effective date—1993 c 311: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 311 § 2.]

Effective date—1987 c 333: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1987." [1987 c 333 § 2.]

Severability—Legislative review—1985 c 450: See RCW 80.36.900 and 80.36.901.

Chapter 80.24 RCW

REGULATORY FEES

Sections

80.24.010 Companies to file reports of gross revenue and pay fees—Delinquent fee payments.

80.24.010 Companies to file reports of gross revenue and pay fees—Delinquent fee payments. Every public service company subject to regulation by the commission shall, on or before the date specified by the commission for filing annual reports under RCW 80.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year or portion thereof and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars: PROVIDED, That the commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section.

The percentage rates of gross operating revenue to be paid in any year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose such companies shall be classified as follows:

Electrical, gas, water, telecommunications, and irrigation companies shall constitute class one. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by law shall pay fees as herein provided and shall constitute additional classes according to kinds of businesses engaged in.

Any payment of the fee imposed by this section made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month. [2003 c 296 § 1; 1994 c 83 § 1; 1990 c 48 § 1; 1985 c 450 § 14; 1961 c 14 § 80.24.010. Prior: 1955 c 125 § 2; prior: 1939 c 123 § 1, part; 1937 c 158 § 1, part; 1929 c 107 § 1, part; 1923 c 107 § 1, part; 1921 c 113 § 1, part; RRS § 10417, part.]

Severability—Legislative review—1985 c 450: See RCW 80.36.900 and 80.36.901.

Chapter 80.28 RCW

GAS, ELECTRICAL, AND WATER COMPANIES

Sections

- 80.28.190 Gas companies—Certificate—Violations—Commission powers—Penalty—Fees. (*Effective July 1, 2004.*)
80.28.210 Safety rules—Pipeline transporters—Penalty. (*Effective July 1, 2004.*)

80.28.190 Gas companies—Certificate—Violations—Commission powers—Penalty—Fees. (*Effective July 1, 2004.*) (1) No gas company shall, after January 1, 1956, operate in this state any gas plant for hire without first having obtained from the commission under the provisions of this chapter a certificate declaring that public convenience and necessity requires or will require such operation and setting forth the area or areas within which service is to be rendered; but a certificate shall be granted where it appears to the satisfaction of the commission that such gas company was actually operating in good faith, within the confines of the area for which such certificate shall be sought, on June 8, 1955. Any right, privilege, certificate held, owned or obtained by a gas company may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the commission. The commission shall have

power, after hearing, when the applicant requests a certificate to render service in an area already served by a certificate holder under this chapter only when the existing gas company or companies serving such area will not provide the same to the satisfaction of the commission and in all other cases, with or without hearing, to issue the certificate as prayed for; or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

(2) The commission may, at any time, by its order duly entered after a hearing had upon notice to the holder of any certificate hereunder, and an opportunity to such holder to be heard, at which it shall be proven that such holder willfully violates or refuses to observe any of its proper orders, rules or regulations, suspend, revoke, alter or amend any certificate issued under the provisions of this section, but the holder of such certificate shall have all the rights of rehearing, review and appeal as to such order of the commission as is provided herein.

(3) In all respects in which the commission has power and authority under this chapter applications and complaints may be made and filed with it, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review to the superior court filed therewith, appeals or mandate filed with the supreme court or the court of appeals of this state considered and disposed of by such courts in the manner, under the conditions, and subject to the limitations and with the effect specified in the Washington utilities and transportation commission laws of this state.

(4) Every officer, agent, or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids or abets in the violation of any of the provisions of this section or who fails to obey, observe or comply with any order, decision, rule or regulation, directive, demand or requirements, or any provision of this section, is guilty of a gross misdemeanor.

(5) Neither this section, RCW 80.28.200, 80.28.210, nor any provisions thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this union except insofar as the same may be permitted under the provisions of the Constitution of the United States and acts of congress.

(6) The commission shall collect the following miscellaneous fees from gas companies: Application for a certificate of public convenience and necessity or to amend a certificate, twenty-five dollars; application to sell, lease, mortgage or transfer a certificate of public convenience and necessity or any interest therein, ten dollars. [2003 c 53 § 383; 1971 c 81 § 141; 1961 c 14 § 80.28.190. Prior: 1955 c 316 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

80.28.210 Safety rules—Pipeline transporters—Penalty. (*Effective July 1, 2004.*) (1) Every person or corporation transporting natural gas by pipeline, or having for one or more of its principal purposes the construction, maintenance or operation of pipelines for transporting natural gas, in this state, even though such person or corporation not be a public

service company under chapter 80.28 RCW, and even though such person or corporation does not deliver, sell or furnish any such gas to any person or corporation within this state, shall be subject to regulation by the utilities and transportation commission insofar as the construction and operation of such facilities shall affect matters of public safety, and every such company shall construct and maintain such facilities as will be safe and efficient. The commission shall have the authority to prescribe rules and regulations to effectuate the purpose of this enactment.

(2) Every such person and every such officer, agent and employee of a corporation who, as an individual or as an officer or agent of such corporation, violates or fails to comply with, or who procures, aids, or abets another, or his or her company, in the violation of, or noncompliance with, any provision of this section or any order, rule or requirement of the commission hereunder, is guilty of a gross misdemeanor. [2003 c 53 § 384; 1969 ex.s. c 210 § 2; 1961 c 14 § 80.28.210. Prior: 1955 c 316 § 6.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 80.36 RCW TELECOMMUNICATIONS

Sections

80.36.005	Definitions.
80.36.110	Tariff changes—Statutory notice—Exception.
80.36.320	Classification as competitive telecommunications companies, services—Factors considered—Minimal regulation—Equal access—Reclassification.
80.36.330	Classification as competitive telecommunications companies, services—Effective competition defined—Prices and rates—Reclassification.
80.36.410	Washington telephone assistance program—Findings.
80.36.420	Washington telephone assistance program—Availability, components.
80.36.430	Washington telephone assistance program—Excise tax—Expenses of community service voice mail.
80.36.440	Washington telephone assistance program—Rules.
80.36.450	Washington telephone assistance program—Limitation.
80.36.460	Washington telephone assistance program—Deposit waivers, connection fee discounts.
80.36.470	Washington telephone assistance program—Eligibility.
80.36.475	Washington telephone assistance program—Report to legislature.

80.36.005 Definitions. The definitions in this section apply throughout RCW 80.36.410 through 80.36.475, unless the context clearly requires otherwise.

(1) "Community agency" means local community agencies that administer community service voice mail programs.

(2) "Community service voice mail" means a computerized voice mail system that provides low-income recipients with: (a) An individually assigned telephone number; (b) the ability to record a personal greeting; and (c) a private security code to retrieve messages.

(3) "Department" means the department of social and health services.

(4) "Service year" means the period between July 1st and June 30th.

(5) "Community action agency" means local community action agencies or local community service agencies designated by the department of community, trade, and economic development under chapter 43.63A RCW. [2003 c 134 § 1; 2002 c 104 § 1; 1993 c 249 § 1.]

Effective date—2003 c 134: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 134 § 12.]

Effective date—1993 c 249: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 249 § 4.]

80.36.110 Tariff changes—Statutory notice—Exception. (1) Except as provided in subsection (2) of this section, unless the commission otherwise orders, no change shall be made in any rate, toll, rental, or charge, that was filed and published by any telecommunications company in compliance with the requirements of RCW 80.36.100, except after notice as required in this subsection.

(a) For changes to any rate, toll, rental, or charge filed and published in a tariff, the company shall provide thirty days' notice to the commission and publication for thirty days as required in the case of original schedules in RCW 80.36.100. The notice shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, toll, or charge will go into effect, and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Proposed changes may be suspended by the commission within thirty days or before the stated effective date of the proposed change, whichever is later.

(b) For changes to any rate, toll, rental, or charge filed and published in a price list, the company shall provide ten days' notice to the commission and customers. The commission shall prescribe the form of notice.

(c) The commission for good cause shown may allow changes in rates, charges, tolls, or rentals without requiring the notice and publication provided for in (a) or (b) of this subsection, by an order or rule specifying the change to be made and the time when it takes effect, and the manner in which the change will be filed and published.

(d) When any change is made in any rate, toll, rental, or charge, the effect of which is to increase any rate, toll, rental, or charge then existing, attention shall be directed on the copy filed with the commission to the increase by some character immediately preceding or following the item in the schedule, which character shall be in such a form as the commission may designate.

(2)(a) A telecommunications company may file a tariff that decreases any rate, charge, rental, or toll with ten days' notice to the commission and publication without receiving a special order from the commission when the filing does not contain an offsetting increase to another rate, charge, rental, or toll, and the filing company agrees not to file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year.

(b) A telecommunications company may file a promotional offering to be effective, without receiving a special order from the commission, upon filing with the commission and publication. For the purposes of this section, "promotional offering" means a tariff or price list that, for a period of up to ninety days, waives or reduces charges or conditions of service for existing or new subscribers for the purpose of

retaining or increasing the number of customers who subscribe to or use a service. [2003 c 189 § 2; 1997 c 166 § 1. Prior: 1989 c 152 § 2; 1989 c 101 § 10; 1985 c 450 § 25; 1961 c 14 § 80.36.110; prior: 1911 c 117 § 37; RRS § 10373.]

80.36.320 Classification as competitive telecommunications companies, services—Factors considered—Minimal regulation—Equal access—Reclassification. (1) The commission shall classify a telecommunications company as a competitive telecommunications company if the services it offers are subject to effective competition. Effective competition means that the company's customers have reasonably available alternatives and that the company does not have a significant captive customer base. In determining whether a company is competitive, factors the commission shall consider include but are not limited to:

- (a) The number and sizes of alternative providers of service;
- (b) The extent to which services are available from alternative providers in the relevant market;
- (c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
- (d) Other indicators of market power which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

The commission shall conduct the initial classification and any subsequent review of the classification in accordance with such procedures as the commission may establish by rule.

(2) Competitive telecommunications companies shall be subject to minimal regulation. Minimal regulation means that competitive telecommunications companies may file, instead of tariffs, price lists. The commission may also waive other regulatory requirements under this title for competitive telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may waive different regulatory requirements for different companies if such different treatment is in the public interest. A competitive telecommunications company shall at a minimum:

- (a) Keep its accounts according to regulations as determined by the commission;
- (b) File financial reports with the commission as required by the commission and in a form and at times prescribed by the commission;
- (c) Keep on file at the commission such current price lists and service standards as the commission may require; and
- (d) Cooperate with commission investigations of customer complaints.

(3) When a telecommunications company has demonstrated that the equal access requirements ordered by the federal district court in the case of *U.S. v. AT&T*, 552 F. Supp. 131 (1982), or in supplemental orders, have been met, the commission shall review the classification of telecommunications companies providing inter-LATA interexchange services. At that time, the commission shall classify all such companies as competitive telecommunications companies unless it finds that effective competition, as defined in subsection (1) of this section, does not then exist.

(4) The commission may revoke any waivers it grants and may reclassify any competitive telecommunications company if the revocation or reclassification would protect the public interest.

(5) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a competitive telecommunications company if it finds that competition will serve the same purpose and protect the public interest. [2003 c 189 § 3; 1998 c 337 § 5; 1989 c 101 § 15; 1985 c 450 § 4.]

Severability—1998 c 337: See note following RCW 80.36.600.

80.36.330 Classification as competitive telecommunications companies, services—Effective competition defined—Prices and rates—Reclassification. (1) The commission may classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service if the service is subject to effective competition. Effective competition means that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base. In determining whether a service is competitive, factors the commission shall consider include but are not limited to:

- (a) The number and size of alternative providers of services;
- (b) The extent to which services are available from alternative providers in the relevant market;
- (c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
- (d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

(2) When the commission finds that a telecommunications company has demonstrated that a telecommunications service is competitive, the commission may permit the service to be provided under a price list. The commission may adopt procedural rules necessary to implement this section.

(3) Prices or rates charged for competitive telecommunications services shall cover their cost. The commission shall determine proper cost standards to implement this section, provided that in making any assignment of costs or allocating any revenue requirement, the commission shall act to preserve affordable universal telecommunications service.

(4) The commission may investigate prices for competitive telecommunications services upon complaint. In any complaint proceeding initiated by the commission, the telecommunications company providing the service shall bear the burden of proving that the prices charged cover cost, and are fair, just, and reasonable.

(5) Telecommunications companies shall provide the commission with all data it deems necessary to implement this section.

(6) No losses incurred by a telecommunications company in the provision of competitive services may be recovered through rates for noncompetitive services. The commission may order refunds or credits to any class of subscribers to a noncompetitive telecommunications service which has paid excessive rates because of below cost pricing of competitive telecommunications services.

(7) The commission may reclassify any competitive telecommunications service if reclassification would protect the public interest.

(8) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a service classified as competitive if it finds that competition will serve the same purpose and protect the public interest. [2003 c 189 § 4; 1998 c 337 § 6; 1989 c 101 § 16; 1985 c 450 § 5.]

Severability—1998 c 337: See note following RCW 80.36.600.

80.36.410 Washington telephone assistance program—Findings. (1) The legislature finds that universal telephone service is an important policy goal of the state. The legislature further finds that: (a) Recent changes in the telecommunications industry, such as federal access charges, raise concerns about the ability of low-income persons to continue to afford access to local exchange telephone service; and (b) many low-income persons making the transition to independence from receiving supportive services through community agencies do not qualify for economic assistance from the department.

(2) Therefore, the legislature finds that: (a) It is in the public interest to take steps to mitigate the effects of these changes on low-income persons; and (b) advances in telecommunications technologies, such as community service voice mail provide new and economically efficient ways to secure many of the benefits of universal service to low-income persons who are not customers of local exchange telephone service. [2003 c 134 § 2; 2002 c 104 § 2; 1987 c 229 § 3.]

Effective date—2003 c 134: See note following RCW 80.36.005.

80.36.420 Washington telephone assistance program—Availability, components. The Washington telephone assistance program shall be available to participants of programs set forth in RCW 80.36.470. Assistance shall consist of the following components:

(1) A discount on service connection fees of fifty percent or more as set forth in RCW 80.36.460.

(2) A waiver of deposit requirements on local exchange service, as set forth in RCW 80.36.460.

(3) A discounted flat rate service for local exchange service, which shall be subject to the following conditions:

(a) The commission shall establish a single telephone assistance rate for all local exchange companies operating in the state of Washington. The telephone assistance rate shall include any federal end user charges and any other charges necessary to obtain local exchange service.

(b) The commission shall, in establishing the telephone assistance rate, consider all charges for local exchange service, including federal end user charges, mileage charges, extended area service, and any other charges necessary to obtain local exchange service.

(c) The telephone assistance rate shall only be available to eligible customers subscribing to the lowest priced local exchange flat rate service, where the lowest priced local exchange flat rate service, including any federal end user charges and any other charges necessary to obtain local exchange service, is greater than the telephone assistance rate.

(d) The cost of providing the service shall be paid, to the maximum extent possible, by a waiver of all or part of federal end user charges and, to the extent necessary, from the telephone assistance fund created by RCW 80.36.430.

(4) A discount on a community service voice mailbox that provides recipients with (a) an individually assigned telephone number; (b) the ability to record a personal greeting; and (c) a secure private security code to retrieve messages. [2003 c 134 § 3; 1990 c 170 § 2; 1987 c 229 § 4.]

Effective date—2003 c 134: See note following RCW 80.36.005.

80.36.430 Washington telephone assistance program—Excise tax—Expenses of community service voice mail. (1) The Washington telephone assistance program shall be funded by a telephone assistance excise tax on all switched access lines and by funds from any federal government or other programs for this purpose. Switched access lines are defined in RCW 82.14B.020. The telephone assistance excise tax shall be applied equally to all residential and business access lines not to exceed fourteen cents per month. The telephone assistance excise tax shall be separately identified on each ratepayer's bill as the "Washington telephone assistance program." All money collected from the telephone assistance excise tax shall be transferred to a telephone assistance fund administered by the department.

(2) Local exchange companies shall bill the fund for their expenses incurred in offering the telephone assistance program, including administrative and program expenses. The department shall disburse the money to the local exchange companies. The department is exempted from having to conclude a contract with local exchange companies in order to effect this reimbursement. The department shall recover its administrative costs from the fund. The department may specify by rule the range and extent of administrative and program expenses that will be reimbursed to local exchange companies.

(3) The department shall enter into an agreement with the department of community, trade, and economic development for an amount not to exceed eight percent of the prior fiscal year's total revenue for the administrative and program expenses of providing community service voice mail services. The community service voice mail service may include toll-free lines in community action agencies through which recipients can access their community service voice mailboxes at no charge. [2003 c 134 § 4; 1990 c 170 § 3; 1987 c 229 § 5.]

Effective date—2003 c 134: See note following RCW 80.36.005.

80.36.440 Washington telephone assistance program—Rules. (1) The commission and the department may adopt any rules necessary to implement RCW 80.36.410 through 80.36.470.

(2) Rules necessary for the implementation of community service voice mail services shall be made by the commission and the department in consultation with the department of community, trade, and economic development. [2003 c 134 § 5; 1990 c 170 § 4; 1987 c 229 § 6.]

Effective date—2003 c 134: See note following RCW 80.36.005.

80.36.450 Washington telephone assistance program—Limitation. The Washington telephone assistance program shall limit reimbursement to one residential switched access line per eligible household, or one discounted community service voice mailbox per eligible person. [2003 c 134 § 6; 1993 c 249 § 2; 1987 c 229 § 7.]

Effective date—2003 c 134: See note following RCW 80.36.005.

Effective date—1993 c 249: See note following RCW 80.36.005.

80.36.460 Washington telephone assistance program—Deposit waivers, connection fee discounts. Local exchange companies shall waive deposits on local exchange service for eligible subscribers and provide a fifty percent discount on the company's customary charge for commencing telecommunications service for eligible subscribers. Part or all of the remaining fifty percent of service connection fees may be paid by funds from federal government or other programs for this purpose. The commission or other appropriate agency shall make timely application for any available federal funds. The remaining portion of the connection fee to be paid by the subscriber shall be expressly payable by installment fees spread over a period of months. A subscriber may, however, choose to pay the connection fee in a lump sum. Costs associated with the waiver and discount shall be accounted for separately and recovered from the telephone assistance fund. [2003 c 134 § 7; 1990 c 170 § 5; 1987 c 229 § 8.]

Effective date—2003 c 134: See note following RCW 80.36.005.

80.36.470 Washington telephone assistance program—Eligibility. (1) Adult recipients of department-administered programs for the financially needy which provide continuing financial or medical assistance, food stamps, or supportive services to persons in their own homes are eligible for participation in the telephone assistance program. The department shall notify the participants of their eligibility.

(2) Participants in community service voice mail programs are eligible for participation in services available under RCW 80.36.420 (1), (2), and (3) after completing use of community service voice mail services. Eligibility shall be for a period including the remainder of the current service year and the following service year. Community agencies shall notify the department of participants eligible under this subsection. [2003 c 134 § 8; 2002 c 104 § 3; 1990 c 170 § 6; 1987 c 229 § 9.]

Effective date—2003 c 134: See note following RCW 80.36.005.

80.36.475 Washington telephone assistance program—Report to legislature. The department shall report to the appropriate committees of the house of representatives and the senate by December 1 of each year on the status of the Washington telephone assistance program. The report shall include the number of participants by qualifying social service programs receiving benefits from the telephone assistance program and the type of benefits participants receive. The report shall also include a description of the geographical distribution of participants, the program's annual revenue and expenditures, and any recommendations for legislative action. [2003 c 134 § 9; 1990 c 170 § 7.]

Effective date—2003 c 134: See note following RCW 80.36.005.

Title 81

TRANSPORTATION

Chapters

- 81.04** Regulations—General.
- 81.24** Regulatory fees.
- 81.40** Railroads—Employee requirements and regulations.
- 81.44** Common carriers—Equipment.
- 81.53** Railroads—Crossings.
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- 81.60** Railroads—Railroad police and regulations.
- 81.64** Street railways.
- 81.68** Auto transportation companies.
- 81.77** Solid waste collection companies.
- 81.84** Commercial ferries.
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- 81.112** Regional transit authorities.

Chapter 81.04 RCW

REGULATIONS—GENERAL

Sections

- 81.04.390 Penalties—Violations by persons. (*Effective July 1, 2004.*)

81.04.390 Penalties—Violations by persons. (*Effective July 1, 2004.*) (1) Except as provided in subsection (2) of this section, every person who, either individually, or acting as an officer or agent of a corporation other than a public service company, violates any provision of this title, or fails to observe, obey, or comply with any order made by the commission under this title, so long as the same is or remains in force, or who procures, aids, or abets any such corporation in its violation of this title, or in its failure to obey, observe, or comply with any such order, is guilty of a gross misdemeanor.

(2) A violation pertaining to equipment on motor carriers transporting hazardous material is a misdemeanor. [2003 c 53 § 385; 1980 c 104 § 5; 1961 c 14 § 81.04.390. Prior: 1911 c 117 § 97; RRS § 10446.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 81.24 RCW

REGULATORY FEES

Sections

- 81.24.010 Companies to file reports of gross revenue and pay fees—General.
- 81.24.020 Fees of auto transportation companies—Statement filing.
- 81.24.030 Fees of every commercial ferry—Statement filing.

81.24.010 Companies to file reports of gross revenue and pay fees—General. (1) Every company subject to regulation by the commission, except auto transportation companies, steamboat companies, and motor freight carriers shall, on or before the date specified by the commission for filing annual reports under RCW 81.04.080, file with the commission a statement on oath showing its gross operating

revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars, except railroad companies which shall each pay to the commission a fee equal to one and one-half percent of its intrastate gross operating revenue. The commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section. Any railroad association that qualifies as a not-for-profit charitable organization under the federal internal revenue code section 501(c)(3) is exempt from the fee required under this subsection.

(2) The percentage rates of gross operating revenue to be paid in any one year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose such companies shall be classified as follows: Railroad, express, sleeping car, and toll bridge companies shall constitute class two. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by law shall pay fees as herein provided and shall constitute additional classes according to kinds of businesses engaged in. [2003 c 296 § 2; 1996 c 196 § 1; 1990 c 48 § 2; 1977 ex.s. c 48 § 1; 1969 ex.s. c 210 § 6; 1963 c 59 § 11; 1961 c 14 § 81.24.010. Prior: 1957 c 185 § 1; 1955 c 125 § 4; prior: 1939 c 123 § 1, part; 1937 c 158 § 1, part; 1929 c 107 § 1, part; 1923 c 107 § 1, part; 1921 c 113 § 1, part; RRS § 10417, part.]

81.24.020 Fees of auto transportation companies—Statement filing. On or before the date specified by the commission for filing annual reports under RCW 81.04.080, every auto transportation company must file with the commission a statement showing its gross operating revenue from intrastate operations for the preceding year and pay to the commission a fee of two-fifths of one percent of the amount of gross operating revenue. The commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section.

The percentage rate of gross operating revenue to be paid in any period may be decreased by the commission by general order entered before the fifteenth day of the month preceding the month in which the fee is due. [2003 c 296 § 3; 1997 c 215 § 1; 1961 c 14 § 81.24.020. Prior: 1955 c 125 § 5; prior: 1937 c 158 § 2, part; RRS § 10417-1, part.]

81.24.030 Fees of every commercial ferry—Statement filing. Every commercial ferry shall, on or before the date specified by the commission for filing annual reports under RCW 81.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee of two-fifths of one percent of the amount of gross operating revenue: PROVIDED, That the commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pur-

suant to this section. The percentage rate of gross operating revenue to be paid in any year may be decreased by the commission by general order entered before March 1st of such year. [2003 c 296 § 4; 1993 c 427 § 10; 1981 c 13 § 5; 1961 c 14 § 81.24.030. Prior: 1955 c 125 § 6; prior: 1939 c 123 § 3, part; 1937 c 158 § 4, part; RRS § 10417-3, part.]

Chapter 81.40 RCW

RAILROADS—EMPLOYEE REQUIREMENTS AND REGULATIONS

Sections

- 81.40.010 Full train crews—Passenger—Safety review—Penalty—Enforcement. (*Effective July 1, 2004.*)
- 81.40.030 Repealed. (*Effective July 1, 2004.*)
- 81.40.040 Train employees—Hours of service—Penalty—Enforcement. (*Effective July 1, 2004.*)
- 81.40.050 Repealed. (*Effective July 1, 2004.*)
- 81.40.060 Purchase of apparel by employees—Penalty. (*Effective July 1, 2004.*)
- 81.40.070 Repealed. (*Effective July 1, 2004.*)
- 81.40.080 Employee shelters—Penalty. (*Effective July 1, 2004.*)
- 81.40.090 Repealed. (*Effective July 1, 2004.*)
- 81.40.120 Repealed. (*Effective July 1, 2004.*)
- 81.40.130 Cost of records or medical examinations—Unlawful to require employee or applicant to pay—Penalty—Definitions. (*Effective July 1, 2004.*)
- 81.40.140 Repealed. (*Effective July 1, 2004.*)

81.40.010 Full train crews—Passenger—Safety review—Penalty—Enforcement. (*Effective July 1, 2004.*)

(1) No law or order of any regulatory agency of this state shall prevent a common carrier by railroad from staffing its passenger trains in accordance with collective bargaining agreements or any national or other applicable settlement of train crew size. In the absence of a collective bargaining agreement or any national or other applicable settlement of train crew size, any common carrier railroad operating a passenger train with a crew of less than two members shall be subject to a safety review by the Washington utilities and transportation commission, which, as to staffing, may issue an order requiring as many as two crew members.

(2) Each train or engine run in violation of this section is a separate offense: PROVIDED, That nothing in this section shall be construed as applying in the case of disability of one or more of any train crew while out on the road between division terminals, wrecking trains, or to any line, or part of line, where not more than two trains are run in each twenty-four hours.

(3) Any person, corporation, company, or officer of court operating any railroad or railway, or part of any railroad or railway in the state of Washington, and engaged as a common carrier, in the transportation of freight or passengers, who violates this section is guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense.

(4) It is the duty of the commission to enforce this section. [2003 c 53 § 386; 1992 c 102 § 1; 1961 c 14 § 81.40.010. Prior: 1911 c 134 § 1; RRS § 10486.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

81.40.030 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.40.040 Train employees—Hours of service—Penalty—Enforcement. (*Effective July 1, 2004.*) (1) It is unlawful for any common carrier by railroad or any of its officers or agents, to require or permit any employee engaged in or connected with the movement of any train to remain on duty more than twelve consecutive hours, except when by casualty occurring after such employee has started on his or her trip; or, except by accident or unavoidable delay of trains scheduled to make connection with the train on which such employee is serving, he or she is prevented from reaching his or her terminal; or, to require or permit any such employee who has been on duty twelve consecutive hours to go on duty without having had at least ten hours off duty; or, to require or permit any such employee who has been on duty twelve hours in the aggregate in any twenty-four hour period to continue on duty without having had at least eight hours off duty within the twenty-four hour period.

(2) Any such common carrier, or any of its officers or agents violating this section is guilty of a misdemeanor punishable by a fine of not less than one hundred or more than one thousand dollars for each and every such violation to be recovered in a suit or suits to be brought by the attorney general.

(3) It shall be the duty of the attorney general to bring such suits upon duly verified information being lodged with him or her of such violation having occurred, in any superior court.

(4) It shall also be the duty of the commission to fully investigate all cases of the violation of this section, and to lodge with the attorney general information of any such violation as may come to its knowledge. [2003 c 53 § 387; 1977 c 70 § 1; 1961 c 14 § 81.40.040. Prior: 1907 c 20 § 1; RRS § 7652.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

81.40.050 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.40.060 Purchase of apparel by employees—Penalty. (*Effective July 1, 2004.*) (1) It shall be unlawful for any railroad or other transportation company doing business in the state of Washington, or of any officer, agent or servant of such railroad or other transportation company, to require any conductor, engineer, brakeman, fireman, purser, or other employee, as a condition of his or her continued employment, or otherwise to require or compel, or attempt to require or compel, any such employees to purchase of any such railroad or other transportation company or of any particular person, firm or corporation or at any particular place or places, any uniform or other clothing or apparel, required by any such railroad or other transportation company to be used by any such employee in the performance of his or her duties as such; and any such railroad or transportation company or any officer, agent or servant thereof, who shall order or require any conductor, engineer, brakeman, fireman, purser, or other person in its employ, to purchase any uniform or other clothing or apparel as aforesaid, shall be deemed to have required such purchase as a condition of such employee's continued employment.

(2) Any railroad or other transportation company doing business in the state of Washington, or any officer, agent, or servant thereof, violating this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail of the county where the misdemeanor is committed, not exceeding six months. [2003 c 53 § 388; 1961 c 14 § 81.40.060. Prior: 1907 c 224 § 1; RRS § 10504.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

81.40.070 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.40.080 Employee shelters—Penalty. (*Effective July 1, 2004.*) (1) It shall be unlawful for any railroad company, corporation, association or other person owning, controlling or operating any line of railroad in the state of Washington, to build, construct, reconstruct, or repair railroad car equipment or motive power in this state without first erecting and maintaining at every point where five employees or more are regularly employed on such work, a shed over a sufficient portion of the tracks used for such work, so as to provide that all men regularly employed in such work shall be sheltered and protected from rain and other inclement weather: PROVIDED, That the provisions of this section shall not apply at points where it is necessary to make light repairs only on equipment or motive power, nor to equipment loaded with time or perishable freight, nor to equipment when trains are being held for the movement of equipment, nor to equipment on tracks where trains arrive or depart or are assembled or made up for departure. The term "light repairs," as herein used, shall not include repairs usually made in roundhouse, shop or shed upon well equipped railroads.

(2) Any railroad company or officer or agent thereof, or any other person, who violates this section by failing or refusing to comply with its provisions is guilty of a misdemeanor, and each day's failure or refusal to comply shall be considered a separate offense. [2003 c 53 § 389; 1961 c 14 § 81.40.080. Prior: 1941 c 238 § 1; Rem. Supp. 1941 § 7666-40.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

81.40.090 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.40.120 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.40.130 Cost of records or medical examinations—Unlawful to require employee or applicant to pay—Penalty—Definitions. (*Effective July 1, 2004.*) (1) It is unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records required by the employer as a condition of employment.

(2) Any employer who violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars. Each violation shall constitute a separate offense.

(3) As used in this section:

(a) "Employer" means any common carrier by rail, doing business in or operating within the state, and any subsidiary thereof.

(b) "Employee" means every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment. [2003 c 53 § 390; 1961 c 14 § 81.40.130. Prior: 1955 c 228 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

81.40.140 Repealed. (Effective July 1, 2004.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 81.44 RCW

COMMON CARRIERS—EQUIPMENT

Sections

81.44.085 First aid kits and drinking water—Penalty. (*Effective July 1, 2004.*)

81.44.085 First aid kits and drinking water—Penalty. (Effective July 1, 2004.) (1) Every person operating a common carrier railroad in this state shall equip each locomotive and caboose used in train or yard switching service, and every car used in passenger service with a first aid kit of a type to be approved by the commission, which kit shall be plainly marked and be readily visible and accessible and be maintained in a fully quipped condition: PROVIDED, That such kits shall not be required on equipment used exclusively in yard or switching service where such kits are maintained in the yard or terminal.

(2) Each locomotive and caboose shall also be furnished with sanitary cups and sanitary ice-cooled drinking water.

(3) For the purpose of this section a "locomotive" shall include all railroad engines propelled by any form of energy and used in rail line haul or yard switching service.

(4) Any person violating this section is guilty of a misdemeanor. [2003 c 53 § 391; 1969 ex.s. c 210 § 7; 1961 c 14 § 81.44.085. Prior: 1951 c 66 §§ 1, 2, 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Caboozes

drinking water facilities: RCW 81.44.097.

fire extinguisher—Type, location, and maintenance: RCW 81.44.0972.

Chapter 81.53 RCW

RAILROADS—CROSSINGS

Sections

81.53.271 Crossing signals, warning devices—Petition contents—Apportionment of installation and maintenance costs.
81.53.281 Crossing signals, warning devices—Grade crossing protective fund—Created—Transfer of funds—Allocation of costs—Procedure—Federal funding.

81.53.271 Crossing signals, warning devices—Petition contents—Apportionment of installation and maintenance costs. The petition shall set forth by description the location of the crossing or crossings, the type of signal or other warning device to be installed, the necessity from the standpoint of public safety for such installation, the approximate cost of installation and related work, and the approximate annual cost of maintenance. If the commission directs the installation of a grade crossing protective device, and a federal-aid funding program is available to participate in the costs of such installation, installation and maintenance costs of the device shall be apportioned in accordance with the provisions of RCW 81.53.295. Otherwise if installation is directed by the commission, it shall apportion the cost of installation and maintenance as provided in this section:

(1) Installation: (a) The first twenty thousand dollars shall be apportioned to the grade crossing protective fund created by RCW 81.53.281; and

(b) The remainder of the cost shall be apportioned as follows:

(i) Sixty percent to the grade crossing protective fund, created by RCW 81.53.281;

(ii) Thirty percent to the city, town, county, or state; and

(iii) Ten percent to the railroad:

PROVIDED, That, if the proposed installation is located at a new crossing requested by a city, town, county, or state, forty percent of the cost shall be apportioned to the city, town, county, or state, and none to the railroad. If the proposed installation is located at a new crossing requested by a railroad, then the entire cost shall be apportioned to the railroad. In the event the city, town, county, or state should concurrently petition the commission and secure an order authorizing the closure of an existing crossing or crossings in proximity to the crossing for which installation of signals or other warning devices shall have been directed, the apportionment to the petitioning city, town, county, or state shall be reduced by ten percent of the total cost for each crossing ordered closed and the apportionment from the grade crossing protective fund increased accordingly. This exception shall not be construed to permit a charge to the grade crossing protective fund in an amount greater than the total cost otherwise apportionable to the city, town, county, or state. No reduction shall be applied where one crossing is closed and another opened in lieu thereof, nor to crossings of a private nature.

(2) Maintenance: (a) Twenty-five percent to the grade crossing protective fund, created by RCW 81.53.281; and

(b) Seventy-five percent to the railroad:

PROVIDED, That if the proposed installation is located at a new crossing requested by a railroad, then the entire cost shall be apportioned to the railroad. [2003 c 190 § 2; 1982 c 94 § 2; 1975 1st ex.s. c 189 § 1; 1973 1st ex.s. c 77 § 1; 1969 c 134 § 2.]

Findings—2003 c 190: "The legislature finds that grade crossing, rail trespass, and other safety issues continue to present a public safety problem.

The legislature further finds that with the increased importance of rail to freight and commuter mobility, there is a direct public benefit in assisting local communities and railroads to work together to address rail-related public safety concerns." [2003 c 190 § 1.]

Application—1982 c 94: See note following RCW 81.53.261.

81.53.281 Crossing signals, warning devices—Grade crossing protective fund—Created—Transfer of funds—

Allocation of costs—Procedure—Federal funding. There is hereby created in the state treasury a "grade crossing protective fund" to carry out the provisions of RCW 81.53.261, 81.53.271, 81.53.281, 81.53.291, and 81.53.295; for grants and/or subsidies to public, private, and nonprofit entities for rail safety projects authorized or ordered by the commission; and for personnel and associated costs related to supervising and administering rail safety grants and/or subsidies. The commission shall transfer from the public service revolving fund's miscellaneous fees and penalties accounts moneys appropriated for these purposes as needed. At the time the commission makes each allocation of cost to said grade crossing protective fund, it shall certify that such cost shall be payable out of said fund. When federal-aid highway funds are involved, the department of transportation shall, upon entry of an order by the commission requiring the installation or upgrading of a grade crossing protective device, submit to the commission an estimate for the cost of the proposed installation and related work. Upon receipt of the estimate the commission shall pay to the department of transportation the percentage of the estimate specified in RCW 81.53.295, as now or hereafter amended, to be used as the grade crossing protective fund portion of the cost of the installation and related work.

The commission may adopt rules for the allocation of money from the grade crossing protective fund. [2003 c 190 § 3; 1998 c 245 § 166; 1987 c 257 § 1; 1985 c 405 § 509; 1982 c 94 § 3; 1975 1st ex.s. c 189 § 2; 1973 c 115 § 4; 1969 c 134 § 3.]

Findings—2003 c 190: See note following RCW 81.53.271.

Severability—1985 c 405: See note following RCW 9.46.100.

Application—1982 c 94: See note following RCW 81.53.261.

Chapter 81.54 RCW

RAILROADS—INSPECTION OF INDUSTRIAL CROSSINGS

Sections

81.54.030 Reimbursement of inspection cost. (*Effective July 1, 2004.*)

81.54.030 Reimbursement of inspection cost. (*Effective July 1, 2004.*) (1) Every person operating any logging railroad or industrial railway shall, prior to July 1st of each year, file with the commission a statement showing the number of, and location, by name of highway, quarter section, section, township, and range of all crossings on his or her line and pay with the filing a fee for each crossing so reported. The commission shall, by order, fix the exact fee based on the cost of rendering such inspection service. All fees collected shall be deposited in the state treasury to the credit of the public service revolving fund. Intersections having one or more tracks shall be treated as a single crossing. Tracks separated a distance in excess of one hundred feet from the nearest track or group of tracks shall constitute an additional crossing. Where two or more independently operated railroads cross each other or the same highway intersection, each independent track shall constitute a separate crossing.

(2) Every person failing to make the report and pay the fees as required by this section is guilty of a misdemeanor and in addition subject to a penalty of twenty-five dollars for each day that the fee remains unpaid after it becomes due.

[2003 c 53 § 392; 1991 c 46 § 1; 1961 c 14 § 81.54.030. Prior: 1951 c 111 § 1; 1941 c 161 § 3; Rem. Supp. 1941 § 10511-3. Formerly RCW 81.52.320.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 81.56 RCW

RAILROADS—SHIPPERS AND PASSENGERS

Sections

81.56.150 Regulating sale of passenger tickets. (*Effective July 1, 2004.*)

81.56.150 Regulating sale of passenger tickets. (*Effective July 1, 2004.*) (1) It shall be the duty of every person or corporation engaged wholly or in part in the business of carrying passengers for hire, to provide every agent authorized to sell its passage tickets in this state, with a certificate of his or her authority, attested by its seal and the signature of its manager, secretary or general passenger agent, which shall contain a designation of the place of business at which such authority shall be exercised.

(2) Every person and every corporation or association, and every officer, agent or employee thereof who shall sell, exchange or transfer, or have in his or her possession with intent to sell, exchange or transfer, or maintain, conduct or operate any office or place of business for the sale, exchange or transfer of any passage ticket or pass or part thereof, or any other evidence of a right to travel upon any railroad or boat, whether the same be owned or operated within or without the limits of this state, in any place except his or her place of business, or within such place of business without having rightfully in his or her possession and posted in a conspicuous place therein the certificate of authority required by this section is guilty of a misdemeanor. [2003 c 53 § 393; 1961 c 14 § 81.56.150. Prior: 1909 c 249 § 396; RRS § 2648.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 81.60 RCW

RAILROADS—RAILROAD POLICE AND REGULATIONS

(Formerly: Railroads—Special police and police regulations)

Sections

81.60.070 Malicious injury to railroad property. (*Effective July 1, 2004.*)
 81.60.080 Sabotaging rolling stock—Receiving stolen railroad property. (*Effective July 1, 2004.*)
 81.60.090 Repealed. (*Effective July 1, 2004.*)

81.60.070 Malicious injury to railroad property. (*Effective July 1, 2004.*) Every person who, in such manner as might, if not discovered, endanger the safety of any engine, motor, car or train, or any person thereon, shall in any manner interfere or tamper with or obstruct any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railway, or any train, engine, motor, or car on such railway, and every person who shall discharge any firearm or throw any dangerous missile at any train, engine, motor, or car on any railway, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years. [2003 c 53 § 394; 1999 c

352 § 4; 1992 c 7 § 60; 1961 c 14 § 81.60.070. Prior: 1909 c 249 § 398; RRS § 2650.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Application—1999 c 352 §§ 3-5: See note following RCW 9.94A.515.

81.60.080 Sabotaging rolling stock—Receiving stolen railroad property. (*Effective July 1, 2004.*) (1) Any person or persons who shall willfully or maliciously, with intent to injure or deprive the owner thereof, take, steal, remove, change, add to, alter, or in any manner interfere with any journal bearing, brass, waste, packing, triple valve, pressure cock, brake, air hose, or any other part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad or railway company in this state, is guilty of a class C felony, and upon conviction thereof shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

(2) Every person who buys or receives any of the property described in subsection (1) of this section, knowing the same to have been stolen, is guilty of a class C felony, and upon conviction thereof shall be punished as provided in subsection (1) of this section. [2003 c 53 § 395; 1992 c 7 § 61; 1961 c 14 § 81.60.080. Prior: 1941 c 212 § 1; Rem. Supp. 1941 § 2650-1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

81.60.090 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 81.64 RCW STREET RAILWAYS

Sections

81.64.090	Competent employees required—"Competent" defined—Penalty. (<i>Effective July 1, 2004.</i>)
81.64.100	Repealed. (<i>Effective July 1, 2004.</i>)
81.64.110	Repealed. (<i>Effective July 1, 2004.</i>)
81.64.160	Hours of labor—Penalty. (<i>Effective July 1, 2004.</i>)
81.64.170	Repealed. (<i>Effective July 1, 2004.</i>)

81.64.090 Competent employees required—"Competent" defined—Penalty. (*Effective July 1, 2004.*) (1) Street railway or street car companies, or street car corporations, shall employ none but competent men to operate or assist as conductors, motormen or gripmen upon any street railway, or streetcar line in this state.

(2) A person shall be deemed competent to operate or assist in operating cars or (dummies) usually used by street railway or streetcar companies, or corporations, only after first having served at least three days under personal instruction of a regularly employed conductor, motorman, or gripman on a car or dummy in actual service on the particular street railway or streetcar line for which the service of an additional person or additional persons may be required: PROVIDED, That during a strike on the streetcar lines the railway companies may employ competent persons who have not worked three days on the particular streetcar line.

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(3) Any violation of this section by the president, secretary, manager, superintendent, assistant superintendent, stockholder, or other officer or employee of any company or corporation owning or operating any street railway or streetcar line or any receiver of street railway or streetcar company, or street railway or streetcar corporations appointed by any court within this state to operate such car line is a misdemeanor punishable by a fine in any amount not less than fifty dollars nor more than two hundred dollars, or imprisonment in the county jail for a term of thirty days, or both such fine and imprisonment at the discretion of the court. [2003 c 53 § 396; 1961 c 14 § 81.64.090. Prior: 1901 c 103 § 1; RRS § 11073.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

81.64.100 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.64.110 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.64.160 Hours of labor—Penalty. (*Effective July 1, 2004.*) (1) No person, agent, officer, manager, or superintendent or receiver of any corporation or owner of streetcars shall require his, her, or its gripmen, motormen, drivers, or conductors to work more than ten hours in any twenty-four hours.

(2) Any person, agent, officer, manager, superintendent, or receiver of any corporation, or owner of streetcar or cars, violating this section is guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars for each day in which such gripman, motorman, driver, or conductor in the employ of such person, agent, officer, manager, superintendent, or receiver of such corporation or owner is required to work more than ten hours during each twenty-four hours, as provided in this section.

(3) It is the duty of the prosecuting attorney of each county of this state to institute the necessary proceedings to enforce the provisions of this section. [2003 c 53 § 397; 1961 c 14 § 81.64.160. Prior: 1895 c 100 § 1; RRS § 7648.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

81.64.170 Repealed. (*Effective July 1, 2004.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 81.68 RCW AUTO TRANSPORTATION COMPANIES

Sections

81.68.080	Penalty. (<i>Effective July 1, 2004.</i>)
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81.68.080 Penalty. (*Effective July 1, 2004.*) (1) Except as otherwise provided in this section, every officer, agent, or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provisions of this chapter, or who

fails to obey, observe, or comply with any order, decision, rule or regulation, direction, demand, or requirement, or any part of provision thereof, is guilty of a gross misdemeanor.

(2)(a) Except as provided in (b) of this subsection, violation of such an order, decision, rule or regulation, direction, demand, or requirement relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(b) Violation of such an order, decision, rule or regulation, direction, demand, or requirement equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 is a misdemeanor. [2003 c 53 § 398; 1979 ex.s. c 136 § 106; 1961 c 14 § 81.68.080. Prior: 1921 c 111 § 7; RRS § 6393.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

Chapter 81.77 RCW

SOLID WASTE COLLECTION COMPANIES

(Formerly: Garbage and refuse collection companies)

Sections

81.77.080 Companies to file reports of gross operating revenue and pay fees—Legislative intent—Disposition of revenue.

81.77.080 Companies to file reports of gross operating revenue and pay fees—Legislative intent—Disposition of revenue. Every solid waste collection company shall, on or before the date specified by the commission for filing annual reports under RCW 81.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one percent of the amount of gross operating revenue: **PROVIDED**, That the commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section.

It is the intent of the legislature that the fees collected under the provisions of this chapter shall reasonably approximate the cost of supervising and regulating motor carriers subject thereto, and to that end the utilities and transportation commission is authorized to decrease the schedule of fees provided in this section by general order entered before March 1st of any year in which it determines that the moneys then in the solid waste collection companies account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating such carriers.

All fees collected under this section or under any other provision of this chapter shall be paid to the commission and shall be by it transmitted to the state treasurer within thirty days to be deposited to the credit of the public service revolving fund. [2003 c 296 § 5; 1989 c 431 § 24; 1971 ex.s. c 143 § 3; 1969 ex.s. c 210 § 11; 1963 c 59 § 12; 1961 c 295 § 9.]

Chapter 81.84 RCW
COMMERCIAL FERRIES
(Formerly: Steamboat companies)

Sections

81.84.010 Certificate of convenience and necessity required—Progress reports.
81.84.020 Application—Hearing—Issuance of certificate—Determining factors.
81.84.060 Certificate—Grounds for cancellation, revocation, suspension, alteration, or amendment.

81.84.010 Certificate of convenience and necessity required—Progress reports. (1) No commercial ferry may hereafter operate any vessel or ferry for the public use for hire between fixed termini or over a regular route upon the waters within this state, including the rivers and lakes and Puget Sound, without first applying for and obtaining from the commission a certificate declaring that public convenience and necessity require such operation. Service authorized by certificates issued before or after July 25, 1993, to a commercial ferry operator shall be exercised by the operator in a manner consistent with the conditions established in the certificate or tariffs: **PROVIDED**, That no certificate shall be required for a vessel primarily engaged in transporting freight other than vehicles, whose gross earnings from the transportation of passengers and/or vehicles, are not more than ten percent of the total gross annual earnings of such vessel: **PROVIDED**, That nothing herein shall be construed to affect the right of any county public transportation benefit area or other public agency within this state to construct, condemn, purchase, operate, or maintain, itself or by contract, agreement, or lease, with any person, firm, or corporation, ferries or boats across or wharfs at or upon the waters within this state, including rivers and lakes and Puget Sound, provided such operation is not over the same route or between the same districts, being served by a certificate holder without first acquiring the rights granted to the certificate holder under the certificate, nor shall this chapter be construed to affect, amend, or invalidate any contract entered into prior to January 15, 1927, for the operation of ferries or boats upon the waters within this state, which was entered into in good faith by any county with any person, firm, or corporation, except that in case of the operation or maintenance by any county, city, town, port district, or other political subdivision by contract, agreement, or lease with any person, firm, or corporation, of ferries or boats across or wharfs at or upon the waters within this state, including rivers and lakes and Puget Sound, the commission shall have power and authority to regulate rates and services of such operation or maintenance of ferries, boats, or wharfs, to make, fix, alter, or amend said rates, and to regulate service and safety of operations thereof, in the manner and to the same extent as it is empowered to regulate a commercial ferry, notwithstanding the provisions of any act or parts of acts inconsistent herewith.

(2) The holder of a certificate of public convenience and necessity granted under this chapter must initiate service within five years of obtaining the certificate, except that the holder of a certificate of public convenience and necessity for passenger-only ferry service in Puget Sound must initiate service within twenty months of obtaining the certificate. The certificate holder shall report to the commission every six

months after the certificate is granted on the progress of the certificated route. The reports shall include, but not be limited to, the progress of environmental impact, parking, local government land use, docking, and financing considerations. Except in the case of passenger-only ferry service in Puget Sound, if service has not been initiated within five years of obtaining the certificate, the commission may extend the certificate on a twelve-month basis for up to three years if the six-month progress reports indicate there is significant advancement toward initiating service.

(3) The commission shall review certificates in existence as of July 25, 1993, where service is not being provided on all or any portion of the route or routes certificated. Based on progress reports required under subsection (2) of this section, the commission may grant an extension beyond that provided in subsection (2) of this section. Such additional extension may not exceed a total of two years. [2003 c 373 § 4; 2003 c 83 § 211; 1993 c 427 § 2; 1961 c 14 § 81.84.010. Prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

Reviser's note: This section was amended by 2003 c 83 § 211 and by 2003 c 373 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

81.84.020 Application—Hearing—Issuance of certificate—Determining factors. (1) Upon the filing of an application the commission shall give reasonable notice to the department, affected cities, counties, and public transportation benefit areas and any common carrier which might be adversely affected, of the time and place for hearing on such application. The commission shall have power after hearing, to issue the certificate as prayed for, or to refuse to issue it, or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require; but the commission shall not have power to grant a certificate to operate between districts and/or into any territory prohibited by RCW 47.60.120 or already served by an existing certificate holder, unless such existing certificate holder has failed or refused to furnish reasonable and adequate service or has failed to provide the service described in its certificate or tariffs after the time period allowed to initiate service has elapsed: PROVIDED, A certificate shall be granted when it shall appear to the satisfaction of the commission that the commercial ferry was actually operating in good faith over the route for which such certificate shall be sought, on January 15, 1927: PROVIDED, FURTHER, That in case two or more commercial ferries shall upon said date have been operating vessels upon the same route, or between the same districts the commission shall determine after public hearing whether one or more certificates shall issue, and in determining to whom a certificate or certificates shall be issued, the commission shall consider all material facts and circumstances including the prior operation, schedules, and services rendered by either of the ferries, and in case more than one certificate shall issue, the commission shall fix and determine the schedules and services of the ferries to which the certifi-

cates are issued to the end that duplication of service be eliminated and public convenience be furthered.

(2) Before issuing a certificate, the commission shall determine that the applicant has the financial resources to operate the proposed service for at least twelve months, based upon the submission by the applicant of a pro forma financial statement of operations. Issuance of a certificate shall be determined upon, but not limited to, the following factors: Ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing the service; a statement of the total assets on hand of the applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in such field by the applicant. The documentation required of the applicant under this section shall comply with the provisions of RCW 9A.72.085.

(3) Subsection (2) of this section does not apply to an application for a certificate that is pending as of July 25, 1993.

(4) In granting a certificate for passenger-only ferries and determining what conditions to place on the certificate, the commission shall consider and give substantial weight to the effect of its decisions on public agencies operating, or eligible to operate, passenger-only ferry service.

(5) Until March 1, 2005, the commission shall not consider an application for passenger-only ferry service serving any county in Puget Sound, unless the public transportation benefit area authority or ferry district serving that county, by resolution, agrees to the application. [2003 c 373 § 5; 2003 c 83 § 212; 1993 c 427 § 3; 1961 c 14 § 81.84.020. Prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

81.84.060 Certificate—Grounds for cancellation, revocation, suspension, alteration, or amendment. The commission, upon complaint by an interested party, or upon its own motion after notice and opportunity for hearing, may cancel, revoke, suspend, alter, or amend a certificate issued under this chapter on any of the following grounds:

(1) Failure of the certificate holder to initiate service by the conclusion of the fifth year after the certificate has been granted or by the conclusion of an extension granted under RCW 81.84.010 (2) or (3), if the commission has considered the progress report information required under RCW 81.84.010 (2) or (3);

(2) Failure of a certificate holder for passenger-only ferry service in Puget Sound to initiate service by the conclusion of the twentieth month after the certificate has been granted;

(3) Failure of the certificate holder to file an annual report;

(4) The filing by a certificate holder of an annual report that shows no revenue in the previous twelve-month period after service has been initiated;

(5) The violation of any provision of this chapter;

(6) The violation of or failure to observe the provisions or conditions of the certificate or tariffs;

(7) The violation of an order, decision, rule, regulation, or requirement established by the commission under this chapter;

(8) Failure of a certificate holder to maintain the required insurance coverage in full force and effect; or

(9) Failure or refusal to furnish reasonable and adequate service after initiating service.

The commission shall take appropriate action within thirty days upon a complaint by an interested party or of its own finding that a provision of this section has been violated. [2003 c 373 § 6; 2003 c 83 § 213; 1993 c 427 § 7.]

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Chapter 81.104 RCW

HIGH-CAPACITY TRANSPORTATION SYSTEMS

Sections

81.104.160 Motor vehicle excise tax—Sales and use tax on car rentals. (*Effective if Initiative Measure No. 776 is declared unconstitutional by pending court action.*)

81.104.160 Motor vehicle excise tax—Sales and use tax on car rentals. (*Effective if Initiative Measure No. 776 is upheld by pending court action.*)

81.104.160 Motor vehicle excise tax—Sales and use tax on car rentals. (*Effective if Initiative Measure No. 776 is declared unconstitutional by pending court action.*) (1) Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, and regional transit authorities may submit an authorizing proposition to the voters, and if approved, may levy and collect an excise tax, at a rate approved by the voters, but not exceeding eighty one-hundredths of one percent on the value, under chapter 82.44 RCW, of every motor vehicle owned by a resident of the taxing district, solely for the purpose of providing high capacity transportation service. In any county imposing a motor vehicle excise tax surcharge pursuant to RCW 81.100.060, the maximum tax rate under this section shall be reduced to a rate equal to eighty one-hundredths of one percent on the value less the equivalent motor vehicle excise tax rate of the surcharge imposed pursuant to RCW 81.100.060. This rate shall not apply to vehicles licensed under RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16.079, 46.16.085, or 46.16.090.

(2) An agency imposing a tax under subsection (1) of this section may also impose a sales and use tax solely for the purpose of providing high capacity transportation service, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the agency's jurisdiction that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax shall not exceed 2.172 percent. The rate of tax imposed under this subsection shall bear the same ratio to the 2.172 percent rate authorized that the rate imposed under subsection (1) of this section bears to the rate authorized under subsection (1) of this section. The base of the tax shall be the selling price in the case of a sales tax or the rental value of the vehicle used in the case of a use tax. The revenue collected under this subsection shall be used in the same manner as excise taxes under subsection (1) of this section. [1998 c 321

§ 35 (Referendum Bill No. 49, approved November 3, 1998). Prior: 1992 c 194 § 13; 1992 c 101 § 27; 1991 c 318 § 12; 1990 c 43 § 42.]

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Contingent effective dates—1998 c 321 §§ 23-42: See note following RCW 35.58.410.

Legislative intent—1992 c 194: See note following RCW 82.08.020.

Effective dates—1992 c 194: See note following RCW 46.04.466.

81.104.160 Motor vehicle excise tax—Sales and use tax on car rentals. (*Effective if Initiative Measure No. 776 is upheld by pending court action.*) An agency may impose a sales and use tax solely for the purpose of providing high capacity transportation service, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the agency's jurisdiction that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax shall not exceed 2.172 percent. The base of the tax shall be the selling price in the case of a sales tax or the rental value of the vehicle used in the case of a use tax.

Any motor vehicle excise tax previously imposed under the provisions of RCW 81.104.160(1) shall be repealed, terminated and expire on December 5, 2002. [2003 c 1 § 6 (Initiative Measure No. 776, approved November 5, 2002); 1998 c 321 § 35 (Referendum Bill No. 49, approved November 3, 1998). Prior: 1992 c 194 § 13; 1992 c 101 § 27; 1991 c 318 § 12; 1990 c 43 § 42.]

Reviser's note: The constitutionality of Initiative Measure No. 776 is being challenged in *Pierce Co. v. State of Washington*, King Co. Superior Ct. No. 02-2-35125-5 SEA.

Severability—Savings—2003 c 1 (Initiative Measure No. 776): "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. If the repeal of taxes in section 6 of this act is judicially held to impair any contract in existence as of the effective date of this act, the repeal shall apply to any other contract, including novation, renewal, or refunding (in the case of bond contract)." [2003 c 1 § 10 (Initiative Measure No. 776, approved November 5, 2002).]

Repeal of taxes by 2003 c 1 § 6 (Initiative Measure No. 776): "If the repeal of taxes in section 6 of this act affects any bonds previously issued for any purpose relating to light rail, the people expect transit agencies to retire these bonds using reserve funds including accrued interest, sale of property or equipment, new voter approved tax revenues, or any combination of these sources of revenue. Taxing districts should abstain from further bond sales for any purpose relating to light rail until voters decide this measure. The people encourage transit agencies to put another tax revenue measure before voters if they want to continue with a light rail system dramatically changed from that previously represented to and approved by voters." [2003 c 1 § 7 (Initiative Measure No. 776, approved November 5, 2002).]

Construction—Intent—2003 c 1 (Initiative Measure No. 776): See notes following RCW 46.16.0621.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Contingent effective dates—1998 c 321 §§ 23-42: See note following RCW 35.58.410.

Legislative intent—1992 c 194: See note following RCW 82.08.020.

Effective dates—1992 c 194: See note following RCW 46.04.466.

Chapter 81.112 RCW

REGIONAL TRANSIT AUTHORITIES

(Formerly: Regional transportation authorities)

Sections

81.112.086 Maintenance plan.

81.112.086 Maintenance plan. As a condition of receiving state funding, a regional transit authority shall submit a maintenance and preservation management plan for certification by the transportation commission or its successor entity. The plan must inventory all transportation system assets within the direction and control of the transit authority, and provide a plan for preservation of assets based on lowest life-cycle cost methodologies. [2003 c 363 § 306.]

Finding—Intent—2003 c 363: See note following RCW 35.84.060.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

Title 82 EXCISE TAXES

Reviser's note: Referendum Bill No. 51 was rejected by the voters at the November 2002 election, after the 2002 print edition of the Revised Code of Washington had been published and distributed. The following explains what session laws were affected and the resulting changes that were made to this title.

Engrossed Substitute Senate Bill No. 6008 (codified as 2002 c 203) was contingent on funding being provided by legislative appropriation (see 2002 c 203 § 13). Funding was provided in Engrossed Substitute Senate Bill No. 6347 (codified as 2002 c 201). However, 2002 c 201 was contingent on passage of Engrossed Substitute House Bill No. 2969 (codified as 2002 c 202), which was sent to the voters as Referendum Bill No. 51, and rejected by the voters. Therefore, 2002 c 201 and 2002 c 203 did not take effect.

We have removed the following sections, and the notes following, from this title.

82.67.005
82.67.010
82.67.020
82.67.030
82.67.040
82.67.050
82.67.900
82.67.901

Chapters

82.02 General provisions.
82.04 Business and occupation tax.
82.08 Retail sales tax.
82.12 Use tax.
82.14 Local retail sales and use taxes.
82.16 Public utility tax.
82.19 Litter tax.
82.23B Oil spill response tax.
82.24 Tax on cigarettes.
82.27 Tax on enhanced food fish.
82.29A Leasehold excise tax.
82.32 General administrative provisions.
82.36 Motor vehicle fuel tax.
82.38 Special fuel tax act.
82.42 Aircraft fuel tax.
82.44 Motor vehicle excise tax.
82.45 Excise tax on real estate sales.
82.49 Watercraft excise tax.
82.50 Travel trailers and campers excise tax.

82.68 Sales and use tax deferrals for the manufacture of biodiesel and alcohol fuel.
82.69 Sales and use tax deferrals for the manufacture of wood biomass fuel.
82.70 Commute trip reduction incentives.
82.71 Quality maintenance fee on nursing facility operators.
82.80 Local option transportation taxes.

Chapter 82.02 RCW GENERAL PROVISIONS

Sections

82.02.210 Washington compliance with streamlined sales and use tax agreement—Intent.
82.02.220 Exclusion of steam, electricity, or electrical energy from definition of certain terms. (*Effective July 1, 2004.*)
82.02.230 One statewide rate and one jurisdiction-wide rate for sales and use taxes. (*Effective July 1, 2004.*)

82.02.210 Washington compliance with streamlined sales and use tax agreement—Intent. (1) It is the intent of the legislature that Washington join as a member state in the streamlined sales and use tax agreement referred to in chapter 82.58 RCW. The agreement provides for a simpler and more uniform sales and use tax structure among states that have sales and use taxes. The intent of the legislature is to bring Washington's sales and use tax system into compliance with the agreement so that Washington may join as a member state and have a voice in the development and administration of the system, and to substantially reduce the burden of tax compliance on sellers.

(2) Chapter 168, Laws of 2003 does not include changes to Washington law that may be required in the future and that are not fully developed under the agreement. These include, but are not limited to, changes relating to on-line registration, reporting, and remitting of payments by businesses for sales and use tax purposes, monetary allowances for sellers and their agents, sourcing, and amnesty for businesses registering under the agreement.

(3) It is the intent of the legislature that the provisions of chapters 82.08 and 82.12 RCW be interpreted and applied consistently with the agreement.

(4) The department of revenue shall report to the fiscal committees of the legislature on January 1, 2004, and each January 1st thereafter, on the development of the agreement and shall recommend changes to the sales and use tax structure and propose legislation as may be necessary to keep Washington in compliance with the agreement. [2003 c 168 § 1.]

Part headings not law—2003 c 168: See note following RCW 82.08.010.

82.02.220 Exclusion of steam, electricity, or electrical energy from definition of certain terms. (*Effective July 1, 2004.*) When the terms "ingredient," "component part," "incorporated into," "goods," "products," "byproducts," "materials," "consumables," and other similar terms denoting tangible items that may be used, sold, or consumed are used in this title, the terms do not include steam, electricity, or electrical energy. [2003 c 168 § 701.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.02.230 One statewide rate and one jurisdiction-wide rate for sales and use taxes. (Effective July 1, 2004.)

(1) There shall be one statewide rate for sales and use taxes imposed at the state level. This subsection does not apply to the taxes imposed by RCW 82.12.022 or 82.18.020, or to taxes imposed on the sale, rental, lease, or use of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

(2) There shall be one jurisdiction-wide rate for local sales and use taxes imposed at levels below the state level. This subsection does not apply to the taxes imposed by chapter 67.28 RCW, RCW 67.40.090 or 82.14.360, or to taxes imposed on the sale, rental, lease, or use of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes. [2003 c 168 § 801.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Chapter 82.04 RCW**BUSINESS AND OCCUPATION TAX**

Sections

82.04.040	"Sale," "casual or isolated sale," "lease or rental." (Effective July 1, 2004.)
82.04.050	"Sale at retail," "retail sale." (Effective July 1, 2004.)
82.04.120	"To manufacture." (Effective July 1, 2004.)
82.04.180	"Successor."
82.04.215	"Computer," "computer software," "custom software," "customization of prewritten computer software," "master copies," "prewritten computer software," "retained rights." (Effective July 1, 2004.)
82.04.216	Exclusion of steam, electricity, or electrical energy from definition of certain terms. (Effective July 1, 2004.)
82.04.240	Tax on manufacturers. (Contingent effective date; contingent expiration of subsection.)
82.04.250	Tax on retailers. (Expires July 1, 2006.)
82.04.250	Tax on retailers. (Contingent effective date.)
82.04.260	Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Nuclear fuel assemblies—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors—Hospitals—Expiration of subsection. (Contingent expiration date.)
82.04.260	Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Nuclear fuel assemblies—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors—Hospitals—Expiration of subsection. (Contingent effective date.)
82.04.270	Tax on wholesalers. (Contingent effective date.)
82.04.272	Tax on warehousing and reselling prescription drugs. (Effective July 1, 2004.)
82.04.280	Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting, government contractors—Cold storage warehouse defined—Storage warehouse defined—Periodical or magazine defined. (Contingent effective date.)
82.04.290	Tax on international investment management services or other business or service activities.
82.04.29001	Creation and distribution of custom software—Customization of prewritten computer software—Taxable services. (Effective July 1, 2004.)
82.04.2906	Tax on certain chemical dependency services.
82.04.424	Exemptions—Certain in-state activities. (Contingent expiration date.)
82.04.426	Exemptions—Semiconductor microchips. (Contingent effective date; contingent expiration date.)
82.04.4289	Exemption—Compensation for patient services or attendant sales of drugs dispensed pursuant to prescription by certain nonprofit organizations. (Effective July 1, 2004.)
82.04.4334	Deductions—Sale or distribution of biodiesel or alcohol fuels. (Expires July 1, 2009.)

82.04.4335	Deductions—Sale or distribution of wood biomass fuel. (Expires July 1, 2009.)
82.04.440	Persons taxable on multiple activities—Credits. (Contingent effective date.)
82.04.4453	Repealed.
82.04.4454	Repealed.
82.04.4461	Credit—Preproduction development spending. (Contingent effective date; expires July 1, 2024.)
82.04.4462	Credit—Investment in design and preproduction development computer software and hardware. (Contingent effective date; expires July 1, 2024.)
82.04.4463	Credit—Property taxes paid on property used for manufacture of commercial airplanes. (Contingent effective date; expires July 1, 2024.)
82.04.448	Credit—Manufacturing semiconductor materials. (Contingent effective date; contingent expiration date.)
82.04.470	Resale certificate—Burden of proof—Tax liability—Rules—Resale certificate defined. (Effective July 1, 2004.)
82.04.530	Gross proceeds of sales calculation for telephone business. (Contingent expiration date.)

Commuter trip reduction incentives: Chapter 82.70 RCW.

82.04.040 "Sale," "casual or isolated sale," "lease or rental." (Effective July 1, 2004.)

(1) "Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail" or "retail sale" under RCW 82.04.050. It includes lease or rental, conditional sale contracts, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

(2) "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved.

(3)(a) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" includes transactions under agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. Sec. 7701(h)(1), as amended or renumbered as of January 1, 2003. The definition in this subsection (3) shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the United States internal revenue code, Washington state's commercial code, or other provisions of federal, state, or local law.

(b) "Lease or rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments, and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this

subsection (3)(b)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property. [2003 c 168 § 103; 1961 c 15 § 82.04.040. Prior: 1959 ex.s. c 5 § 1; 1959 ex.s. c 3 § 1; 1955 c 389 § 5; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.04.050 "Sale at retail," "retail sale." (Effective July 1, 2004.) (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situ-

ated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in

this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term shall also include:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term shall not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall also include the sale of prewritten computer software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of prewritten computer software.

(7) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(8) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fer-

tilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(9) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(10) Until July 1, 2003, the term shall not include the sale of or charge made for labor and services rendered for environmental remedial action as defined in RCW 82.04.2635(2). [2003 c 168 § 104; 2002 c 178 § 1; 2000 2nd sp.s. c 4 § 23. Prior: 1998 c 332 § 2; 1998 c 315 § 1; 1998 c 308 § 1; 1998 c 275 § 1; 1997 c 127 § 1; prior: 1996 c 148 § 1; 1996 c 112 § 1; 1995 1st sp.s. c 12 § 2; 1995 c 39 § 2; 1993 sp.s. c 25 § 301; 1988 c 253 § 1; prior: 1987 c 285 § 1; 1987 c 23 § 2; 1986 c 231 § 1; 1983 2nd ex.s. c 3 § 25; 1981 c 144 § 3; 1975 1st ex.s. c 291 § 5; 1975 1st ex.s. c 90 § 1; 1973 1st ex.s. c 145 § 1; 1971 ex.s. c 299 § 3; 1971 ex.s. c 281 § 1; 1970 ex.s. c 8 § 1; prior: 1969 ex.s. c 262 § 30; 1969 ex.s. c 255 § 3; 1967 ex.s. c 149 § 4; 1965 ex.s. c 173 § 1; 1963 c 7 § 1; prior: 1961 ex.s. c 24 § 1; 1961 c 293 § 1; 1961 c 15 § 82.04.050; prior: 1959 ex.s. c 5 § 2; 1957 c 279 § 1; 1955 c 389 § 6; 1953 c 91 § 3; 1951 2nd ex.s. c 28 § 3; 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Retroactive application—Effective date—2002 c 178: See notes following RCW 67.28.180.

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Effective dates—1998 c 308: "(1) Sections 1 through 4 of this act take effect July 1, 1998.

(2) Section 5 of this act takes effect July 1, 2003." [1998 c 308 § 6.]

Effective date—1998 c 275: "This act takes effect July 1, 1998." [1998 c 275 § 2.]

Effective date—1997 c 127: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 127 § 2.]

Severability—1996 c 148: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 148 § 7.]

Effective date—1996 c 148: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1996." [1996 c 148 § 8.]

Effective date—1996 c 112: "This act shall take effect July 1, 1996." [1996 c 112 § 5.]

Intent—1995 1st sp.s. c 12: "It is the intent of the legislature that massage services be recognized as health care practitioners for the purposes of business and occupation tax application. To achieve this intent massage services are being removed from the definition of sale at retail and retail sale." [1995 1st sp.s. c 12 § 1.]

Effective date—1995 1st sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 12 § 5.]

Effective date—1995 c 39: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 39 § 3.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

Application to preexisting contracts—1975 1st ex.s. c 291; 1975 1st ex.s. c 90: See note following RCW 82.12.010.

Effective dates—1975 1st ex.s. c 291: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately: PROVIDED, That sections 8 and 26 through 43 of this amendatory act shall be effective on and after January 1, 1976; PROVIDED FURTHER, That sections 2, 3, and 4, and subsections (1) and (2) of section 24 shall be effective on and after January 1, 1977; AND PROVIDED FURTHER, That subsections (3) through (15) of section 24 shall be effective on and after January 1, 1978." [1975 1st ex.s. c 291 § 46.]

Severability—1975 1st ex.s. c 291: "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 291 § 45.]

Effective date—1975 1st ex.s. c 90: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 90 § 5.]

Effective date—1973 1st ex.s. c 145: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 145 § 2.]

Effective dates—1971 ex.s. c 299: "This 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect as follows:

(1) Sections 1 through 12, 15 through 34 and 53 shall take effect July 1, 1971;

(2) Sections 13, 14, and 77 and 78 shall take effect June 1, 1971; and

(3) Sections 35 through 52 and 54 through 76 shall take effect as provided in section 53." [1971 ex.s. c 299 § 79.]

Severability—1971 ex.s. c 299: "If any phrase, clause, subsection or section of this 1971 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1971 amendatory act without the phrase, clause, subsection or section so held unconstitutional or

invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1971 ex.s. c 299 § 78.]

Construction—Severability—1969 ex.s. c 255: See notes following RCW 35.58.272.

Effective date—1967 ex.s. c 149: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1967." [1967 ex.s. c 149 § 65.]

Effective date—1965 ex.s. c 173: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1965." [1965 ex.s. c 173 § 33.]

Credit for retail sales or use taxes paid to other jurisdictions with respect to property used: RCW 82.12.035.

"Services rendered in respect to" defined: RCW 82.04.051.

82.04.120 "To manufacture." (Effective July 1, 2004.) "To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include: (1) The production or fabrication of special made or custom made articles; (2) the production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician; (3) cutting, delimiting, and measuring of felled, cut, or taken trees; and (4) crushing and/or blending of rock, sand, stone, gravel, or ore.

"To manufacture" shall not include: Conditioning of seed for use in planting; cubing hay or alfalfa; activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state; the growing, harvesting, or producing of agricultural products; packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage; or the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser. [2003 c 168 § 604; 1999 sp.s. c 9 § 1; 1999 c 211 § 2; 1998 c 168 § 1; 1997 c 384 § 1; 1989 c 302 § 201. Prior: 1989 c 302 § 101; 1987 c 493 § 1; 1982 2nd ex.s. c 9 § 2; 1975 1st ex.s. c 291 § 6; 1965 ex.s. c 173 § 3; 1961 c 15 § 82.04.120; prior: 1959 ex.s. c 3 § 2; 1955 c 389 § 13; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Intent—1999 sp.s. c 9: "This act is intended to clarify that this is the intent of the legislature both retroactively and prospectively." [1999 sp.s. c 9 § 4.]

Severability—1999 sp.s. c 9: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 sp.s. c 9 § 5.]

Effective date—1999 sp.s. c 9: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 7, 1999]." [1999 sp.s. c 9 § 6.]

Intent—1999 c 211 §§ 2 and 3: "The legislature intends that sections 2 and 3 of this act be clarifying in nature and are retroactive in response to the administrative difficulties encountered in implementing the original legislation." [1999 c 211 § 4.]

Effective date—1999 c 211 §§ 1-4: "Sections 1 through 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 7, 1999]." [1999 c 211 § 7.]

Finding—Intent—1999 c 211: See note following RCW 82.08.02565.

Effective date—1998 c 168: "This act takes effect October 1, 1998." [1998 c 168 § 4.]

Effective date—1997 c 384: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 384 § 3.]

Finding—Purpose—1989 c 302: "(1) The legislature finds that chapter 9, Laws of 1982 2nd ex. sess. was intended to extend state public utility taxation to electrical energy generated in this state for eventual distribution outside this state. The legislature further finds that chapter 9, Laws of 1982 2nd ex. sess. was held unconstitutional by the Thurston county superior court in *Washington Water Power v. State of Washington* (memorandum opinion No. 83-2-00977-1). The purpose of *Part I of this act is to recognize the effect of that decision by correcting the relevant RCW sections to read as though the legislature had not enacted chapter 9, Laws of 1982 2nd ex. sess., and thereby make clear the effect of subsequent amendments in *Part II of this act.

(2) The purpose of *Part II of this act is to provide a constitutional means of replacing the revenue lost as a result of the Washington Water Power decision." [1989 c 302 § 1.]

***Reviser's note:** For "Part" division see 1989 c 302.

Effective date—1982 2nd ex.s. c 9: See note following RCW 82.16.010.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

82.04.180 "Successor." (1) "Successor" means:

(a) Any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, more than fifty percent of the fair market value of either the (i) tangible assets or (ii) intangible assets of the taxpayer; or

(b) A surviving corporation of a statutory merger.

(2) Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor. [2003 1st sp.s. c 13 § 11; 1985 c 414 § 6; 1961 c 15 § 82.04.180. Prior: 1955 c 389 § 19; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

82.04.215 "Computer," "computer software," "custom software," "customization of prewritten computer software," "master copies," "prewritten computer software," "retained rights." (*Effective July 1, 2004.*) (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. All software is classified as either prewritten or custom. Consistent with this definition

"computer software" includes only those sets of coded instructions intended for use by an end user and specifically excludes retained rights in software and master copies of software.

(3) "Custom software" means software created for a single person.

(4) "Customization of prewritten computer software" means any alteration, modification, or development of applications using or incorporating prewritten computer software for a specific person. "Customization of prewritten computer software" includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of prewritten computer software does not change the underlying character or taxability of the original prewritten computer software.

(5) "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license.

(6) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such persons is not the author or creator, the person shall be deemed to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; however where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

(7) "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor. [2003 c 168 § 601; 1998 c 332 § 3.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

82.04.216 Exclusion of steam, electricity, or electrical energy from definition of certain terms. (*Effective July 1, 2004.*) Consistent with RCW 82.02.220, when the terms "tangible personal property," "ingredient," "component part," "incorporated into," "goods," "products," "byproducts," "materials," "consumables," and other similar terms denoting tangible items that may be used, sold, or consumed are used

in this chapter, the terms do not include steam, electricity, or electrical energy. [2003 c 168 § 702.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.04.240 Tax on manufacturers. (Contingent effective date; contingent expiration of subsection.) (1) Upon every person engaging within this state in business as a manufacturer, except persons taxable as manufacturers under other provisions of this chapter; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured, multiplied by the rate of 0.484 percent.

(2) Upon every person engaging within this state in the business of manufacturing semiconductor materials, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or, in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.275 percent. For the purposes of this subsection "semiconductor materials" means silicon crystals, silicon ingots, raw polished semiconductor wafers, compound semiconductors, integrated circuits, and microchips. This subsection (2) expires twelve years after *the effective date of this act.

(3) The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state. [2003 c 149 § 3; 1998 c 312 § 3; 1993 sp.s. c 25 § 102; 1981 c 172 § 1; 1979 ex.s. c 196 § 1; 1971 ex.s. c 281 § 3; 1969 ex.s. c 262 § 34; 1967 ex.s. c 149 § 8; 1965 ex.s. c 173 § 5; 1961 c 15 § 82.04.240. Prior: 1959 c 211 § 1; 1955 c 389 § 44; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

***Contingent effective date—Findings—Intent—2003 c 149:** See notes following RCW 82.04.426.

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective dates—1981 c 172: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981, except section 9 of this act shall take effect September 1, 1981, sections 7 and 8 of this act shall take effect October 1, 1981, and section 10 of this act shall take effect July 1, 1983." [1981 c 172 § 12.]

Effective date—1979 ex.s. c 196: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1979." [1979 ex.s. c 196 § 15.]

82.04.250 Tax on retailers. (Expires July 1, 2006.) (1) Upon every person except persons taxable under RCW 82.04.260(5), 82.04.272, or subsection (2) or (3) of this section engaging within this state in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax

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imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263 except as provided in subsection (3) of this section, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

(3) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, that is classified by the federal aviation administration as a FAR part 145 certificated repair station with airframe and instrument ratings and limited ratings for nondestructive testing, radio, Class 3 Accessory, and specialized services, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of .275 percent. [2003 1st sp.s. c 2 § 1. Prior: 1998 c 343 § 5; 1998 c 312 § 4; 1993 sp.s. c 25 § 103; 1981 c 172 § 2; 1971 ex.s. c 281 § 4; 1971 ex.s. c 186 § 2; 1969 ex.s. c 262 § 35; 1967 ex.s. c 149 § 9; 1961 c 15 § 82.04.250; prior: 1955 c 389 § 45; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Expiration date—2003 1st sp.s. c 2: "This act expires July 1, 2006." [2003 1st sp.s. c 2 § 3.]

Effective date—2003 1st sp.s. c 2: "This act takes effect August 1, 2003." [2003 1st sp.s. c 2 § 4.]

Effective date—1998 c 343: See note following RCW 82.04.272.

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1971 ex.s. c 186: See note following RCW 82.04.110.

82.04.250 Tax on retailers. (Contingent effective date.) (1) Upon every person except persons taxable under RCW 82.04.260 (5) or (13), 82.04.272, or subsection (2) of this section engaging within this state in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260(13), as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent. [2003 2nd sp.s. c 1 § 2. Prior: 1998 c 343 § 5; 1998 c 312 § 4; 1993 sp.s. c 25 § 103; 1981 c 172 § 2; 1971 ex.s. c 281 § 4; 1971 ex.s. c 186 § 2; 1969 ex.s. c 262 § 35; 1967 ex.s. c 149 § 9; 1961 c 15 § 82.04.250; prior: 1955 c 389 § 45; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Effective date—1998 c 343: See note following RCW 82.04.272.

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1971 ex.s. c 186: See note following RCW 82.04.110.

82.04.260 Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Nuclear fuel assemblies—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors—Hospitals—Expiration of subsection. (Contingent expiration date.)

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

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

(b) Seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of 0.138 percent;

(c) By canning, preserving, freezing, processing, or dehydrating fresh fruits and vegetables, or selling at wholesale fresh fruits and vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen, processed, or dehydrated multiplied by the rate of 0.138 percent. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record;

(d) Dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course of business the goods out of state; as to such persons the tax imposed shall be equal to the value of the products manufactured multiplied by the rate of 0.138 percent. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record;

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

(f) Alcohol fuel or wood biomass fuel, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel or wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

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

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

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

(5) Upon every person engaging within this state in the business of making sales, at retail or wholesale, of nuclear fuel assemblies manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the assemblies multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in the business of manufacturing nuclear fuel assemblies, as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of 0.275 percent.

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

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

(9) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar

structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

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

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

(11) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 0.484 percent.

(12) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900. [2003 c 339 § 11; 2003 c 261 § 11; 2001 2nd sp.s. c 25 § 2. Prior: 1998 c 312 § 5; 1998 c 311 § 2; prior: 1998 c 170 § 4; 1996 c 148 § 2; 1996 c 115 § 1; prior: 1995 2nd sp.s. c 12 § 1; 1995 2nd sp.s. c 6 § 1; 1993 sp.s. c 25 § 104; 1993 c 492 § 304; 1991 c 272 § 15; 1990 c 21 § 2; 1987 c 139 § 1; prior: 1985 c 471 § 1; 1985 c 135 § 2; 1983 2nd ex.s. c 3 § 5; prior: 1983 1st ex.s. c 66 § 4; 1983 1st ex.s. c 55 § 4; 1982 2nd ex.s. c 13 § 1; 1982 c 10 § 16; prior: 1981 c 178 § 1; 1981 c 172 § 3; 1979 ex.s. c 196 § 2; 1975 1st ex.s. c 291 § 7; 1971 ex.s. c 281 § 5; 1971 ex.s. c 186 § 3; 1969 ex.s. c 262 § 36; 1967 ex.s. c 149 § 10; 1965 ex.s. c 173 § 6; 1961 c 15 § 82.04.260; prior: 1959 c 211 § 2; 1955 c 389 § 46; prior: 1953 c 91 § 4; 1951 2nd ex.s. c 28 § 4; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Reviser's note: This section was amended by 2003 c 261 § 11 and by 2003 c 339 § 11, each without reference to the other. Both amendments are

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incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2003 c 339: See note following RCW 82.69.030.

Effective dates—2003 c 261: See note following RCW 82.68.030.

Purpose—Intent—2001 2nd sp.s. c 25: "The purpose of sections 2 and 3 of this act is to provide a tax rate for persons who manufacture dairy products that is commensurate to the rate imposed on certain other processors of agricultural commodities. This tax rate applies to persons who manufacture dairy products from raw materials such as fluid milk, dehydrated milk, or byproducts of milk such as cream, buttermilk, whey, butter, or casein. It is not the intent of the legislature to provide this tax rate to persons who use dairy products as an ingredient or component of their manufactured product, such as milk-based soups or pizza. It is the intent that persons who manufacture products such as milk, cheese, yogurt, ice cream, whey, or whey products be subject to this rate." [2001 2nd sp.s. c 25 § 1.]

Part headings not law—2001 2nd sp.s. c 25: "Part headings used in this act are not any part of the law." [2001 2nd sp.s. c 25 § 7.]

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Effective date—1998 c 170: See note following RCW 82.04.331.

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

Effective date—1996 c 115: "This act shall take effect July 1, 1996." [1996 c 115 § 2.]

Effective date—1995 2nd sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 12 § 2.]

Effective date—1995 2nd sp.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 6 § 2.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1991 c 272: See RCW 81.108.901.

Severability—1985 c 471: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 471 § 17.]

Effective date—1985 c 471: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 471 § 18.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

Severability—1982 2nd ex.s. c 13: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 2nd ex.s. c 13 § 2.]

Effective date—1982 2nd ex.s. c 13: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 13 § 3.]

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

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Effective date—1971 ex.s. c 186: See note following RCW 82.04.110.

Low-level waste disposal rate regulation study: RCW 81.04.520.

82.04.260 Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Nuclear fuel assemblies—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors—Hospitals—Expiration of subsection. (*Contingent effective date.*) (1) Upon every person engaging within this state in the business of manufacturing:

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

(b) Seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of 0.138 percent;

(c) By canning, preserving, freezing, processing, or dehydrating fresh fruits and vegetables, or selling at wholesale fresh fruits and vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen, processed, or dehydrated multiplied by the rate of 0.138 percent. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record;

(d) Dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course of business the goods out of state; as to such persons the tax imposed shall be equal to the value of the products manufactured multiplied by the rate of 0.138 percent. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record;

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

(f) Alcohol fuel or wood biomass fuel, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel or wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be

equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

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

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

(5) Upon every person engaging within this state in the business of making sales, at retail or wholesale, of nuclear fuel assemblies manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the assemblies multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in the business of manufacturing nuclear fuel assemblies, as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of 0.275 percent.

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

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

(9) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient

place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

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

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

(11) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 0.484 percent.

(12) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter. The monies collected under this subsection shall be deposited in the health services account created under RCW 43.72.900.

(13)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through the later of June 30, 2007, or the day preceding the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550; and

(ii) 0.2904 percent beginning on the later of July 1, 2007, or the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550.

(b) Beginning October 1, 2005, upon every person engaging within this state in the business of making sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the airplanes or components multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through the later of June 30, 2007, or the day preceding the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550; and

(ii) 0.2904 percent beginning on the later of July 1, 2007, or the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550.

(c) For the purposes of this subsection (13), "commercial airplane," "component," and "final assembly of a superefficient airplane" have the meanings given in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person eligible for the tax rate under this subsection (13) must report as required under RCW 82.32.545.

(e) This subsection (13) does not apply after the earlier of: July 1, 2024; or December 31, 2007, if assembly of a superefficient airplane does not begin by December 31, 2007, as determined under RCW 82.32.550. [2003 2nd sp.s. c 1 § 4; 2003 2nd sp.s. c 1 § 3; 2003 c 339 § 11; 2003 c 261 § 11; 2001 2nd sp.s. c 25 § 2. Prior: 1998 c 312 § 5; 1998 c 311 § 2; prior: 1998 c 170 § 4; 1996 c 148 § 2; 1996 c 115 § 1; prior: 1995 2nd sp.s. c 12 § 1; 1995 2nd sp.s. c 6 § 1; 1993 sp.s. c 25 § 104; 1993 c 492 § 304; 1991 c 272 § 15; 1990 c 21 § 2; 1987 c 139 § 1; prior: 1985 c 471 § 1; 1985 c 135 § 2; 1983 2nd ex.s. c 3 § 5; prior: 1983 1st ex.s. c 66 § 4; 1983 1st ex.s. c 55 § 4; 1982 2nd ex.s. c 13 § 1; 1982 c 10 § 16; prior: 1981 c 178 § 1; 1981 c 172 § 3; 1979 ex.s. c 196 § 2; 1975 1st ex.s. c 291 § 7; 1971 ex.s. c 281 § 5; 1971 ex.s. c 186 § 3; 1969 ex.s. c 262 § 36; 1967 ex.s. c 149 § 10; 1965 ex.s. c 173 § 6; 1961 c 15 § 82.04.260; prior: 1959 c 211 § 2; 1955 c 389 § 46; prior: 1953 c 91 § 4; 1951 2nd ex.s. c 28 § 4; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Reviser's note: This section was amended by 2003 2nd sp.s. c 1 § 3 and by 2003 2nd sp.s. c 1 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.461.

Purpose—Intent—2001 2nd sp.s. c 25: "The purpose of sections 2 and 3 of this act is to provide a tax rate for persons who manufacture dairy products that is commensurate to the rate imposed on certain other processors of agricultural commodities. This tax rate applies to persons who manufacture dairy products from raw materials such as fluid milk, dehydrated milk, or byproducts of milk such as cream, buttermilk, whey, butter, or casein. It is not the intent of the legislature to provide this tax rate to persons who use dairy products as an ingredient or component of their manufactured product, such as milk-based soups or pizza. It is the intent that persons who manufacture products such as milk, cheese, yogurt, ice cream, whey, or whey products be subject to this rate." [2001 2nd sp.s. c 25 § 1.]

Part headings not law—2001 2nd sp.s. c 25: "Part headings used in this act are not any part of the law." [2001 2nd sp.s. c 25 § 7.]

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Effective date—1998 c 170: See note following RCW 82.04.331.

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

Effective date—1996 c 115: "This act shall take effect July 1, 1996." [1996 c 115 § 2.]

Effective date—1995 2nd sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 12 § 2.]

Effective date—1995 2nd sp.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 6 § 2.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1991 c 272: See RCW 81.108.901.

Severability—1985 c 471: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 471 § 17.]

Effective date—1985 c 471: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 471 § 18.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

Severability—1982 2nd ex.s. c 13: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 2nd ex.s. c 13 § 2.]

Effective date—1982 2nd ex.s. c 13: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 13 § 3.]

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

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Effective date—1971 ex.s. c 186: See note following RCW 82.04.110.

Low-level waste disposal rate regulation study: RCW 81.04.520.

82.04.270 Tax on wholesalers. (Contingent effective date.) Upon every person except persons taxable under RCW 82.04.260 (5) or (13), 82.04.298, or 82.04.272 engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of 0.484 percent. [2003 2nd sp.s. c 1 § 5; 2001 1st sp.s. c 9 § 3; (2001 1st sp.s. c 9 § 2 expired July 1, 2001); 1999 c 358 § 2. Prior: 1999 c 358 § 1; 1998 c 343 § 2; 1998 c 329 § 1; 1998 c 312 § 6; 1994 c 124 § 2; 1993 sp.s. c 25 § 105; 1981 c 172 § 4; 1971 ex.s. c 281 § 6; 1971 ex.s. c 186 § 4; 1969 ex.s. c 262 § 37; 1967 ex.s. c 149 § 11; 1961 c 15 § 82.04.270; prior: 1959 ex.s. c 5 § 3; 1955 c 389 § 47; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Effective dates—2001 1st sp.s. c 9: See note following RCW 82.04.298.

Expiration dates—2001 1st sp.s. c 9: See note following RCW 82.04.290.

Effective date—1999 c 358 § 2: "Section 2 of this act takes effect July 1, 2001." [1999 c 358 § 23.]

Effective date—1999 c 358 §§ 1 and 3-21: See note following RCW 82.04.3651.

Effective date—1998 c 343: See note following RCW 82.04.272.

Effective date—1998 c 329: "This act takes effect July 1, 1998." [1998 c 329 § 2.]

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1971 ex.s. c 186: See note following RCW 82.04.110.

82.04.272 Tax on warehousing and reselling prescription drugs. (Effective July 1, 2004.) (1) Upon every person engaging within this state in the business of warehousing and reselling drugs for human use pursuant to a prescription; as to such persons, the amount of the tax shall be equal to the gross income of the business multiplied by the rate of 0.138 percent.

(2) For the purposes of this section:

(a) "Prescription" and "drug" have the same meaning as in RCW 82.08.0281; and

(b) "Warehousing and reselling drugs for human use pursuant to a prescription" means the buying of drugs for human use pursuant to a prescription from a manufacturer or another wholesaler, and reselling of the drugs to persons selling at retail or to hospitals, clinics, health care providers, or other providers of health care services, by a wholesaler or retailer who is registered with the federal drug enforcement administration and licensed by the state board of pharmacy. [2003 c 168 § 401; 1998 c 343 § 1.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective date—1998 c 343: "This act takes effect July 1, 2001." [1998 c 343 § 6.]

82.04.280 Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting, government contractors—Cold storage warehouse defined—Storage warehouse defined—Periodical or magazine defined. (Contingent effective date.) Upon every person engaging within this state in the business of: (1) Printing, and of publishing newspapers, periodicals, or magazines; (2) building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used, primarily for foot or vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved; (3) extracting for hire or processing for hire, except persons taxable as processors for hire under another section of this chapter; (4) operating a cold storage warehouse or storage warehouse, but not including the rental of cold storage lockers; (5) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed

under the provisions of RCW 48.05.310; (6) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the Federal Communications Commission, or in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 micro-volt signal strength and delivery by wire, if any; (7) engaging in activities which bring a person within the definition of consumer contained in RCW 82.04.190(6); as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of 0.484 percent.

As used in this section, "cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

As used in this section, "storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini storage" facilities whereby customers have direct access to individual storage areas by separate entrance. "Storage warehouse" does not include a building or structure, or that part of such building or structure, in which an activity taxable under RCW 82.04.272 is conducted.

As used in this section, "periodical or magazine" means a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication. [2003 c 149 § 4; 1998 c 343 § 3; 1994 c 112 § 1; 1993 sp.s. c 25 § 303; 1993 sp.s. c 25 § 106; 1986 c 226 § 2; 1983 c 132 § 1; 1975 1st ex.s. c 90 § 3; 1971 ex.s. c 299 § 5; 1971 ex.s. c 281 § 7; 1970 ex.s. c 8 § 2. Prior: 1969 ex.s. c 262 § 38; 1969 ex.s. c 255 § 5; 1967 ex.s. c 149 § 13; 1963 c 168 § 1; 1961 c 15 § 82.04.280; prior: 1959 ex.s. c 5 § 4; 1959 ex.s. c 3 § 4; 1955 c 389 § 48; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 228 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Contingent effective date—Findings—Intent—2003 c 149: See notes following RCW 82.04.426.

Effective date—1998 c 343: See note following RCW 82.04.272.

Retroactive application—1994 c 112 § 1: "Section 1 of this act shall apply retroactively to July 1, 1993." [1994 c 112 § 5.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective date—1986 c 226: See note following RCW 82.16.010.

Application to preexisting contracts—1975 1st ex.s. c 90: See note following RCW 82.12.010.

Effective date—1975 1st ex.s. c 90: See note following RCW 82.04.050.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

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82.04.290 Tax on international investment management services or other business or service activities. (1) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, 82.04.298, 82.04.2905, 82.04.280, 82.04.2907, 82.04.272, and 82.04.2906, and subsection (1) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.5 percent.

This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section. [2003 c 343 § 2; 2001 1st sp.s. c 9 § 6; (2001 1st sp.s. c 9 § 4 expired July 1, 2001). Prior: 1998 c 343 § 4; 1998 c 331 § 2; 1998 c 312 § 8; 1998 c 308 § 5; 1998 c 308 § 4; 1997 c 7 § 2; 1996 c 1 § 2; 1995 c 229 § 3; 1993 sp.s. c 25 § 203; 1985 c 32 § 3; 1983 2nd ex.s. c 3 § 2; 1983 c 9 § 2; 1983 c 3 § 212; 1971 ex.s. c 281 § 8; 1970 ex.s. c 65 § 4; 1969 ex.s. c 262 § 39; 1967 ex.s. c 149 § 14; 1963 ex.s. c 28 § 2; 1961 c 15 § 82.04.290; prior: 1959 ex.s. c 5 § 5; 1955 c 389 § 49; prior: 1953 c 195 § 2; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Expiration dates—2001 1st sp.s. c 9: "(1) Sections 2 and 4 of this act expire July 1, 2001.

(2) Section 5 of this act expires July 1, 2003.

(3) Section 8 of this act expires July 22, 2001." [2001 1st sp.s. c 9 § 10.]

Effective dates—2001 1st sp.s. c 9: See note following RCW 82.04.298.

Effective date—1998 c 343: See note following RCW 82.04.272.

Effective date—1998 c 331: See note following RCW 82.04.2907.

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Effective dates—1998 c 308: See note following RCW 82.04.050.

Savings—Effective date—1997 c 7: See notes following RCW 82.04.255.

Effective date—1996 c 1: See note following RCW 82.04.255.

Effective date—1995 c 229: See note following RCW 82.04.293.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—Severability—Effective date—1983 c 9: See notes following RCW 82.04.255.

82.04.29001 Creation and distribution of custom software—Customization of prewritten computer software—Taxable services. (*Effective July 1, 2004.*) (1) The creation and distribution of custom software is a service taxable under RCW 82.04.290(2). Duplication of the software for the same person, or by the same person for its own use, does not change the character of the software.

(2) The customization of prewritten computer software is a service taxable under RCW 82.04.290(2). [2003 c 168 § 602; 1998 c 332 § 4.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Findings—Intent—1998 c 332: "The legislature finds that the creation and customization of software is an area not fully addressed in our excise tax statutes, and that certainty of tax treatment is essential to the industry and consumers. Therefore, the intent of this act is to make the tax treatment of software clear and certain for developers, programmers, and consumers." [1998 c 332 § 1.]

Effective date—1998 c 332: "This act takes effect July 1, 1998." [1998 c 332 § 9.]

82.04.2906 Tax on certain chemical dependency services. (1) Upon every person engaging within this state in the business of providing intensive inpatient or recovery house residential treatment services for chemical dependency, certified by the department of social and health services, for which payment from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof is received as compensation for or to support those services; as to such persons the amount of tax with respect to such business shall be equal to the gross income from such services multiplied by the rate of 0.484 percent.

(2) If the persons described in subsection (1) of this section receive income from sources other than those described in subsection (1) of this section or provide services other than those named in subsection (1) of this section, that income and those services are subject to tax as otherwise provided in this chapter. [2003 c 343 § 1.]

82.04.424 Exemptions—Certain in-state activities. (*Contingent expiration date.*) (1) This chapter does not apply to a person making sales in Washington if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

- (i) The storage, dissemination, or display of advertising;
- (ii) The taking of orders; or
- (iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. For purposes of this section, persons are "affiliated persons" with respect to each other where one of the persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of the persons by another person or by a group of other persons which are affiliated with respect to each other.

(2) This section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is

determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers. [2003 c 76 § 2.]

Intent—2003 c 76: "It is the intent of the legislature to exempt from business and occupation tax and to relieve from the obligation to collect sales and use tax from certain sellers with very limited connections to Washington. These sellers are currently relieved from the obligation to collect sales and use tax because of the provisions of the federal internet tax freedom act. The legislature intends to continue to relieve these particular sellers from that obligation in the event that the federal internet tax freedom act is not extended. The legislature further intends that any relief from tax obligations provided by this act expire at such time as the United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers, or a court of competent jurisdiction, in a judgment not subject to review, determines that a state can impose sales and use tax collection duties on remote sellers." [2003 c 76 § 1.]

82.04.426 Exemptions—Semiconductor microchips. (*Contingent effective date; contingent expiration date.*) (1) The tax imposed by RCW 82.04.240(2) does not apply to any person in respect to the manufacturing of semiconductor microchips.

(2) For the purposes of this section:

(a) "Manufacturing semiconductor microchips" means taking raw polished semiconductor wafers and embedding integrated circuits on the wafers using processes such as masking, etching, and diffusion; and

(b) "Integrated circuit" means a set of microminiaturized, electronic circuits.

(3) This section expires nine years after *the effective date of this act. [2003 c 149 § 2.]

***Contingent effective date—2003 c 149:** "(1)(a) This act is contingent upon the siting and commercial operation of a significant semiconductor microchip fabrication facility in the state of Washington.

(b) For the purposes of this section:

(i) "Commercial operation" means the same as "commencement of commercial production" as used in RCW 82.08.965.

(ii) "Semiconductor microchip fabrication" means "manufacturing semiconductor microchips" as defined in RCW 82.04.426.

(iii) "Significant" means the combined investment of new buildings and new machinery and equipment in the buildings, at the commencement of commercial production, will be at least one billion dollars.

(2) This act takes effect the first day of the month in which a contract for the construction of a significant semiconductor fabrication facility is signed, as determined by the director of the department of revenue.

(3)(a) The department of revenue shall provide notice of the effective date of this act to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(b) If, after making a determination that a contract has been signed and this act is effective, the department discovers that commencement of commercial production did not take place within three years of the date the contract was signed, the department shall make a determination that this act is no longer effective, and all taxes that would have been otherwise due shall be deemed deferred taxes and are immediately assessed and payable from any person reporting tax under RCW 82.04.240(2) or claiming an exemption or credit under section 2 or 5 through 10 of this act. The department is not authorized to make a second determination regarding the effective date of this act." [2003 c 149 § 12.]

Findings—Intent—2003 c 149: "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of family wage employment in the state's manufacturing industries. The legislature further finds that targeting tax incentives to focus on key industry clusters is an important business climate strategy. The Washington competitiveness council has recognized the semiconductor industry, which includes the design and manufacture of semiconductor materials, as one of the state's existing key industry clusters. Businesses in this cluster in the state of Washington are facing increasing pressure to expand elsewhere. The sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature improved Washington's ability to compete with other states for manufactur-

ing investment. However, additional incentives for the semiconductor cluster need to be put in place in recognition of the unique forces and global issues involved in business decisions that key businesses in this cluster face.

Therefore, the legislature intends to enact comprehensive tax incentives for the semiconductor cluster that address activities of the lead product industry and its suppliers and customers. Tax incentives for the semiconductor cluster are important in both retention and expansion of existing business and attraction of new businesses, all of which will strengthen this cluster. The legislature also recognizes that the semiconductor industry involves major investment that results in significant construction projects, which will create jobs and bring many indirect benefits to the state during the construction phase." [2003 c 149 § 1.]

82.04.4289 Exemption—Compensation for patient services or attendant sales of drugs dispensed pursuant to prescription by certain nonprofit organizations. (*Effective July 1, 2004.*) This chapter does not apply to amounts derived as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by a kidney dialysis facility operated as a nonprofit corporation, a nonprofit hospice agency licensed under chapter 70.127 RCW, and nursing homes and homes for unwed mothers operated as religious or charitable organizations, but only if no part of the net earnings received by such an institution inures directly or indirectly, to any person other than the institution entitled to deduction hereunder. "Prescription" and "drug" have the same meaning as in RCW 82.08.0281. [2003 c 168 § 402; 1998 c 325 § 1; 1993 c 492 § 305; 1981 c 178 § 2; 1980 c 37 § 10. Formerly RCW 82.04.430(9).]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.4334 Deductions—Sale or distribution of biodiesel or alcohol fuels. (*Expires July 1, 2009.*) (1) In computing tax there may be deducted from the measure of tax amounts received from the retail sale, or for the distribution, of:

(a) Biodiesel fuel; or

(b) Alcohol fuel, if the alcohol fuel is at least eighty-five percent of the volume of the fuel being sold or distributed.

(2) For the purposes of this section and RCW 82.08.955 and 82.12.955, the following definitions apply:

(a) "Biodiesel fuel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

(b) "Alcohol fuel" means any alcohol made from a product other than petroleum or natural gas, which is used alone or in combination with gasoline or other petroleum products for use as a fuel for motor vehicles, farm implements and machines, or implements of husbandry.

(c) "Distribution" means any of the actions specified in RCW 82.36.020(2).

(3) This section expires July 1, 2009. [2003 c 63 § 1.]

Effective date—2003 c 63: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

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ernment and its existing public institutions, and takes effect July 1, 2003." [2003 c 63 § 4.]

82.04.4335 Deductions—Sale or distribution of wood biomass fuel. (*Expires July 1, 2009.*) (1) In computing tax there may be deducted from the measure of tax amounts received from the retail sale, or for the distribution, of wood biomass fuel.

(2) For the purposes of this act [section], the following definitions apply:

(a) "Wood biomass fuel" means a pyrolytic liquid fuel or synthesis gas-derived liquid fuel, used in internal combustion engines, and produced from wood, forest, or field residue, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic.

(b) "Distribution" means any of the actions specified in RCW 82.36.020(2).

(3) This section expires July 1, 2009. [2003 c 339 § 12.]

Effective dates—2003 c 339: See note following RCW 82.69.030.

82.04.440 Persons taxable on multiple activities—Credits. (*Contingent effective date.*) (1) Every person engaged in activities which are within the purview of the provisions of two or more of sections RCW 82.04.230 to 82.04.290, inclusive, shall be taxable under each paragraph applicable to the activities engaged in.

(2) Persons taxable under RCW 82.04.250, 82.04.270, or 82.04.260 (4) or (13) with respect to selling products in this state shall be allowed a credit against those taxes for any (a) manufacturing taxes paid with respect to the manufacturing of products so sold in this state, and/or (b) extracting taxes paid with respect to the extracting of products so sold in this state or ingredients of products so sold in this state. Extracting taxes taken as credit under subsection (3) of this section may also be taken under this subsection, if otherwise allowable under this subsection. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(3) Persons taxable under RCW 82.04.240 or 82.04.260(1)(b) shall be allowed a credit against those taxes for any extracting taxes paid with respect to extracting the ingredients of the products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(4) Persons taxable under RCW 82.04.230, 82.04.240, or 82.04.260 (1), (2), (4), (6), or (13) with respect to extracting or manufacturing products in this state shall be allowed a credit against those taxes for any (i) gross receipts taxes paid to another state with respect to the sales of the products so extracted or manufactured in this state, (ii) manufacturing taxes paid with respect to the manufacturing of products using ingredients so extracted in this state, or (iii) manufacturing taxes paid with respect to manufacturing activities completed in another state for products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the extraction or manufacturing of those products.

(5) For the purpose of this section:

(a) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof.

(c) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes (i) the taxes imposed in RCW 82.04.240 and 82.04.260 (1), (2), (4), and (13), and (ii) similar gross receipts taxes paid to other states.

(d) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes the tax imposed in RCW 82.04.230 and similar gross receipts taxes paid to other states.

(e) "Business", "manufacturer", "extractor", and other terms used in this section have the meanings given in RCW 82.04.020 through 82.04.212, notwithstanding the use of those terms in the context of describing taxes imposed by other states. [2003 2nd sp.s. c 1 § 6; 1998 c 312 § 9; 1994 c 124 § 4; 1987 2nd ex.s. c 3 § 2; 1985 c 190 § 1; 1981 c 172 § 5; 1967 ex.s. c 149 § 16; 1965 ex.s. c 173 § 12; 1961 c 15 § 82.04.440. Prior: 1959 c 211 § 3; 1951 1st ex.s. c 9 § 1; 1950 ex.s. c 5 § 2; 1949 c 228 § 2-A; 1943 c 156 § 3; 1941 c 178 § 3; 1939 c 225 § 3; 1937 c 227 § 3; 1935 c 180 § 6; Rem. Supp. 1949 § 8370-6.]

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Retroactive application—1994 c 124: "Except as otherwise provided in section 6 of this act, section 4 of this act applies retrospectively to all tax reporting periods on or after June 23, 1987." [1994 c 124 § 7.]

Legislative findings and intent—1987 2nd ex.s. c 3: "The legislature finds that the invalidation of the multiple activities exemption contained in RCW 82.04.440 by the United States Supreme Court now requires adjustments to the state's business and occupation tax to achieve constitutional equality between Washington taxpayers who have conducted and will continue to conduct business in interstate and intrastate commerce. It is the intent of chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act to preserve the integrity of Washington's business and occupation tax system and impose only that financial burden upon the state necessary to establish parity in taxation between such taxpayers.

Thus, chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act extends [extend] the system of credits originated in RCW 82.04.440 in 1985 to provide for equal treatment of taxpayers engaging in extracting, manufacturing or selling regardless of the location in which any of such activities occurs. It is further intended that RCW 82.04.440, as amended by section 2, chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act, shall be construed and applied in a manner that will eliminate unconstitutional discrimination between taxpayers and ensure the preservation and collection of revenues from the conduct of multiple activities in which taxpayers in this state may engage." [1994 c 124 § 5; 1987 2nd ex.s. c 3 § 1.]

Application to prior reporting periods—1987 2nd ex.s. c 3: "If it is determined by a court of competent jurisdiction, in a judgment not subject to review, that relief is appropriate for any tax reporting periods before August 11, 1987, in respect to RCW 82.04.440 as it existed before August 11, 1987, it is the intent of the legislature that the credits provided in RCW 82.04.440 as amended by section 2, chapter 3, Laws of 1987 2nd ex. sess. and section 4 of this act shall be applied to such reporting periods and that relief for such

periods be limited to the granting of such credits." [1994 c 124 § 6; 1987 2nd ex.s. c 3 § 3.]

Severability—1987 2nd ex.s. c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 2nd ex.s. c 3 § 4.]

Severability—1985 c 190: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 190 § 8.]

Effective dates—1981 c 172: See note following RCW 82.04.240.

82.04.4453 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.04.4454 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.04.4461 Credit—Preproduction development spending. (Contingent effective date; expires July 1, 2024.)

(1)(a) In computing the tax imposed under this chapter, a credit is allowed for each person for preproduction development spending occurring after *the effective date of this act.

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

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

(3) Except as provided in subsection (1)(b) of this section the credit shall be taken against taxes due for the same calendar year in which the qualified preproduction development expenditures are incurred. Credit earned on or after July 1, 2005, may not be carried over. The credit for each calendar year shall not exceed the amount of tax otherwise due under this chapter for the calendar year. Refunds may not be granted in the place of a credit.

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

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

(a) "Aeronautics" means the study of flight and the science of building and operating commercial aircraft.

(b) "Person" means a person as defined in RCW 82.04.030, who is a manufacturer or processor for hire of commercial airplanes, or components of such airplanes, as those terms are defined in RCW 82.32.550.

(c) "Preproduction development" means research, design, and engineering activities performed in relation to the development of a product, product line, model, or model derivative, including prototype development, testing, and certification. The term includes the discovery of technological information, the translating of technological information into new or improved products, processes, techniques, for-

mulas, or inventions, and the adaptation of existing products and models into new products or new models, or derivatives of products or models. The term does not include manufacturing activities or other production-oriented activities, however the term does include tool design and engineering design for the manufacturing process. The term does not include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(d) "Preproduction development spending" means qualified preproduction development expenditures plus eighty percent of amounts paid to a person other than a public educational or research institution to conduct qualified preproduction development.

(e) "Qualified preproduction development" means preproduction development performed within this state in the field of aeronautics.

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

(g) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's tax returns during the year in which the credit is claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440.

(6) In addition to all other requirements under this title, a person taking the credit under this section must report as required under RCW 82.32.545.

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

(8) This section expires July 1, 2024. [2003 2nd sp.s. c 1 § 7.]

***Reviser's note:** See RCW 82.32.550 for determination of effective date.

Finding—2003 2nd sp.s. c 1: "The legislature finds that the people of the state have benefited from the presence of the aerospace industry in Washington state. The aerospace industry provides good wages and benefits for the thousands of engineers, mechanics, and support staff working directly in the industry throughout the state. The suppliers and vendors that support the aerospace industry in turn provide a range of jobs. The legislature declares that it is in the public interest to encourage the continued presence of this industry through the provision of tax incentives. The comprehensive tax incentives in this act address the cost of doing business in Washington state compared to locations in other states." [2003 2nd sp.s. c 1 § 1.]

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

82.04.4462 Credit—Investment in design and preproduction development computer software and hardware. (Contingent effective date; expires July 1, 2024.) (1) In computing the tax imposed under this chapter, a credit is allowed for the investment related to design and preproduction development computer software and hardware acquired

between July 1, 1995, and *the effective date of this act, and used by an eligible person primarily for the digital design and development of commercial airplanes. The credit shall be equal to the purchase price of such property, multiplied by 8.44 percent. Credit taken in any one calendar year may not exceed ten million dollars, and total lifetime credit taken under this section by any one person may not exceed twenty million dollars. Credit may be carried over until used.

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

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

(b) "Design and preproduction development computer software and hardware" means computer-aided three-dimensional interactive applications and other solid modeling computer technology that allow for electronic design and testing during product development.

(c) "Eligible person" means a person as defined in RCW 82.04.030, who is a manufacturer of commercial airplanes.

(3) An application must be made to the department before taking the credit under this section. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the uses of the computer software and hardware, purchase price, dates of acquisition, and other information required by the department. The department shall rule on the application within sixty days. All applications must be received by the department within one year of *the effective date of this act.

(4) This section expires July 1, 2024. [2003 2nd sp.s. c 1 § 8.]

***Reviser's note:** See RCW 82.32.550 for determination of effective date.

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

82.04.4463 Credit—Property taxes paid on property used for manufacture of commercial airplanes. (Contingent effective date; expires July 1, 2024.) (1) In computing the tax imposed under this chapter, a credit is allowed for property taxes paid during the calendar year.

(2) The credit is equal to:

(a)(i) Property taxes paid on new buildings, and land upon which this property is located, built after *the effective date of this act, and used in manufacturing commercial airplanes or components of such airplanes; or

(ii) Property taxes attributable to an increase in assessed value due to the renovation or expansion, after *the effective date of this act, of a building used in manufacturing commercial airplanes or components of such airplanes; and

(b) Property taxes paid on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 used in manufacturing commercial airplanes or components of such airplanes and acquired after *the effective date of this act.

(3) For the purposes of this section, "commercial passenger airplane" and "component" have the meanings given in RCW 82.32.550.

(4) A person taking the credit under this section is subject to all the requirements of chapter 82.32 RCW. In addition, the person must report as required under RCW 82.32.545. A credit earned during one calendar year may be

carried over to be credited against taxes incurred in a subsequent calendar year, but may not be carried over a second year. No refunds may be granted for credits under this section.

(5) In addition to all other requirements under this title, a person taking the credit under this section must report as required under RCW 82.32.545.

(6) This section expires July 1, 2024. [2003 2nd sp.s. c 1 § 15.]

***Reviser's note:** See RCW 82.32.550 for determination of effective date.

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

82.04.448 Credit—Manufacturing semiconductor materials. (*Contingent effective date; contingent expiration date.*) (1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under RCW 82.04.240(2) for persons engaged in the business of manufacturing semiconductor materials. For the purposes of this section "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2)(a) The credit under this section shall equal three thousand dollars for each employment position used in manufacturing production that takes place in a new building exempt from sales and use tax under RCW 82.08.965 and 82.12.965. A credit is earned for the calendar year a person fills a position. Additionally a credit is earned for each year the position is maintained over the subsequent consecutive years, up to eight years. Those positions that are not filled for the entire year are eligible for fifty percent of the credit if filled less than six months, and the entire credit if filled more than six months.

(b) To qualify for the credit, the manufacturing activity of the person must be conducted at a new building that qualifies for the exemption from sales and use tax under RCW 82.08.965 and 82.12.965.

(c) In those situations where a production building in existence on *the effective date of this section will be phased out of operation, during which time employment at the new building at the same site is increased, the person is eligible for credit for employment at the existing building and new building, with the limitation that the combined eligible employment not exceed full employment at the new building. "Full employment" has the same meaning as in RCW 82.08.965. The credit may not be earned until the commencement of commercial production, as that term is used in RCW 82.08.965.

(3) No application is necessary for the tax credit. The person is subject to all of the requirements of chapter 82.32 RCW. In no case may a credit earned during one calendar year be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds may be granted for credits under this section.

(4) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been claimed shall be immediately due. The department shall assess interest, but not penalties, on the taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be retroactive to the date the

tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(5) A person taking the credit under this section must report under RCW 82.32.535.

(6) Credits may be taken after twelve years after *the effective date of this act, for those buildings at which commercial production began before twelve years after *the effective date of this act, subject to all of the eligibility criteria and limitations of this section.

(7) This section expires twelve years after *the effective date of this act. [2003 c 149 § 9.]

***Contingent effective date—Findings—Intent—2003 c 149:** See notes following RCW 82.04.426.

82.04.470 Resale certificate—Burden of proof—Tax liability—Rules—Resale certificate defined. (*Effective July 1, 2004.*) (1) Unless a seller has taken from the buyer a resale certificate, the burden of proving that a sale of tangible personal property, or of services, was not a sale at retail shall be upon the person who made it.

(2) If a seller does not receive a resale certificate at the time of the sale, have a resale certificate on file at the time of the sale, or obtain a resale certificate from the buyer within a reasonable time after the sale, the seller shall remain liable for the tax as provided in RCW 82.08.050, unless the seller can demonstrate facts and circumstances according to rules adopted by the department of revenue that show the sale was properly made without payment of sales tax.

(3) Resale certificates shall be valid for a period of four years from the date the certificate is provided to the seller.

(4) The department may provide by rule for suggested forms for resale certificates or equivalent documents containing the information that will be accepted as resale certificates. The department shall provide by rule the categories of items or services that must be specified on resale certificates and the business classifications that may use a blanket resale certificate.

(5) As used in this section, "resale certificate" means documentation provided by a buyer to a seller stating that the purchase is for resale in the regular course of business, or that the buyer is exempt from retail sales tax, and containing the following information:

(a) The name and address of the buyer;

(b) The uniform business identifier or revenue registration number of the buyer, if the buyer is required to be registered;

(c) The type of business engaged in;

(d) The categories of items or services to be purchased for resale or that are exempt, unless the buyer is in a business classification that may present a blanket resale certificate as provided by the department by rule;

(e) The date on which the certificate was provided;

(f) A statement that the items or services purchased either: (i) Are purchased for resale in the regular course of business; or (ii) are exempt from tax pursuant to statute;

(g) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale or exemption privilege claimed on the certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law;

(h) The name of the individual authorized to sign the certificate, printed in a legible fashion;

(i) The signature of the authorized individual; and

(j) The name of the seller.

(6) Subsection (5)(h), (i), and (j) of this section does not apply if the certificate is provided in a format other than paper. If the certificate is provided in a format other than paper, the name of the individual providing the certificate must be included in the certificate. [2003 c 168 § 204; 1993 sp.s. c 25 § 701; 1983 2nd ex.s. c 3 § 29; 1975 1st ex.s. c 278 § 43; 1961 c 15 § 82.04.470. Prior: 1935 c 180 § 9; RRS § 8370-9.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

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

Resale certificates: RCW 82.08.130 and 82.32.291.

82.04.530 Gross proceeds of sales calculation for telephone business. (*Contingent expiration date.*)

Contingency—Court judgment—2002 c 67: "(1) If a court of competent jurisdiction enters a final judgment on the merits that is based on federal or state law, is no longer subject to appeal, and substantially limits or impairs the essential elements of P.L. 106-252, 4 U.S.C. Secs. 116 through 126, or chapter 67, Laws of 2002, then chapter 67, Laws of 2002 is null and void in its entirety.

(2) If the contingency in subsection (1) of this section occurs, section 502, chapter 168, Laws of 2003 is null and void." [2003 c 168 § 902; 2002 c 67 § 18.]

Chapter 82.08 RCW RETAIL SALES TAX

Sections

82.08.010	Definitions. (<i>Effective July 1, 2004.</i>)
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82.08.0273	Exemptions—Sales to nonresidents of tangible personal property for use outside the state—Proof of nonresident status—Penalties. (<i>Effective July 1, 2004.</i>)
82.08.0281	Exemptions—Sales of certain drugs or family planning devices. (<i>Effective July 1, 2004.</i>)
82.08.0283	Exemptions—Certain medical items. (<i>Effective July 1, 2004.</i>)
82.08.0293	Exemptions—Sales of food and food ingredients. (<i>Effective January 1, 2004.</i>)
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82.08.050	Buyer to pay, seller to collect tax—Statement of tax—Exception—Penalties—Contingent expiration of subsection. (<i>Effective July 1, 2004.</i>)
82.08.054	Computation of tax due. (<i>Effective July 1, 2004.</i>)
82.08.064	Tax rate changes. (<i>Effective until July 1, 2004.</i>)
82.08.064	Tax rate changes. (<i>Effective July 1, 2004.</i>)
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82.08.945	Exemptions—Kidney dialysis devices. (<i>Effective July 1, 2004.</i>)
82.08.950	Exemptions—Steam, electricity, electrical energy. (<i>Effective July 1, 2004.</i>)
82.08.955	Exemptions—Sales of machinery, equipment, vehicles, and services related to biodiesel or alcohol fuel blend. (<i>Expires July 1, 2009.</i>)
82.08.960	Sales of machinery, equipment, vehicles, and services related to wood biomass fuel blend. (<i>Expires July 1, 2009.</i>)
82.08.965	Exemptions—Semiconductor materials manufacturing. (<i>Contingent effective date; contingent expiration date.</i>)
82.08.970	Exemptions—Gases and chemicals used to manufacture semiconductor materials. (<i>Contingent effective date; contingent expiration date.</i>)
82.08.975	Exemptions—Computer parts and software related to the manufacture of commercial airplanes. (<i>Contingent effective date; expires July 1, 2024.</i>)
82.08.980	Exemptions—Labor, services, and personal property related to the manufacture of superefficient airplanes. (<i>Contingent effective date; expires July 1, 2024.</i>)

82.08.010 Definitions. (*Effective July 1, 2004.*) For the purposes of this chapter:

(1) "Selling price" includes "sales price." "Sales price" means the total amount of consideration, except trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property or services defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (a) The seller's cost of the property sold; (b) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (c) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (d) delivery charges; (e) installation charges; and (f) the value of exempt tangible personal property given to the purchaser where taxable and exempt tangible personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department may prescribe.

"Selling price" or "sales price" does not include: Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale; interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(2) "Seller" means every person, including the state and its departments and institutions, making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal, except "seller" does not mean the state and its departments and institutions when making sales to the state and its departments and institutions;

(3) "Buyer," "purchaser," and "consumer" include, without limiting the scope hereof, every individual, receiver,

assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, municipal corporation, quasi municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof;

(4) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing;

(5) The meaning attributed in chapter 82.04 RCW to the terms "tax year," "taxable year," "person," "company," "sale," "sale at retail," "retail sale," "sale at wholesale," "wholesale," "business," "engaging in business," "cash discount," "successor," "consumer," "in this state" and "within this state" shall apply equally to the provisions of this chapter;

(6) For the purposes of the taxes imposed under this chapter and under chapter 82.12 RCW, "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software. [2003 c 168 § 101; 1985 c 38 § 3; 1985 c 2 § 2 (Initiative Measure No. 464, approved November 6, 1984); 1983 1st ex.s. c 55 § 1; 1967 ex.s. c 149 § 18; 1963 c 244 § 1; 1961 c 15 § 82.08.010. Prior: (i) 1945 c 249 § 4; 1943 c 156 § 6; 1941 c 78 § 8; 1939 c 225 § 7; 1935 c 180 § 17; Rem. Supp. 1945 § 8370-17. (ii) 1935 c 180 § 20; RRS § 8370-20.]

Effective dates—2003 c 168: "Sections 101 through 104, 201 through 216, 401 through 412, 501, 502, 601 through 604, 701 through 704, 801, 901, and 902 of this act take effect July 1, 2004. Sections 301 through 305 of this act take effect January 1, 2004." [2003 c 168 § 903.]

Part headings not law—2003 c 168: "Part headings used in this act are not any part of the law." [2003 c 168 § 901.]

Purpose—1985 c 2: "The purpose of this initiative is to reduce the amount on which sales tax is paid by excluding the trade-in value of certain property from the amount taxable." [1985 c 2 § 1 (Initiative Measure No. 464, approved November 6, 1984).]

Effective dates—1983 1st ex.s. c 55: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983, except that section 12 of this act shall take effect January 1, 1984, and shall be effective for property taxes levied in 1983, and due in 1984, and thereafter." [1983 1st ex.s. c 55 § 13.]

82.08.020 Tax imposed—Retail sales—Retail car rental. (1) There is levied and there shall be collected a tax on each retail sale in this state equal to six and five-tenths percent of the selling price.

(2) There is levied and there shall be collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. The revenue collected under this subsection shall be deposited in the multimodal transportation account created in RCW 47.66.070.

(3) Beginning July 1, 2003, there is levied and collected an additional tax of three-tenths of one percent of the selling

price on each retail sale of a motor vehicle in this state, other than retail car rentals taxed under subsection (2) of this section. The revenue collected under this subsection shall be deposited in the multimodal transportation account created in RCW 47.66.070.

(4) For purposes of subsection (3) of this section, "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road and nonhighway vehicles as defined in RCW 46.09.020, and snowmobiles as defined in RCW 46.10.010.

(5) The taxes imposed under this chapter shall apply to successive retail sales of the same property.

(6) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020. [2003 c 361 § 301; 2000 2nd sp.s. c 4 § 1; 1998 c 321 § 36 (Referendum Bill No. 49, approved November 3, 1998); 1992 c 194 § 9; 1985 c 32 § 1. Prior: 1983 2nd ex.s. c 3 § 62; 1983 2nd ex.s. c 3 § 41; 1983 c 7 § 6; 1982 1st ex.s. c 35 § 1; 1981 2nd ex.s. c 8 § 1; 1977 ex.s. c 324 § 2; 1975-'76 2nd ex.s. c 130 § 1; 1971 ex.s. c 281 § 9; 1969 ex.s. c 262 § 31; 1967 ex.s. c 149 § 19; 1965 ex.s. c 173 § 13; 1961 c 293 § 6; 1961 c 15 § 82.08.020; prior: 1959 ex.s. c 3 § 5; 1955 ex.s. c 10 § 2; 1949 c 228 § 4; 1943 c 156 § 5; 1941 c 76 § 2; 1939 c 225 § 10; 1935 c 180 § 16; Rem. Supp. 1949 § 8370-16.]

Effective dates—2003 c 361: "Sections 301 through 602 of this act take effect July 1, 2003, and sections 201 and 202 of this act take effect August 1, 2003." [2003 c 361 § 703.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Application—2000 2nd sp.s. c 4 § 1: "Section 1 of this act applies to taxes collected on and after December 31, 1999." [2000 2nd sp.s. c 4 § 34.]

Effective date—2000 2nd sp.s. c 4 §§ 1-3, 20: "Sections 1 through 3 and 20 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 2, 2000]." [2000 2nd sp.s. c 4 § 35.]

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Contingent effective dates—1998 c 321 §§ 23-42: See note following RCW 35.58.410.

Legislative intent—1992 c 194: "The legislature intends to exempt rental cars from state and local motor vehicle excise taxes, and to impose additional sales and use taxes in lieu thereof. These additional sales and use taxes are intended to provide as much revenue to the funds currently receiving motor vehicle excise tax revenue, including the transportation funds and the general fund, as each fund would have received if the motor vehicle excise tax exemptions had not been enacted. Revenues from these additional sales and use taxes are intended to be distributed in the same manner as the motor vehicle excise tax revenues they replace." [1992 c 194 § 4.]

Effective dates—1992 c 194: See note following RCW 46.04.466.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—1983 c 7: "This act shall not be construed as affecting any existing right acquired, or liability or obligation incurred under the sections amended in this act, nor any rule, regulation, or order adopted, nor any proceeding instituted, under those sections." [1983 c 7 § 34.]

Severability—1983 c 7: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 7 § 35.]

Effective dates—1983 c 7: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect March 1,

1983, except as follows:

(1) Sections 9 through 22, and 25 through 31 of this act shall take effect June 30, 1983.

(2) Sections 23 and 24 of this act shall take effect January 1, 1984, for taxes first due in 1984 and thereafter.

The department of revenue and the department of licensing shall immediately take necessary steps to ensure that all sections of this act are properly implemented on their effective dates. The additional taxes and tax rate changes imposed under this act shall take effect on the dates designated in this act notwithstanding the date this act becomes law under Article III, section 12 of the state Constitution." [1983 c 7 § 37.]

Severability—1982 1st ex.s. c 35: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 35 § 47.]

Effective dates—Expiration date—1982 1st ex.s. c 35: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except that sections 28, 29, and 30 of this act shall take effect on May 1, 1982, sections 33 and 34 of this act shall take effect on July 1, 1983, and sections 35 through 38 of this act shall take effect on January 1, 1983.

Sections 28 and 29 of this act shall expire on July 1, 1983. The additional taxes imposed under this act shall take effect on the dates designated in this act notwithstanding the date this act becomes law under Article III, section 12 of the state Constitution." [1982 1st ex.s. c 35 § 48.]

Effective date—1975-'76 2nd ex.s. c 130: "This 1976 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That the provisions of this 1976 amendatory act shall be null and void in the event chapter . . . (*Substitute Senate Bill No. 2778), Laws of 1975-'76 2nd ex. sess. is approved and becomes law." [1975-'76 2nd ex.s. c 130 § 4.]

***Reviser's note:** "Substitute Senate Bill No. 2778" failed to become law.

High capacity transportation systems—Sales and use tax: RCW 81.104.170. Manufacturers, study: 1994 c 66.

82.08.02566 Exemptions—Sales of tangible personal property incorporated in prototype for parts, auxiliary equipment, and aircraft modification—Limitations on yearly exemption. (Effective July 1, 2004.) (1) The tax levied by RCW 82.08.020 shall not apply to sales of tangible personal property incorporated into a prototype for aircraft parts, auxiliary equipment, or modifications; or to sales of tangible personal property that at one time is incorporated into the prototype but is later destroyed in the testing or development of the prototype.

(2) This exemption does not apply to sales to any person whose total taxable amount during the immediately preceding calendar year exceeds twenty million dollars. For purposes of this section, "total taxable amount" means gross income of the business and value of products manufactured, less any amounts for which a credit is allowed under RCW 82.04.440.

(3) State and local taxes for which an exemption is received under this section and RCW 82.12.02566 shall not exceed one hundred thousand dollars for any person during any calendar year.

(4) Sellers shall collect tax on sales subject to this exemption. The buyer shall apply for a refund directly from the department. [2003 c 168 § 208; 1997 c 302 § 1; 1996 c 247 § 4.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective date—1997 c 302: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

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ernment and its existing public institutions, and takes effect July 1, 1997." [1997 c 302 § 3.]

Findings—Intent—1996 c 247: "The legislature finds that the health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in the state's manufacturing industries.

The legislature also finds that sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature have improved Washington's ability to compete with other states for manufacturing investment, but that additional incentives for manufacturers need to be adopted to solidify and enhance the state's competitive position.

The legislature intends to accomplish this by extending the current manufacturing machinery and equipment exemptions to include machinery and equipment used for research and development with potential manufacturing applications." [1996 c 247 § 1.]

82.08.0273 Exemptions—Sales to nonresidents of tangible personal property for use outside the state—Proof of nonresident status—Penalties. (Effective July 1, 2004.) (1) The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state of tangible personal property for use outside this state when the purchaser (a) is a bona fide resident of a state or possession or Province of Canada other than the state of Washington and such state, possession, or Province of Canada does not impose a retail sales tax or use tax of three percent or more or, if imposing such a tax, permits Washington residents exemption from otherwise taxable sales by reason of their residence, and (b) agrees, when requested, to grant the department of revenue access to such records and other forms of verification at his or her place of residence to assure that such purchases are not first used substantially in the state of Washington.

(2)(a) Any person claiming exemption from retail sales tax under the provisions of this section must display proof of his or her current nonresident status as herein provided.

(b) Acceptable proof of a nonresident person's status shall include one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (2)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(3) Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor shall, in good faith, examine the proof of nonresidence, determine whether the proof is acceptable under subsection (2)(b) of this section, and maintain records for each nontaxable sale which shall show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(4)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her

own, or counterfeit identification, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, shall be liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(5)(a) Any vendor who makes sales without collecting the tax to a person who does not hold valid identification establishing out-of-state residency, and any vendor who fails to maintain records of sales to nonresidents as provided in this section, shall be personally liable for the amount of tax due.

(b) Any vendor who makes sales without collecting the retail sales tax under this section and who has actual knowledge that the purchaser's proof of identification establishing out-of-state residency is fraudulent is guilty of a misdemeanor and, in addition, shall be liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the purchaser and the vendor shall be liable for any penalties and interest assessable under chapter 82.32 RCW. [2003 c 53 § 399; 1993 c 444 § 1; 1988 c 96 § 1; 1982 1st ex.s. c 5 § 1; 1980 c 37 § 39. Formerly RCW 82.08.030(21).]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—1988 c 96: "This act shall take effect July 1, 1989." [1988 c 96 § 2.]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0281 Exemptions—Sales of certain drugs or family planning devices. (Effective July 1, 2004.) (1) The tax levied by RCW 82.08.020 shall not apply to sales of drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription.

(2) The tax levied by RCW 82.08.020 shall not apply to sales of drugs or devices used for family planning purposes, including the prevention of conception, for human use dispensed or to be dispensed to patients, pursuant to a prescription.

(3) The tax levied by RCW 82.08.020 shall not apply to sales of drugs and devices used for family planning purposes, including the prevention of conception, for human use supplied by a family planning clinic that is under contract with the department of health to provide family planning services.

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

(a) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state.

(b) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(i) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; or

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) Intended to affect the structure or any function of the body.

(c) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug required by 21 C.F.R. Sec. 201.66, as amended or renumbered on January 1, 2003. The label includes:

(i) A "drug facts" panel; or

(ii) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance, or preparation. [2003 c 168 § 403; 1993 sp.s. c 25 § 308; 1980 c 37 § 46. Formerly RCW 82.08.030(28).]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Finding—1993 sp.s. c 25: "The legislature finds that prevention is a significant element in the reduction of health care costs. The legislature further finds that taxing some physician prescriptions and not others is unfair to patients. It is, therefore, the intent of the legislature to remove the taxes from prescriptions issued for family planning purposes." [1993 sp.s. c 25 § 307.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0283 Exemptions—Certain medical items. (Effective July 1, 2004.) (1) The tax levied by RCW 82.08.020 shall not apply to sales of prosthetic devices prescribed for an individual by a person licensed under chapter 18.22, 18.25, 18.57, or 18.71 RCW; medicines of mineral, animal, and botanical origin administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; and medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual. In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under this section.

(2) The exemption in subsection (1) of this section shall not apply to sales of durable medical equipment or mobility enhancing equipment.

(2) The exemption in subsection (1) of this section shall not apply to sales of durable medical equipment or mobility enhancing equipment.

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

(a) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for a prosthetic device, worn on or in the body to:

(i) Artificially replace a missing portion of the body;

(ii) Prevent or correct a physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body.

(b) "Durable medical equipment" means equipment, including repair and replacement for durable medical equipment, but does not include mobility enhancing equipment, that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury; and

(iv) Does not work in or on the body.

(c) "Mobility enhancing equipment" means equipment, including repair and replacement parts for mobility enhancing equipment, but does not include medical equipment, that:

(i) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either at home or a motor vehicle;

(ii) Is not generally used by persons with normal mobility; and

(iii) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer. [2003 c 168 § 409; 2001 c 75 § 1; 1998 c 168 § 2; 1997 c 224 § 1; 1996 c 162 § 1; 1991 c 250 § 2; 1986 c 255 § 1; 1980 c 86 § 1; 1980 c 37 § 48. Formerly RCW 82.08.030(30).]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective date—2001 c 75: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 2001]." [2001 c 75 § 3.]

Effective date—1998 c 168: See note following RCW 82.04.120.

Effective date—1997 c 224: "This act takes effect October 1, 1998." [1997 c 224 § 3.]

Effective date—1996 c 162: "This act shall take effect July 1, 1996." [1996 c 162 § 3.]

Finding—Intent—1991 c 250: "(1) The legislature finds:

(a) The existing state policy is to exempt medical oxygen from sales and use tax.

(b) The technology for supplying medical oxygen has changed substantially in recent years. Many consumers of medical oxygen purchase or rent equipment that supplies oxygen rather than purchasing oxygen in gaseous form.

(2) The intent of this act is to bring sales and rental of individual oxygen systems within the existing exemption for medical oxygen, without expanding the essence of the original policy decision that medical oxygen should be exempt from sales and use tax." [1991 c 250 § 1.]

Effective date—1986 c 255: "This act shall take effect July 1, 1986." [1986 c 255 § 3.]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0293 Exemptions—Sales of food and food ingredients. (Effective January 1, 2004.) (1) The tax levied by RCW 82.08.020 shall not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

(a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume; and

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section shall not apply to prepared food, soft drinks, or dietary supplements.

(a) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

"Prepared food" in (a)(ii) of this subsection, does not include food that is only cut, repackaged, or pasteurized by

the seller and raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness; or bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

(b) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

(c) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients: A vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or a concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection; and is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(ii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section shall apply to food and food ingredients which are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW 74.38.040(6); or

(b) Which are provided to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW.

(4) Subsection (1) of this section notwithstanding, the retail sale of food and food ingredients is subject to sales tax under RCW 82.08.020 if the food and food ingredients are sold through a vending machine, and in this case the selling price for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

This subsection does not apply to hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine.

For tax collected under this subsection, the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived. [2003 c 168 § 301; 1988 c 103 § 1; 1986 c 182 § 1; 1985 c 104 § 1; 1982 1st ex.s. c 35 § 33.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective date—1988 c 103: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1988." [1988 c 103 § 4.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.08.037 Credits and refunds for bad debts. (*Effective July 1, 2004.*) (1) A seller is entitled to a credit or refund for sales taxes previously paid on debts which are bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, except for:

- (a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;
- (b) Expenses incurred in attempting to collect debt; and
- (c) Repossessed property.

(2) If a credit or refund of sales tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(3) Payments on a bad debt are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

(4) If the seller uses a certified service provider to administer its sales tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount to the seller. [2003 c 168 § 212; 1982 1st ex.s. c 35 § 35.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.08.050 Buyer to pay, seller to collect tax—Statement of tax—Exception—Penalties—Contingent expiration of subsection. (*Effective until July 1, 2004.*) (1) The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department pursuant to the provisions of RCW 82.08.060. The tax required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department, and any seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter shall be guilty of a gross misdemeanor.

(2) In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax, unless the seller has taken from the buyer in good faith a properly executed resale certificate under RCW 82.04.470 or a copy of a direct pay permit issued under RCW 82.32.087.

(3) The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct

or indirect, and any buyer who refuses to pay any tax due under this chapter shall be guilty of a misdemeanor. The tax required by this chapter to be collected by the seller shall be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. For purposes of determining the tax due from the buyer to the seller and from the seller to the department it shall be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter, but if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price shall not be considered the selling price.

(4) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the buyer to pay the same to the seller, regardless of when the tax may be collected by the department; and all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, shall apply in addition; and, for the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made shall be considered as the due date of the tax.

(5) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

- (i) The storage, dissemination, or display of advertising;
- (ii) The taking of orders; or
- (iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(6) Subsection (5) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers. [2003 c 76 § 3; 2001 c 188 § 4; 1993 sp.s. c 25 § 704; 1992 c 206 § 2; 1986 c 36 § 1; 1985 c 38 § 1; 1971 ex.s. c 299 § 7; 1965 ex.s. c 173 § 15; 1961 c 15 § 82.08.050. Prior: 1951 c 44 § 1; 1949 c 228 § 6; 1941 c 71 § 3; 1939 c 225 § 11; 1937 c 227 § 7; 1935 c 180 § 21; Rem. Supp. 1949 § 8370-21.]

Intent—2003 c 76: See note following RCW 82.04.424.

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective date—1992 c 206: See note following RCW 82.04.170.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Project on exemption reporting requirements: RCW 82.32.440.

82.08.050 Buyer to pay, seller to collect tax—Statement of tax—Exception—Penalties—Contingent expiration of subsection. (*Effective July 1, 2004.*) (1) The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department pursuant to the provisions of RCW 82.08.060.

(2) The tax required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department, and any seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) In case any seller fails to collect the tax herein imposed or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax, unless the seller has taken from the buyer a resale certificate under RCW 82.04.470, a copy of a direct pay permit issued under RCW 82.32.087, information required under the streamlined sales and use tax agreement, or information required under rules adopted by the department. Sellers shall not be relieved from personal liability for the amount of the tax unless they maintain proper records of exempt transactions and provide them to the department when requested.

(4) The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter is guilty of a misdemeanor.

(5) The tax required by this chapter to be collected by the seller shall be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. For purposes of determining the tax due from the buyer to the seller and from the seller to the department it shall be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter, but if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price shall not be considered the selling price.

(6) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the buyer to pay

the same to the seller, regardless of when the tax may be collected by the department; and all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, shall apply in addition; and, for the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made shall be considered as the due date of the tax.

(7) Notwithstanding subsections (1) through (6) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

(i) The storage, dissemination, or display of advertising;

(ii) The taking of orders; or

(iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(8) Subsection (7) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers. [2003 c 168 § 203; 2003 c 76 § 3; 2003 c 53 § 400; 2001 c 188 § 4; 1993 sp.s. c 25 § 704; 1992 c 206 § 2; 1986 c 36 § 1; 1985 c 38 § 1; 1971 ex.s. c 299 § 7; 1965 ex.s. c 173 § 15; 1961 c 15 § 82.08.050. Prior: 1951 c 44 § 1; 1949 c 228 § 6; 1941 c 71 § 3; 1939 c 225 § 11; 1937 c 227 § 7; 1935 c 180 § 21; Rem. Supp. 1949 § 8370-21.]

Reviser's note: This section was amended by 2003 c 53 § 400, 2003 c 76 § 3, and by 2003 c 168 § 203, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Intent—2003 c 76: See note following RCW 82.04.424.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective date—1992 c 206: See note following RCW 82.04.170.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Project on exemption reporting requirements: RCW 82.32.440.

82.08.054 Computation of tax due. (*Effective July 1, 2004.*) Sellers shall compute the tax due under this chapter and chapters 82.12 and 82.14 RCW by carrying the computation to the third decimal place and rounding to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. Sellers may elect to compute the tax due on a transaction on an item or an invoice basis. This rounding rule shall be applied to the aggregated state and local taxes. [2003 c 168 § 210.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.08.064 Tax rate changes. (Effective until July 1, 2004.) (1) A sales and use tax rate change under this chapter or chapter 82.12 RCW shall be imposed (a) no sooner than seventy-five days after its enactment into law and (b) only on the first day of January, April, July, or October.

(2) Subsection (1) of this section does not apply to the tax rate change in section 301, chapter 361, Laws of 2003. [2003 c 361 § 304; 2000 c 104 § 3.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Findings—Intent—Effective date—2000 c 104: See notes following RCW 82.14.055.

82.08.064 Tax rate changes. (Effective July 1, 2004.)

(1) A sales and use tax rate change under this chapter or chapter 82.12 RCW shall be imposed (a) no sooner than seventy-five days after its enactment into law and (b) only on the first day of January, April, July, or October.

(2) Subsection (1) of this section does not apply to the tax rate change in section 301, chapter 361, Laws of 2003.

(3)(a) A sales and use tax rate increase under this chapter or chapter 82.12 RCW imposed on services applies to the first billing period starting on or after the effective date of the increase.

(b) A sales and use tax rate decrease under this chapter or chapter 82.12 RCW imposed on services applies to bills rendered on or after the effective date of the decrease.

(c) For the purposes of this subsection (3), "services" means retail services such as installing and constructing and retail services such as telecommunications, but does not include services such as tattooing. [2003 c 361 § 304; 2003 c 168 § 205; 2000 c 104 § 3.]

Reviser's note: This section was amended by 2003 c 168 § 205 and by 2003 c 361 § 304, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Findings—Intent—Effective date—2000 c 104: See notes following RCW 82.14.055.

82.08.150 Tax on certain sales of intoxicating liquors—Additional taxes for specific purposes—Collection.

(1) There is levied and shall be collected a tax upon each retail sale of spirits in the original package at the rate of fifteen percent of the selling price. The tax imposed in this subsection shall apply to all such sales including sales by the Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.

(2) There is levied and shall be collected a tax upon each sale of spirits in the original package at the rate of ten percent of the selling price on sales by Washington state liquor stores and agencies to spirits, beer, and wine restaurant licensees.

(3) There is levied and shall be collected an additional tax upon each retail sale of spirits in the original package at

the rate of one dollar and seventy-two cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees.

(4) An additional tax is imposed equal to fourteen percent multiplied by the taxes payable under subsections (1), (2), and (3) of this section.

(5) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of seven cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(6)(a) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and seven-tenths percent of the selling price through June 30, 1995, two and six-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and three and four-tenths of the selling price thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.

(b) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and one-tenth percent of the selling price through June 30, 1995, one and seven-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and two and three-tenths of the selling price thereafter. This additional tax applies to all such sales to spirits, beer, and wine restaurant licensees.

(c) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of twenty cents per liter through June 30, 1995, thirty cents per liter for the period July 1, 1995, through June 30, 1997, and forty-one cents per liter thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees.

(d) All revenues collected during any month from additional taxes under this subsection shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month.

(7) The tax imposed in RCW 82.08.020 shall not apply to sales of spirits in the original package.

(8) The taxes imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale under this section. The taxes required by this section to be collected by the seller shall be stated separately from the selling price and for purposes of determining the tax due from the buyer to the seller, it shall be conclusively presumed that the selling price quoted in any price list does not include the taxes imposed by this section.

(9) As used in this section, the terms, "spirits" and "package" shall have the meaning ascribed to them in chapter 66.04 RCW. [2003 c 167 § 11; 1998 c 126 § 16; 1997 c 321 § 55; 1994 s.p.s. c 7 § 903 (Referendum Bill No. 43, approved

November 8, 1994); 1993 c 492 § 310; 1989 c 271 § 503; 1983 2nd ex.s. c 3 § 12; 1982 1st ex.s. c 35 § 3; 1981 1st ex.s. c 5 § 25; 1973 1st ex.s. c 204 § 1; 1971 ex.s. c 299 § 9; 1969 ex.s. c 21 § 11; 1965 ex.s. c 173 § 16; 1965 c 42 § 1; 1961 ex.s. c 24 § 2; 1961 c 15 § 82.08.150. Prior: 1959 ex.s. c 5 § 9; 1957 c 279 § 4; 1955 c 396 § 1; 1953 c 91 § 5; 1951 2nd ex.s. c 28 § 5.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1973 1st ex.s. c 204: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect the first day of July, 1973." [1973 1st ex.s. c 204 § 4.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Effective date—1969 ex.s. c 21: See note following RCW 64.04.010.

82.08.925 Exemptions—Dietary supplements. (*Effective January 1, 2004.*) The tax levied by RCW 82.08.020 shall not apply to sales of dietary supplements for human use dispensed or to be dispensed to patients, pursuant to a prescription. "Dietary supplement" has the same meaning as in RCW 82.08.0293. [2003 c 168 § 302.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.08.935 Exemptions—Disposable devices used to deliver prescription drugs for human use. (*Effective July 1, 2004.*) The tax levied by RCW 82.08.020 shall not apply to sales of disposable devices used or to be used to deliver drugs for human use, pursuant to a prescription. "Disposable devices used to deliver drugs" means single use items such as syringes, tubing, or catheters. [2003 c 168 § 404.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.08.940 Exemptions—Over-the-counter drugs for human use. (*Effective July 1, 2004.*) The tax levied by RCW 82.08.020 shall not apply to sales of over-the-counter drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription. "Over-the-counter drug" has the same meaning as in RCW 82.08.0281. [2003 c 168 § 405.]

[2003 RCW Supp—page 1054]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.08.945 Exemptions—Kidney dialysis devices. (*Effective July 1, 2004.*) The tax levied by RCW 82.08.020 shall not apply to sales of kidney dialysis devices, including repair and replacement parts, for human use pursuant to a prescription. [2003 c 168 § 410.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.08.950 Exemptions—Steam, electricity, electrical energy. (*Effective July 1, 2004.*) The tax levied by RCW 82.08.020 shall not apply to sales of steam, electricity, or electrical energy. [2003 c 168 § 703.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.08.955 Exemptions—Sales of machinery, equipment, vehicles, and services related to biodiesel or alcohol fuel blend. (*Expires July 1, 2009.*) (1) The tax levied by RCW 82.08.020 does not apply to sales of machinery and equipment, or to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or machinery and equipment, or to sales of tangible personal property that becomes an ingredient or component of structures or machinery and equipment, if the machinery, equipment, or structure is used directly for the retail sale of a biodiesel or alcohol fuel blend. Structures and machinery and equipment that are used for the retail sale of a biodiesel or alcohol fuel blend and for other purposes are exempt only on the portion used directly for the retail sale of a biodiesel or alcohol fuel blend.

(2) The tax levied by RCW 82.08.020 does not apply to sales of fuel delivery vehicles or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the vehicles including repair parts and replacement parts if at least seventy-five percent of the fuel distributed by the vehicles is a biodiesel or alcohol fuel blend.

(3) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(4) For the purposes of this section, the definitions in RCW 82.04.4334 and this subsection apply.

(a) "Alcohol fuel blend" means fuel that contains at least eighty-five percent alcohol fuel by volume.

(b) "Biodiesel blend" means fuel that contains at least twenty percent biodiesel fuel by volume.

(c) "Machinery and equipment" means industrial fixtures, devices, and support facilities and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts that are integral and necessary for the delivery of biodiesel or alcohol fuel blends into the fuel tank of a motor vehicle.

(5) This section expires July 1, 2009. [2003 c 63 § 2.]

Effective date—2003 c 63: See note following RCW 82.04.4334.

82.08.960 Sales of machinery, equipment, vehicles, and services related to wood biomass fuel blend. (*Expires July 1, 2009.*) (1) The tax levied by RCW 82.08.020 does not apply to sales of machinery and equipment, or to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or machinery and equipment, or to sales of tangible personal property that becomes an ingredient or component of structures or machinery and equipment, if the machinery, equipment, or structure is used directly for the retail sale of a wood biomass fuel blend. Structures and machinery and equipment that are used for the retail sale of a wood biomass fuel blend and for other purposes are exempt only on the portion used directly for the retail sale of a wood biomass fuel blend.

(2) The tax levied by RCW 82.08.020 does not apply to sales of fuel delivery vehicles or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the vehicles including repair parts and replacement parts if at least seventy-five percent of the fuel distributed by the vehicles is a wood biomass fuel blend.

(3) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(4) For the purposes of this section, the definitions in RCW 82.69.010 and this subsection apply.

(a) "Wood biomass fuel blend" means fuel that contains at least twenty percent wood biomass fuel by volume.

(b) "Machinery and equipment" means industrial fixtures, devices, and support facilities and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts that are integral and necessary for the delivery of a wood biomass fuel blend into the fuel tank of a motor vehicle.

(5) This section expires July 1, 2009. [2003 c 339 § 13.]

Effective dates—2003 c 339: See note following RCW 82.69.030.

82.08.965 Exemptions—Semiconductor materials manufacturing. (*Contingent effective date; contingent expiration date.*) (1) The tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the constructing of new buildings used for the manufacturing of semiconductor materials, to sales of tangible personal property that will be incorporated as an ingredient or component of such buildings during the course of the constructing, or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b). The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(2) To be eligible under this section the manufacturer or processor for hire must meet the following requirements for an eight-year period, such period beginning the day the new building commences commercial production, or a portion of

tax otherwise due shall be immediately due and payable pursuant to subsection (3) of this section:

(a) The manufacturer or processor for hire must maintain at least seventy-five percent of full employment at the new building for which the exemption under this section is claimed.

(b) Before commencing commercial production at a new facility the manufacturer or processor for hire must meet with the department to review projected employment levels in the new buildings. The department, using information provided by the taxpayer, shall make a determination of the number of positions that would be filled at full employment. This number shall be used throughout the eight-year period to determine whether any tax is to be repaid. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(c) In those situations where a production building in existence on *the effective date of this section will be phased out of operation during which time employment at the new building at the same site is increased, the manufacturer or processor for hire shall maintain seventy-five percent of full employment at the manufacturing site overall.

(d) No application is necessary for the tax exemption. The person is subject to all the requirements of chapter 82.32 RCW. A person taking the exemption under this section must report as required under RCW 82.32.535.

(3) If the employment requirement is not met for any one calendar year, one-eighth of the exempt sales and use taxes shall be due and payable by April 1st of the following year. The department shall assess interest to the date the tax was imposed, but not penalties, on the taxes for which the person is not eligible.

(4) The exemption applies to new buildings, or parts of buildings, that are used exclusively in the manufacturing of semiconductor materials, including the storage of raw materials and finished product.

(5) For the purposes of this section:

(a) "Commencement of commercial production" is deemed to have occurred when the equipment and process qualifications in the new building are completed and production for sale has begun; and

(b) "Full employment" is the number of positions required for full capacity production at the new building, for positions such as line workers, engineers, and technicians.

(c) "Semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(6) No exemption may be taken after twelve years after *the effective date of this act, however all of the eligibility criteria and limitations are applicable to any exemptions claimed before that date.

(7) This section expires twelve years after *the effective date of this act. [2003 c 149 § 5.]

***Contingent effective date—Findings—Intent—2003 c 149:** See notes following RCW 82.04.426.

82.08.970 Exemptions—Gases and chemicals used to manufacture semiconductor materials. (*Contingent effective date; contingent expiration date.*) (1) The tax levied by RCW 82.08.020 shall not apply to sales of gases and chemicals used by a manufacturer or processor for hire in the manufacturing of semiconductor materials. This exemption is

limited to gases and chemicals used in the manufacturing process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the manufacturing process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For the purposes of this section, "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person taking the exemption under this section must report under RCW 82.32.535. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires twelve years after *the effective date of this act. [2003 c 149 § 7.]

*Contingent effective date—Findings—Intent—2003 c 149: See notes following RCW 82.04.426.

82.08.975 Exemptions—Computer parts and software related to the manufacture of commercial airplanes. (Contingent effective date; expires July 1, 2024.)

(1) The tax levied by RCW 82.08.020 shall not apply to sales of computer hardware, computer peripherals, or software, not otherwise eligible for exemption under RCW 82.08.02565, to a manufacturer or processor for hire of commercial airplanes or components of such airplanes, used primarily in the development, design, and engineering of such products, or to sales of or charges made for labor and services rendered in respect to installing the computer hardware, computer peripherals, or software. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(2) As used in this section, "commercial airplane" and "component" have the meanings given in RCW 82.32.550. "Peripherals" includes keyboards, monitors, mouse devices, and other accessories that operate outside of the computer, excluding cables, conduit, wiring, and other similar property.

(3) This section expires July 1, 2024. [2003 2nd sp.s. c 1 § 9.]

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

82.08.980 Exemptions—Labor, services, and personal property related to the manufacture of superefficient airplanes. (Contingent effective date; expires July 1, 2024.)

(1) The tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the constructing of new buildings by a manufacturer engaged in the manufacturing of superefficient airplanes or by a port district, to be leased to a manufacturer engaged in the manufacturing of superefficient airplanes, to sales of tangible personal property that will be incorporated as an ingredient or component of such buildings during the course of the constructing, or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b). The exemption is available only when

the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(2) No application is necessary for the tax exemption in this section, however in order to qualify under this section before starting construction the port district must have entered into an agreement with the manufacturer to build such a facility. A person taking the exemption under this section is subject to all the requirements of chapter 82.32 RCW. In addition, the person must report as required under RCW 82.32.545.

(3) The exemption in this section applies to buildings, or parts of buildings, that are used exclusively in the manufacturing of superefficient airplanes, including buildings used for the storage of raw materials and finished product.

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

(5) This section expires July 1, 2024. [2003 2nd sp.s. c 1 § 11.]

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Chapter 82.12 RCW USE TAX

Sections

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- 82.12.900 Exemptions—Anaerobic digesters.
- 82.12.925 Exemptions—Dietary supplements. (*Effective January 1, 2004.*)
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- 82.12.980 Exemptions—Labor, services, and personal property related to the manufacture of superefficient airplanes. (*Contingent effective date; expires July 1, 2024.*)

82.12.010 Definitions. (*Effective until July 1, 2004.*)

For the purposes of this chapter:

(1)(a) "Value of the article used" shall mean the consideration, whether money, credit, rights, or other property except trade-in property of like kind, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this chapter. The term includes the amount of any freight, delivery, or other like transportation charge paid or given by the purchaser to the seller with respect to the purchase of such article. The term also includes, in addition to the consideration paid or given or contracted to be paid or given, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department of revenue may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the

value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used shall be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used shall be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used shall be determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used shall be determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used shall be determined by the retail selling price, as defined in RCW 82.08.010, of such article if but for the use of the direct pay permit the transaction would have been subject to sales tax;

(2) "Value of the service used" means the consideration, whether money, credit, rights, or other property, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the service, the use of which is taxable under this chapter. If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used shall be determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character under rules the department of revenue may prescribe;

(3) "Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean:

(a) With respect to tangible personal property, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state; and

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(4) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

(5) "Retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter;

(6) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. With respect to property distributed to persons within this state by a consumer as defined in this subsection (6), the use of the property shall be deemed to be by such consumer. [2003 c 5 § 1; 2002 c 367 § 3; 2001 c 188 § 3; 1994 c 93 § 1. Prior: 1985 c 222 § 1; 1985 c 132 § 1; 1983 1st ex.s. c 55 § 2; 1975-'76 2nd ex.s. c 1 § 1; 1975 1st ex.s. c 278 § 52; 1965 ex.s. c 173 § 17; 1961 c 293 § 15; 1961 c 15 § 82.12.010; prior: 1955 c 389 § 24; 1951 1st ex.s. c 9 § 3; 1949 c 228 § 9; 1945 c 249 § 8; 1943 c 156 § 10; 1939 c 225 § 18; 1937 c 191 § 4; 1935 c 180 § 35; Rem. Supp. 1949 § 8370-35.]

Finding—Intent—Retroactive application—2003 c 5: "The legislature finds that in the enactment of chapter 367, Laws of 2002, some use tax exemptions were not updated to reflect the change in taxability regarding services. It is the legislature's intent to correct this omission by amending the various use tax exemptions so that services exempt from the sales tax are also exempt from the use tax. Sections 1 through 19 of this act apply retroactively to June 1, 2002. The department of revenue shall refund any use taxes paid and forgive use taxes unpaid as a result of the omission." [2003 c 5 § 20.]

Effective date—2003 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 2003]." [2003 c 5 § 21.]

Severability—Effective date—2002 c 367: See notes following RCW 82.04.060.

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

[2003 RCW Supp—page 1058]

Effective date—1994 c 93: "This act shall take effect July 1, 1994." [1994 c 93 § 3.]

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

Application to preexisting contracts—1975-'76 2nd ex.s. c 1; 1975 1st ex.s. c 90: "In the event any person has entered into a contract prior to July 1, 1975 or has bid upon a contract prior to July 1, 1975 and has been awarded the contract after July 1, 1975, the additional taxes imposed by chapter 90, Laws of 1975 1st ex. sess., section 5, chapter 291, Laws of 1975 1st ex. sess. and this 1975 amendatory act shall not be required to be paid by such person in carrying on activities in the fulfillment of such contract." [1975-'76 2nd ex.s. c 1 § 3; 1975 1st ex.s. c 90 § 4.]

Severability—1975-'76 2nd ex.s. c 1: "If any provision of this 1975 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 1 § 4.]

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

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

82.12.010 Definitions. (Effective July 1, 2004.) For the purposes of this chapter:

(1) "Purchase price" means the same as sales price as defined in RCW 82.08.010.

(2)(a) "Value of the article used" shall be the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. The term also includes, in addition to the purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used shall be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for

no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used shall be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used shall be determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used shall be determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used shall be determined by the purchase price of such article if, but for the use of the direct pay permit, the transaction would have been subject to sales tax;

(3) "Value of the service used" means the purchase price for the service, the use of which is taxable under this chapter. If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used shall be determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character under rules the department may prescribe;

(4) "Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean:

(a) With respect to tangible personal property, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state; and

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(5) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

(6) "Retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter;

(7) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. With respect to property distributed to persons within this state by a consumer as defined in this subsection (7), the use of the property shall be deemed to be by such consumer. [2003 c 168 § 102; 2003 c 5 § 1; 2002 c 367 § 3; 2001 c 188 § 3; 1994 c 93 § 1. Prior: 1985 c 222 § 1; 1985 c 132 § 1; 1983 1st ex.s. c 55 § 2; 1975-'76 2nd ex.s. c 1 § 1; 1975 1st ex.s. c 278 § 52; 1965 ex.s. c 173 § 17; 1961 c 293 § 15; 1961 c 15 § 82.12.010; prior: 1955 c 389 § 24; 1951 1st ex.s. c 9 § 3; 1949 c 228 § 9; 1945 c 249 § 8; 1943 c 156 § 10; 1939 c 225 § 18; 1937 c 191 § 4; 1935 c 180 § 35; Rem. Supp. 1949 § 8370-35.]

Reviser's note: This section was amended by 2003 c 5 § 1 and by 2003 c 168 § 102, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Finding—Intent—Retroactive application—2003 c 5: "The legislature finds that in the enactment of chapter 367, Laws of 2002, some use tax exemptions were not updated to reflect the change in taxability regarding services. It is the legislature's intent to correct this omission by amending the various use tax exemptions so that services exempt from the sales tax are also exempt from the use tax. Sections 1 through 19 of this act apply retroactively to June 1, 2002. The department of revenue shall refund any use taxes paid and forgive use taxes unpaid as a result of the omission." [2003 c 5 § 20.]

Effective date—2003 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 2003]." [2003 c 5 § 21.]

Severability—Effective date—2002 c 367: See notes following RCW 82.04.060.

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Effective date—1994 c 93: "This act shall take effect July 1, 1994." [1994 c 93 § 3.]

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

Application to preexisting contracts—1975-'76 2nd ex.s. c 1; 1975 1st ex.s. c 90: "In the event any person has entered into a contract prior to July 1, 1975 or has bid upon a contract prior to July 1, 1975 and has been awarded the contract after July 1, 1975, the additional taxes imposed by chapter 90, Laws of 1975 1st ex. sess., section 5, chapter 291, Laws of 1975 1st ex. sess. and this 1975 amendatory act shall not be required to be paid by such person in carrying on activities in the fulfillment of such contract." [1975-'76 2nd ex.s. c 1 § 3; 1975 1st ex.s. c 90 § 4.]

Severability—1975-'76 2nd ex.s. c 1: "If any provision of this 1975 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 1 § 4.]

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

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

82.12.020 Use tax imposed. (Effective until July 1, 2004.) (1) There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer: (a) Any article of

tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7); or (b) any canned software, regardless of the method of delivery, but excluding canned software that is either provided free of charge or is provided for temporary use in viewing information, or both.

(2) This tax shall apply to the use of every service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a) and the use of every article of tangible personal property, including property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state.

(3) The provisions of this chapter do not apply in respect to the use of any article of tangible personal property or service taxable under RCW 82.04.050 (2)(a) or (3)(a) purchased at retail or acquired by lease, gift, or bailment if the sale to, or the use by, the present user or his bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his bailor or donor.

(4) Except as provided in this section, payment by one purchaser or user of tangible personal property or service of the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect of exempting any other purchaser or user of the same property or service from the taxes imposed by such chapters. If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor; or in respect to the use of property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use; or in respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961, the tax imposed by this chapter does not apply.

(5) The tax shall be levied and collected in an amount equal to the value of the article used or value of the service used by the taxpayer multiplied by the rates in effect for the retail sales tax under RCW 82.08.020. [2003 c 361 § 302; 2003 c 5 § 2; 2002 c 367 § 4; 1999 c 358 § 9; 1998 c 332 § 7; 1996 c 148 § 5; 1994 c 93 § 2; 1983 c 7 § 7; 1981 2nd ex.s. c 8 § 2; 1980 c 37 § 79; 1977 ex.s. c 324 § 3; 1975-'76 2nd ex.s. c 130 § 2; 1975-'76 2nd ex.s. c 1 § 2; 1971 ex.s. c 281 § 10; 1969 ex.s. c 262 § 32; 1967 ex.s. c 149 § 22; 1965 ex.s. c 173 § 18; 1961 c 293 § 9; 1961 c 15 § 82.12.020. Prior: 1959 ex.s. c 3 § 10; 1955 ex.s. c 10 § 3; 1955 c 389 § 25; 1949 c 228 § 7; 1943 c 156 § 8; 1941 c 76 § 6; 1939 c 225 § 14; 1937 c 191 § 1; 1935 c 180 § 31; Rem. Supp. 1949 § 8370-31.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Severability—Effective date—2002 c 367: See notes following RCW 82.04.060.

Effective date—1999 c 358 §§ 1 and 3-21: See note following RCW 82.04.3651.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

Effective date—1994 c 93: See note following RCW 82.12.010.

Construction—Severability—Effective dates—1983 c 7: See notes following RCW 82.08.020.

Intent—1980 c 37: See note following RCW 82.04.4281.

Effective date—1975-'76 2nd ex.s. c 130: See note following RCW 82.08.020.

Application to preexisting contracts—1975-'76 2nd ex.s. c 1: See note following RCW 82.12.010.

Severability—1975-'76 2nd ex.s. c 1: See note following RCW 82.12.010.

High capacity transportation systems—Sales and use tax: RCW 81.104.170.

82.12.020 Use tax imposed. (Effective July 1, 2004.)

(1) There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer: (a) Any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7); or (b) any prewritten computer software, regardless of the method of delivery, but excluding prewritten computer software that is either provided free of charge or is provided for temporary use in viewing information, or both.

(2) This tax shall apply to the use of every service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a) and the use of every article of tangible personal property, including property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state.

(3) The provisions of this chapter do not apply in respect to the use of any article of tangible personal property or service taxable under RCW 82.04.050 (2)(a) or (3)(a) purchased at retail or acquired by lease, gift, or bailment if the sale to, or the use by, the present user or his bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his bailor or donor.

(4) Except as provided in this section, payment by one purchaser or user of tangible personal property or service of the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect of exempting any other purchaser or user of the same property or service from the taxes imposed by such chapters. If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor; or in respect to the use of property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by

chapter 82.08 RCW or this chapter as of the time of first use; or in respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961, the tax imposed by this chapter does not apply.

(5) The tax shall be levied and collected in an amount equal to the value of the article used or value of the service used by the taxpayer multiplied by the rates in effect for the retail sales tax under RCW 82.08.020, except in the case of a seller required to collect use tax from the purchaser, the tax shall be collected in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. [2003 c 361 § 302; 2003 c 168 § 214; 2003 c 5 § 2; 2002 c 367 § 4; 1999 c 358 § 9; 1998 c 332 § 7; 1996 c 148 § 5; 1994 c 93 § 2; 1983 c 7 § 7; 1981 2nd ex.s. c 8 § 2; 1980 c 37 § 79; 1977 ex.s. c 324 § 3; 1975-'76 2nd ex.s. c 130 § 2; 1975-'76 2nd ex.s. c 1 § 2; 1971 ex.s. c 281 § 10; 1969 ex.s. c 262 § 32; 1967 ex.s. c 149 § 22; 1965 ex.s. c 173 § 18; 1961 c 293 § 9; 1961 c 15 § 82.12.020. Prior: 1959 ex.s. c 3 § 10; 1955 ex.s. c 10 § 3; 1955 c 389 § 25; 1949 c 228 § 7; 1943 c 156 § 8; 1941 c 76 § 6; 1939 c 225 § 14; 1937 c 191 § 1; 1935 c 180 § 31; Rem. Supp. 1949 § 8370-31.]

Reviser's note: This section was amended by 2003 c 168 § 214 and by 2003 c 361 § 302, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2003 c 361: See note following RCW 82.08.020.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Severability—Effective date—2002 c 367: See notes following RCW 82.04.060.

Effective date—1999 c 358 §§ 1 and 3-21: See note following RCW 82.04.3651.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

Effective date—1994 c 93: See note following RCW 82.12.010.

Construction—Severability—Effective dates—1983 c 7: See notes following RCW 82.08.020.

Intent—1980 c 37: See note following RCW 82.04.4281.

Effective date—1975-'76 2nd ex.s. c 130: See note following RCW 82.08.020.

Application to preexisting contracts—1975-'76 2nd ex.s. c 1: See note following RCW 82.12.010.

Severability—1975-'76 2nd ex.s. c 1: See note following RCW 82.12.010.

High capacity transportation systems—Sales and use tax: RCW 81.104.170.

82.12.0251 Exemptions—Use by nonresident while temporarily within Washington of tangible personal property brought into Washington—Use by nonresident of motor vehicle or trailer licensed in another state—Use by resident or nonresident member of armed forces of household goods, personal effects, and private motor vehicles acquired in another state while a resident—

"State" defined. The provisions of this chapter shall not apply in respect to the use:

(1) Of any article of tangible personal property, and services that were rendered in respect to such property, brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington unless such property is used in conducting a nontransitory business activity within the state of Washington;

(2) By a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060, and services rendered outside the state of Washington in respect to such property;

(3) Of household goods, personal effects, and private motor vehicles, and services rendered in respect to such property, by a bona fide resident of Washington, or nonresident members of the armed forces who are stationed in Washington pursuant to military orders, if such articles and services were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington. For purposes of this subsection, private motor vehicles does [do] not include motor homes.

(4) For purposes of this section, "state" means a state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, and "services" means services defined as retail sales in RCW 82.04.050(2)(a). [2003 c 5 § 18; 1997 c 301 § 1; 1987 c 27 § 1; 1985 c 353 § 4; 1983 c 26 § 2; 1980 c 37 § 51. Formerly RCW 82.12.030(1).]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0252 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.12.0254 Exemptions—Use of airplanes, locomotives, railroad cars, or watercraft used in interstate or foreign commerce or outside state's territorial waters—Components—Use of motor vehicle or trailer in the transportation of persons or property across state boundaries—Conditions—Use of motor vehicle or trailer under one-transit permit to point outside state. (1) The provisions of this chapter shall not apply in respect to the use of any airplane, locomotive, railroad car, or watercraft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state, and in respect to use of tangible personal property which becomes a component part of any such airplane, locomotive, railroad car, or watercraft in the course of repairing, cleaning, altering, or improving the same; also the use of labor and services rendered in respect to such repairing, cleaning, altering, or improving.

(2) The provisions of this chapter shall not apply in respect to the use by a nonresident of this state of any motor

vehicle or trailer used exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state and in respect to the use by a nonresident of this state of any motor vehicle or trailer so registered and licensed and used within this state for a period not exceeding fifteen consecutive days under such rules as the department of revenue shall adopt: PROVIDED, That under circumstances determined to be justifiable by the department of revenue a second fifteen day period may be authorized consecutive with the first fifteen day period; and for the purposes of this exemption the term "nonresident" as used herein, shall include a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state.

(3) The provisions of this chapter shall not apply in respect to the use by the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency of any motor vehicle or trailer whether owned by or leased with or without driver to the permit holder and used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of this state; and in respect to the use of any motor vehicle or trailer while being operated under the authority of a one-transit permit issued by the director of licensing pursuant to RCW 46.16.160 and moving upon the highways from the point of delivery in this state to a point outside this state; and in respect to the use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state whether such motor vehicle or trailer is owned by or leased with or without driver to the permit holder, in the course of repairing, cleaning, altering, or improving the same; also the use of labor and services rendered in respect to such repairing, cleaning, altering, or improving. [2003 c 5 § 3; 1998 c 311 § 7; 1995 c 63 § 2; 1980 c 37 § 54. Formerly RCW 82.12.030(4).]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Effective date—1995 c 63: See note following RCW 82.08.0263.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0255 Exemptions—Nontaxable tangible personal property. The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property or service which the state is prohibited from taxing under the Constitution of the state or under the Constitution or laws of the United States. [2003 c 5 § 4; 1980 c 37 § 55. Formerly RCW 82.12.030(5).]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.02565 Exemptions—Machinery and equipment used for manufacturing, research and development, or a testing operation. The provisions of this chapter shall

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not apply in respect to the use by a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, to the use by a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation, or to the use of labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment. [2003 c 5 § 5; 1999 c 211 § 6; 1998 c 330 § 2; 1996 c 247 § 3; 1995 1st sp.s. c 3 § 3.]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Finding—Intent—1999 c 211: See note following RCW 82.08.02565.

Findings—Intent—1996 c 247: See note following RCW 82.08.02566.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

82.12.02566 Exemptions—Use of tangible personal property incorporated in prototype for aircraft parts, auxiliary equipment, and aircraft modification—Limitations on yearly exemption. (*Effective July 1, 2004.*) (1) The provisions of this chapter shall not apply with respect to the use of tangible personal property incorporated into a prototype for aircraft parts, auxiliary equipment, or modifications; or in respect to the use of tangible personal property that at one time is incorporated into the prototype but is later destroyed in the testing or development of the prototype.

(2) This exemption does not apply in respect to the use of tangible personal property by any person whose total taxable amount during the immediately preceding calendar year exceeds twenty million dollars. For purposes of this section, "total taxable amount" means gross income of the business and value of products manufactured, less any amounts for which a credit is allowed under RCW 82.04.440.

(3) State and local taxes for which an exemption is received under this section and RCW 82.08.02566 shall not exceed one hundred thousand dollars for any person during any calendar year.

(4) Sellers obligated to collect use tax shall collect tax on sales subject to this exemption. The buyer shall apply for a refund directly from the department. [2003 c 168 § 209; 1997 c 302 § 2; 1996 c 247 § 5.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective date—1997 c 302: See note following RCW 82.08.02566.

Findings—Intent—1996 c 247: See note following RCW 82.08.02566.

82.12.02567 Exemptions—Use of machinery and equipment used in generating electricity. (*Expires June 30, 2009.*) (1) The provisions of this chapter shall not apply with respect to machinery and equipment used directly in generating not less than two hundred watts of electricity using wind, sun, or landfill gas as the principal source of power, or to the use of labor and services rendered in respect to installing such machinery and equipment.

(2) The definitions in RCW 82.08.02567 apply to this section.

(3) This section expires June 30, 2009. [2003 c 5 § 6; 2001 c 213 § 2; 1999 c 358 § 10; 1998 c 309 § 2; 1996 c 166 § 2.]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Effective date—2001 c 213: See note following RCW 82.08.02567.

Effective date—1999 c 358 §§ 1 and 3-21: See note following RCW 82.04.3651.

Effective date—1998 c 309: See note following RCW 82.08.02567.

Effective date—1996 c 166: See note following RCW 82.08.02567.

82.12.0259 Exemptions—Use of tangible personal property by federal corporations providing aid and relief. The provisions of this chapter shall not apply in respect to the use of tangible personal property or the use of services defined in RCW 82.04.050(2)(a) by corporations which have been incorporated under any act of the congress of the United States and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, flood, and other national calamities and to devise and carry on measures for preventing the same. [2003 c 5 § 7; 1980 c 37 § 59. Formerly RCW 82.12.030(9).]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.02595 Exemptions—Use of donated tangible personal property by nonprofit organization or governmental entity or for purpose donated—Use of related property. (1) This chapter does not apply to the use by a nonprofit charitable organization or state or local governmental entity of any item of tangible personal property that has been donated to the nonprofit charitable organization or state or local governmental entity, or to the subsequent use of the property by a person to whom the property is donated or bailed in furtherance of the purpose for which the property was originally donated.

(2) This chapter does not apply to the donation of tangible personal property without intervening use to a nonprofit charitable organization, or to the incorporation of tangible personal property without intervening use into real or personal property of or for a nonprofit charitable organization in the course of installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating the real or personal property for no charge.

(3) This chapter does not apply to the use by a nonprofit charitable organization of labor and services rendered in respect to installing, repairing, cleaning, altering, imprinting, or improving personal property provided to the charitable organization at no charge, or to the donation of such services. [2003 c 5 § 11; 1998 c 182 § 1; 1995 c 201 § 1.]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Effective date—1995 c 201: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 1, 1995]." [1995 c 201 § 2.]

82.12.0275 Exemptions—Use of certain drugs or family planning devices. (Effective July 1, 2004.) (1) The provisions of this chapter shall not apply in respect to the use of drugs dispensed or to be dispensed to patients, pursuant to a prescription, if the drugs are for human use.

(2) The provisions of this chapter shall not apply in respect to the use of drugs or devices used for family planning purposes, including the prevention of conception, for human use dispensed or to be dispensed to patients, pursuant to a prescription.

(3) The provisions of this chapter shall not apply in respect to the use of drugs or devices used for family planning purposes, including the prevention of conception, for human use supplied by a family planning clinic that is under contract with the department of health to provide family planning services.

(4) As used in this section, "prescription" and "drug" have the same meanings as in RCW 82.08.0281. [2003 c 168 § 406; 1993 sp.s. c 25 § 309; 1980 c 37 § 73. Formerly RCW 82.12.030(23).]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Finding—1993 sp.s. c 25: See note following RCW 82.08.0281.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0277 Exemptions—Use of certain medical items. (Effective until July 1, 2004.) The provisions of this chapter shall not apply in respect to the use of insulin; prosthetic devices and the components thereof; dental appliances, devices, restorations, and substitutes, and the components thereof, including but not limited to full and partial dentures, crowns, inlays, fillings, braces, and retainers; orthotic devices prescribed for an individual by a person licensed under chapters 18.22, 18.25, 18.57, or 18.71 RCW; hearing instruments dispensed or fitted by a person licensed or certified under chapter 18.35 RCW, and the components thereof; medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; ostomic items; and medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual. In addition, the provisions of this chapter shall not apply in respect to the use of labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under this section. [2003 c 5 § 8; 2001 c 75 § 2; 1998 c 168 § 3; 1997 c 224 § 2; 1996 c 162 § 2; 1991 c 250 § 3; 1986 c 255 § 2; 1980 c 86 § 2; 1980 c 37 § 75. Formerly RCW 82.12.030(25).]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Effective date—2001 c 75: See note following RCW 82.08.0283.

Effective date—1998 c 168: See note following RCW 82.04.120.

Effective date—1997 c 224: See note following RCW 82.08.0283.

Effective date—1996 c 162: See note following RCW 82.08.0283.

Finding—Intent—1991 c 250: See note following RCW 82.08.0283.

Effective date—1986 c 255: See note following RCW 82.08.0283.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0277 Exemptions—Certain medical items. (Effective July 1, 2004.) (1) The provisions of this chapter shall not apply in respect to the use of prosthetic devices prescribed for an individual by a person licensed under chapter 18.22, 18.25, 18.57, or 18.71 RCW; medicines of mineral, animal, and botanical origin administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; and medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual. In addition, the provisions of this chapter shall not apply in respect to the use of labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under this section.

(2) The exemption provided by subsection (1) of this section shall not apply to the use of durable medical equipment or mobility enhancing equipment.

(3) "Prosthetic device," "durable medical equipment," and "mobility enhancing equipment" have the same meanings as in RCW 82.08.0283. [2003 c 168 § 412; 2003 c 5 § 8; 2001 c 75 § 2; 1998 c 168 § 3; 1997 c 224 § 2; 1996 c 162 § 2; 1991 c 250 § 3; 1986 c 255 § 2; 1980 c 86 § 2; 1980 c 37 § 75. Formerly RCW 82.12.030(25).]

Reviser's note: This section was amended by 2003 c 5 § 8 and by 2003 c 168 § 412, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Effective date—2001 c 75: See note following RCW 82.08.0283.

Effective date—1998 c 168: See note following RCW 82.04.120.

Effective date—1997 c 224: See note following RCW 82.08.0283.

Effective date—1996 c 162: See note following RCW 82.08.0283.

Finding—Intent—1991 c 250: See note following RCW 82.08.0283.

Effective date—1986 c 255: See note following RCW 82.08.0283.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0279 Exemptions—Use of ferry vessels by the state or local governmental units—Components thereof. The provisions of this chapter shall not apply in respect to the use of ferry vessels of the state of Washington or of local governmental units in the state of Washington in transporting pedestrian or vehicular traffic within and outside the territorial waters of the state, in respect to the use of tangible personal property which becomes a component part of any such ferry vessel, and in respect to the use of labor and services rendered in respect to improving such ferry vessels. [2003 c 5 § 9; 1980 c 37 § 77. Formerly RCW 82.12.030(27).]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0284 Exemptions—Use of computers or computer components, accessories, or software donated to

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schools or colleges. (Effective July 1, 2004.) The provisions of this chapter shall not apply in respect to the use of computers, computer components, computer accessories, or computer software irrevocably donated to any public or private nonprofit school or college, as defined under chapter 84.36 RCW, in this state. For purposes of this section, "computer" has the same meaning as in RCW 82.04.215. [2003 c 168 § 603; 1983 1st ex.s. c 55 § 7.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

82.12.0293 Exemptions—Use of food and food ingredients. (Effective January 1, 2004.) (1) The provisions of this chapter shall not apply in respect to the use of food and food ingredients for human consumption. "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section shall not apply to prepared food, soft drinks, or dietary supplements. "Prepared food," "soft drinks," and "dietary supplements" have the same meanings as in RCW 82.08.0293.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section shall apply to food and food ingredients which are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW 74.38.040(6); or

(b) Which are provided to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW. [2003 c 168 § 303; 1988 c 103 § 2; 1986 c 182 § 2; 1985 c 104 § 2; 1982 1st ex.s. c 35 § 34.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective date—1988 c 103: See note following RCW 82.08.0293.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.12.0315 Exemptions—Rental or sales related to motion picture or video productions—Exceptions. (1) The provisions of this chapter shall not apply in respect to the use of:

(a) Production equipment rented to a motion picture or video production business;

(b) Production equipment acquired and used by a motion picture or video production business in another state, if the acquisition and use occurred more than ninety days before the time the motion picture or video production business entered this state; and

(c) Production services that are within the scope of RCW 82.04.050(2)(a) and are sold to a motion picture or video production business.

(2) As used in this section, "production equipment," "production services," and "motion picture or video production business" have the meanings given in RCW 82.08.0315.

(3) The exemption provided for in this section shall not apply to the use of production equipment rented to, or production equipment or production services that are within the

scope of RCW 82.04.050(2)(a) acquired and used by, a motion picture or video production business that is engaged, to any degree, in the production of erotic material, as defined in RCW 9.68.050. [2003 c 5 § 10; 1995 2nd sp.s. c 5 § 2.]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Effective date—1995 2nd sp.s. c 5: See note following RCW 82.08.0315.

82.12.040 Retailers to collect tax—Penalty—Contingent expiration of subsection. (Effective until July 1, 2004.) (1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, shall obtain from the department a certificate of registration, and shall, at the time of making sales, or making transfers of either possession or title or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. For the purposes of this chapter, the phrase "maintains in this state a place of business" shall include the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department shall in rules specify activities which constitute engaging in business activity within this state, and shall keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property of his principals made for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter shall be deemed to be held in trust by the retailer until paid to the department and any retailer who appropriates or converts the tax collected to his own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed shall be guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of his own acts or the result of acts or conditions beyond his control, he shall nevertheless, be personally liable to the state for the amount of such tax, unless the seller has taken from the buyer in good faith a copy of a direct pay permit issued under RCW 82.32.087.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter shall be guilty of a misdemeanor.

(5) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

- (i) The storage, dissemination, or display of advertising;
- (ii) The taking of orders; or
- (iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(6) Subsection (5) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers. [2003 c 76 § 4; 2001 c 188 § 5; 1986 c 48 § 1; 1971 ex.s. c 299 § 11; 1961 c 293 § 11; 1961 c 15 § 82.12.040. Prior: 1955 c 389 § 27; 1945 c 249 § 7; 1941 c 178 § 10; 1939 c 225 § 16; Rem. Supp. 1945 § 8370-33; prior: 1935 c 180 § 33.]

Intent—2003 c 76: See note following RCW 82.04.424.

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Effective date—1986 c 48: "This act shall take effect July 1, 1986." [1986 c 48 § 2.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Project on exemption reporting requirements: RCW 82.32.440.

82.12.040 Retailers to collect tax—Penalty—Contingent expiration of subsection. (Effective July 1, 2004.) (1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, shall obtain from the department a certificate of registration, and shall, at the time of making sales of tangible personal property or sales of any service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section shall be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. For the purposes of this chapter, the phrase "maintains in this state a place of business" shall include the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department shall in rules specify activities which constitute engaging in business activity within this state, and shall keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, or sales of any service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), of his or her principals for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price

under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter shall be deemed to be held in trust by the retailer until paid to the department and any retailer who appropriates or converts the tax collected to the retailer's own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed shall be guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller shall nevertheless, be personally liable to the state for the amount of such tax, unless the seller has taken from the buyer in good faith a copy of a direct pay permit issued under RCW 82.32.087.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter shall be guilty of a misdemeanor.

(5) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

- (i) The storage, dissemination, or display of advertising;
- (ii) The taking of orders; or
- (iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(6) Subsection (5) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers. [2003 c 168 § 215; 2003 c 76 § 4; 2001 c 188 § 5; 1986 c 48 § 1; 1971 ex.s. c 299 § 11; 1961 c 293 § 11; 1961 c 15 § 82.12.040. Prior: 1955 c 389 § 27; 1945 c 249 § 7; 1941 c 178 § 10; 1939 c 225 § 16; Rem. Supp. 1945 § 8370-33; prior: 1935 c 180 § 33.]

Reviser's note: This section was amended by 2003 c 76 § 4 and by 2003 c 168 § 215, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Intent—2003 c 76: See note following RCW 82.04.424.

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Effective date—1986 c 48: "This act shall take effect July 1, 1986." [1986 c 48 § 2.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Project on exemption reporting requirements: RCW 82.32.440.

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82.12.045 Collection of tax on motor vehicles by county auditor or director of licensing—Remittance. (1) In the collection of the use tax on motor vehicles, the department of revenue may designate the county auditors of the several counties of the state as its collecting agents. Upon such designation, it shall be the duty of each county auditor to collect the tax at the time an applicant applies for the registration of, and transfer of title to, the motor vehicle, except in the following instances:

(a) Where the applicant exhibits a dealer's report of sale showing that the retail sales tax has been collected by the dealer;

(b) Where the application is for the renewal of registration;

(c) Where the applicant presents a written statement signed by the department of revenue, or its duly authorized agent showing that no use tax is legally due; or

(d) Where the applicant presents satisfactory evidence showing that the retail sales tax or the use tax has been paid by the applicant on the vehicle in question.

(2) The term "motor vehicle," as used in this section means and includes all motor vehicles, trailers and semitrailers used, or of a type designed primarily to be used, upon the public streets and highways, for the convenience or pleasure of the owner, or for the conveyance, for hire or otherwise, of persons or property, including fixed loads, facilities for human habitation, and vehicles carrying exempt licenses.

(3) It shall be the duty of every applicant for registration and transfer of certificate of title who is subject to payment of tax under this section to declare upon the application the value of the vehicle for which application is made, which shall consist of the consideration paid or contracted to be paid therefor.

(4) Each county auditor who acts as agent of the department of revenue shall at the time of remitting license fee receipts on motor vehicles subject to the provisions of this section pay over and account to the state treasurer for all use tax revenue collected under this section, after first deducting as a collection fee the sum of two dollars for each motor vehicle upon which the tax has been collected. All revenue received by the state treasurer under this section shall be credited to the general fund. The auditor's collection fee shall be deposited in the county current expense fund. A duplicate of the county auditor's transmittal report to the state treasurer shall be forwarded forthwith to the department of revenue.

(5) Any applicant who has paid use tax to a county auditor under this section may apply to the department of revenue for refund thereof if he or she has reason to believe that such tax was not legally due and owing. No refund shall be allowed unless application therefor is received by the department of revenue within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050(3). Upon receipt of an application for refund the department of revenue shall consider the same and issue its order either granting or denying it and if refund is denied the taxpayer shall have the right of appeal as provided in RCW 82.32.170, 82.32.180 and 82.32.190.

(6) The provisions of this section shall be construed as cumulative of other methods prescribed in chapters 82.04 to 82.32 RCW, inclusive, for the collection of the tax imposed by this chapter. The department of revenue shall have power

to promulgate such rules as may be necessary to administer the provisions of this section. Any duties required by this section to be performed by the county auditor may be performed by the director of licensing but no collection fee shall be deductible by said director in remitting use tax revenue to the state treasurer.

(7) The use tax revenue collected on the rate provided in RCW 82.08.020(3) shall be deposited in the multimodal transportation account under RCW 47.66.070. [2003 c 361 § 303; 1996 c 149 § 19; 1983 c 77 § 2; 1979 c 158 § 222; 1969 ex.s. c 10 § 1; 1963 c 21 § 1; 1961 c 15 § 82.12.045. Prior: 1951 c 37 § 1.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

82.12.060 Installment sales or leases. (Effective July 1, 2004.) In the case of installment sales and leases of personal property, the department, by rule, may provide for the collection of taxes upon the installments of the purchase price, or amount of rental, as of the time the same fall due. [2003 c 168 § 216; 1975 1st ex.s. c 278 § 54; 1961 c 293 § 16; 1961 c 15 § 82.12.060. Prior: 1959 ex.s. c 3 § 13; 1959 c 197 § 8; prior: 1941 c 178 § 11, part; Rem. Supp. 1941 § 8370-34a, part.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

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

82.12.810 Exemptions—Air pollution control facilities at a thermal electric generation facility—Exceptions—Payments on cessation of operation. (1) For the purposes of this section, "air pollution control facilities" mean any treatment works, control devices and disposal systems, machinery, equipment, structures, property, property improvements, and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation.

(2) The provisions of this chapter do not apply in respect to:

(a) The use of air pollution control facilities installed and used by a light and power business, as defined in RCW 82.16.010, in generating electric power; or

(b) The use of labor and services performed in respect to the installing of air pollution control facilities.

(3) The exemption provided under this section applies only to air pollution control facilities that are:

(a) Constructed or installed after May 15, 1997, and used in a thermal electric generation facility placed in operation after December 31, 1969, and before July 1, 1975; and

(b) Constructed or installed to meet applicable regulatory requirements established under state or federal law, including the Washington clean air act, chapter 70.94 RCW.

(4) This section does not apply to the use of tangible personal property for maintenance or repairs of the pollution

control equipment or to labor and services performed in respect to such maintenance or repairs.

(5) If production of electricity at a thermal electric generation facility for any calendar year after 2002 and before 2023 falls below a twenty percent annual capacity factor for the generation facility, all or a portion of the tax previously exempted under this section in respect to construction or installation of air pollution control facilities at the generation facility shall be due according to the schedule provided in RCW 82.08.810(5).

(6) RCW 82.32.393 applies to this section. [2003 c 5 § 12; 1997 c 368 § 3.]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368: See notes following RCW 82.08.810.

82.12.820 Exemptions—Warehouse and grain elevators and distribution centers. (1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators, and retailers who own or operate distribution centers, and who have paid the tax levied under RCW 82.12.020 on:

(a) Material-handling equipment and racking equipment and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Materials incorporated in the construction of a warehouse or grain elevator, are eligible for an exemption on tax paid in the form of a remittance or credit against tax owed. The amount of the remittance or credit is computed under subsection (2) of this section and is based on the state share of use tax.

(2)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.12.020 to the department. The person may then apply to the department for remittance of all or part of the tax paid under RCW 82.12.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction materials, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses, if applicable; and construction invoices and documents.

(c) The department shall on a quarterly basis remit or credit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(3) Warehouse, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.61, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Materials incorporated in warehouses and grain elevators upon which construction was initiated prior to May 20, 1997, are not eligible for a remittance under this section.

(4) The lessor or owner of the warehouse or grain elevator is not eligible for a remittance or credit under this section unless the underlying ownership of the warehouse or grain elevator and material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the exemption to the lessee in the form of reduced rent payments.

(5) The definitions in RCW 82.08.820 apply to this section. [2003 c 5 § 13; 2000 c 103 § 9; 1997 c 450 § 3.]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Findings—Intent—Report—Effective date—1997 c 450: See notes following RCW 82.08.820.

82.12.840 Exemptions—Machinery, equipment, or structures that reduce field burning. (Expires January 1, 2006.)

(1) The provisions of this chapter do not apply in respect to the use of machinery and equipment, and to services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible machinery and equipment, or tangible personal property that becomes an ingredient or component of eligible machinery and equipment used more than half of the time:

(a) For gathering, densifying, processing, handling, storing, transporting, or incorporating straw or straw-based products that will result in a reduction in field burning of cereal grains and field and turf grass grown for seed; or

(b) To decrease air emissions resulting from field burning of cereal grains and field and turf grass grown for seed.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section.

(3) The department of ecology shall provide the department with the information necessary for the department to administer this section.

(4) This section expires January 1, 2006. [2003 c 5 § 14; 2000 c 40 § 3.]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—Effective date—2000 c 40: See notes following RCW 82.08.840.

82.12.890 Exemptions—Dairy nutrient management equipment and facilities. The provisions of this chapter do not apply with respect to the use by an eligible person of tangible personal property that becomes an ingredient or component of dairy nutrient management equipment and facilities, as defined in RCW 82.08.890, or to labor and services rendered in respect to repairing, cleaning, altering, or improving eligible tangible personal property. The equipment and facilities must be used exclusively for activities necessary to maintain a dairy management plan as required under chapter

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90.64 RCW. This exemption applies to the use of tangible personal property or labor and services made after the dairy nutrient management plan is certified under chapter 90.64 RCW. The exemption certificate and recordkeeping requirements of RCW 82.08.890 apply to this section. [2003 c 5 § 15; 2001 2nd sp.s. c 18 § 3.]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—Effective date—2001 2nd sp.s. c 18: See notes following RCW 82.08.890.

82.12.900 Exemptions—Anaerobic digesters. The provisions of this chapter do not apply with respect to the use of anaerobic digesters, tangible personal property that becomes an ingredient or component of anaerobic digesters, or the use of services rendered in respect to installing, repairing, cleaning, altering, or improving eligible tangible personal property by an eligible person establishing or operating an anaerobic digester, as defined in RCW 82.08.900. The anaerobic digester must be used primarily to treat dairy manure. [2003 c 5 § 16; 2001 2nd sp.s. c 18 § 5.]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—Effective date—2001 2nd sp.s. c 18: See notes following RCW 82.08.890.

82.12.925 Exemptions—Dietary supplements. (Effective January 1, 2004.)

The provisions of this chapter shall not apply to the use of dietary supplements dispensed or to be dispensed to patients, pursuant to a prescription, if the dietary supplements are for human use. "Dietary supplement" has the same meaning as in RCW 82.08.0293. [2003 c 168 § 304.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.12.930 Exemptions—Watershed protection or flood prevention.

The provisions of this chapter do not apply with respect to the use by municipal corporations, the state, and all political subdivisions thereof of tangible personal property consumed and/or of labor and services as defined in RCW 82.04.050(2)(a) rendered in respect to contracts for watershed protection and/or flood prevention. This exemption is limited to that portion of the selling price that is reimbursed by the United States government according to the provisions of the watershed protection and flood prevention act (68 Stat. 666; 16 U.S.C. Sec. 101 et seq.). [2003 c 5 § 17.]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

82.12.935 Exemptions—Disposable devices used to deliver prescription drugs for human use. (Effective July 1, 2004.) The provisions of this chapter shall not apply to the use of disposable devices used to deliver drugs for human use, pursuant to a prescription. Disposable devices means the same as provided in RCW 82.08.935. [2003 c 168 § 407.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.12.940 Exemptions—Over-the-counter drugs for human use. (Effective July 1, 2004.) The provisions of this

chapter shall not apply to the use of over-the-counter drugs dispensed or to be dispensed to patients, pursuant to a prescription, if the over-the-counter drugs are for human use. "Over-the-counter drug" has the same meaning as in RCW 82.08.0281. [2003 c 168 § 408.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.12.945 Exemptions—Kidney dialysis devices. (*Effective July 1, 2004.*) The provisions of this chapter shall not apply to the use of kidney dialysis devices, including repair and replacement parts, for human use pursuant to a prescription. [2003 c 168 § 411.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.12.950 Exemptions—Steam, electricity, electrical energy. (*Effective July 1, 2004.*) The provisions of this chapter shall not apply in respect to the use of steam, electricity, or electrical energy. [2003 c 168 § 704.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.12.955 Exemptions—Use of machinery, equipment, vehicles, and services related to biodiesel or alcohol fuel blend. (*Expires July 1, 2009.*) (1) The provisions of this chapter do not apply in respect to the use of machinery and equipment, or to services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible machinery and equipment, or tangible personal property that becomes an ingredient or component of machinery and equipment used directly for the retail sale of a biodiesel or alcohol fuel blend.

(2) The provisions of this chapter do not apply in respect to the use of fuel delivery vehicles including repair parts and replacement parts and to services rendered in respect to installing, repairing, cleaning, altering, or improving the vehicles if at least seventy-five percent of the fuel distributed by the vehicles is a biodiesel or alcohol fuel blend.

(3) For the purposes of this section, the definitions in RCW 82.04.4334 and 82.08.955 apply.

(4) This section expires July 1, 2009. [2003 c 63 § 3.]

Effective date—2003 c 63: See note following RCW 82.04.4334.

82.12.960 Exemptions—Use of machinery, equipment, vehicles, and services related to wood biomass fuel blend. (*Expires July 1, 2009.*) (1) The provisions of this chapter do not apply in respect to the use of machinery and equipment, or to services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible machinery and equipment, or tangible personal property that becomes an ingredient or component of machinery and equipment used directly for the retail sale of a wood biomass fuel blend.

(2) The provisions of this chapter do not apply in respect to the use of fuel delivery vehicles including repair parts and replacement parts and to services rendered in respect to installing, repairing, cleaning, altering, or improving the vehicles if at least seventy-five percent of the fuel distributed by the vehicles is a wood biomass fuel blend.

(3) For the purposes of this section, the definitions in RCW 82.08.960 apply.

(4) This section expires July 1, 2009. [2003 c 339 § 14.]

Effective dates—2003 c 339: See note following RCW 82.69.030.

82.12.965 Exemptions—Semiconductor materials manufacturing. (*Contingent effective date; contingent expiration date.*) (1) The provisions of this chapter do not apply with respect to the use of tangible personal property that will be incorporated as an ingredient or component of new buildings used for the manufacturing of semiconductor materials during the course of constructing such buildings or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The eligibility requirements, conditions, and definitions in RCW 82.08.965 apply to this section.

(3) No exemption may be taken twelve years after *the effective date of this act, however all of the eligibility criteria and limitations are applicable to any exemptions claimed before that date.

(4) This section expires twelve years after *the effective date of this act. [2003 c 149 § 6.]

***Contingent effective date—Findings—Intent—2003 c 149:** See notes following RCW 82.04.426.

82.12.970 Exemptions—Gases and chemicals used to manufacture semiconductor materials. (*Contingent effective date; contingent expiration date.*) (1) The provisions of this chapter do not apply with respect to the use of gases and chemicals used by a manufacturer or processor for hire in the manufacturing of semiconductor materials. This exemption is limited to gases and chemicals used in the manufacturing process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the manufacturing process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For purposes of this section, "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person taking the exemption under this section must report under RCW 82.32.535. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires twelve years after *the effective date of this act. [2003 c 149 § 8.]

***Contingent effective date—Findings—Intent—2003 c 149:** See notes following RCW 82.04.426.

82.12.975 Computer parts and software related to the manufacture of commercial airplanes. (*Contingent effective date; expires July 1, 2024.*) (1) The provisions of this chapter shall not apply in respect to the use of computer hardware, computer peripherals, or software, not otherwise eligible for exemption under RCW 82.12.02565, by a manufacturer or processor for hire of commercial airplanes or components of such airplanes, used primarily in the development, design, and engineering of such products, or to the use of

labor and services rendered in respect to installing the computer hardware, computer peripherals, or software.

(2) As used in this section, "commercial airplane" and "component" have the meanings given in RCW 82.32.550. "Peripherals" includes keyboards, monitors, mouse devices, and other accessories that operate outside of the computer, excluding cables, conduit, wiring, and other similar property.

(3) This section expires July 1, 2024. [2003 2nd sp.s. c 1 § 10.]

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

82.12.980 Exemptions—Labor, services, and personal property related to the manufacture of superefficient airplanes. (*Contingent effective date; expires July 1, 2024.*) (1) The provisions of this chapter do not apply with respect to the use of tangible personal property that will be incorporated as an ingredient or component of new buildings by a manufacturer engaged in the manufacturing of superefficient airplanes or owned by a port district and to be leased to a manufacturer engaged in the manufacturing of superefficient airplanes, during the course of constructing such buildings, or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The eligibility requirements, conditions, and definitions in RCW 82.08.980 apply to this section.

(3) This section expires July 1, 2024. [2003 2nd sp.s. c 1 § 12.]

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Chapter 82.14 RCW

LOCAL RETAIL SALES AND USE TAXES

Sections

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82.14.020 Definitions—Where retail sale occurs. (*Effective July 1, 2004; contingent expiration date.*) For purposes of this chapter:

(1) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer;

(2) A retail sale consisting essentially of the performance of personal, business, or professional services shall be deemed to have occurred at the place at which such services were primarily performed, except that for the performance of a tow truck service, as defined in RCW 46.55.010, the retail sale shall be deemed to have occurred at the place of business of the operator of the tow truck service;

(3) A retail sale consisting of the rental of tangible personal property shall be deemed to have occurred (a) in the case of a rental involving periodic rental payments, at the place of primary use by the lessee during the period covered by each payment, or (b) in all other cases, at the place of first use by the lessee;

(4) A retail sale within the scope of RCW 82.04.050(2), and a retail sale of taxable personal property to be installed by the seller shall be deemed to have occurred at the place where the labor and services involved were primarily performed;

(5)(a) A retail sale consisting of the providing to a consumer of telephone service, as defined in RCW 82.04.065, other than a sale of tangible personal property under subsection (1) of this section or a rental of tangible personal property under subsection (3) of this section or a sale of mobile telecommunications services, shall be deemed to have occurred at the situs of the telephone or other instrument through which the telephone service is rendered;

(b) A retail sale consisting of the providing of telecommunications services shall be sourced in accordance with RCW 82.32.520;

(6) A retail sale of linen and uniform supply services is deemed to occur as provided in RCW 82.08.0202;

(7) "City" means a city or town;

(8) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, shall have full force and effect with respect to taxes imposed under authority of this chapter;

(9) "Taxable event" shall mean any retail sale, or any use, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER, That the term shall not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended;

(10) "Treasurer or other legal depository" shall mean the treasurer or legal depository of a county or city. [2003 c 168 § 502. Prior: 2002 c 367 § 6; 2002 c 67 § 7; 2001 c 186 § 3; 1997 c 201 § 1; 1983 2nd ex.s. c 3 § 31; 1982 c 211 § 1; 1981 c 144 § 4; 1970 ex.s. c 94 § 3.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Severability—Effective date—2002 c 367: See notes following RCW 82.04.060.

Finding—Contingency—Court judgment—Effective date—2002 c 67: See notes following RCW 82.04.530.

Finding—Purpose—Effective date—2001 c 186: See notes following RCW 82.08.0202.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

82.14.020 Definitions—Where retail sale occurs. (*Contingent effective date.*) For purposes of this chapter:

(1) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer;

(2) A retail sale consisting essentially of the performance of personal, business, or professional services shall be deemed to have occurred at the place at which such services were primarily performed, except that for the performance of a tow truck service, as defined in RCW 46.55.010, the retail sale shall be deemed to have occurred at the place of business of the operator of the tow truck service;

(3) A retail sale consisting of the rental of tangible personal property shall be deemed to have occurred (a) in the case of a rental involving periodic rental payments, at the primary place of use by the lessee during the period covered by each payment, or (b) in all other cases, at the place of first use by the lessee;

(4) A retail sale within the scope of RCW 82.04.050(2), and a retail sale of taxable personal property to be installed by the seller shall be deemed to have occurred at the place where the labor and services involved were primarily performed;

(5) A retail sale consisting of the providing of telecommunications services shall be sourced in accordance with RCW 82.32.520;

(6) A retail sale of linen and uniform supply services is deemed to occur as provided in RCW 82.08.0202;

(7) "City" means a city or town;

(8) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, shall have full force and effect with respect to taxes imposed under authority of this chapter;

(9) "Taxable event" shall mean any retail sale, or any use, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER, That the term shall not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended;

(10) "Treasurer or other legal depository" shall mean the treasurer or legal depository of a county or city. [2003 c 168 § 503; 2002 c 367 § 6; 2001 c 186 § 3; 1997 c 201 § 1; 1983 2nd ex.s. c 3 § 31; 1982 c 211 § 1; 1981 c 144 § 4; 1970 ex.s. c 94 § 3.]

Part headings not law—2003 c 168: See note following RCW 82.08.010.

Severability—Effective date—2002 c 367: See notes following RCW 82.04.060.

Finding—Purpose—Effective date—2001 c 186: See notes following RCW 82.08.0202.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

82.14.050 Administration and collection—Local sales and use tax account. (*Effective until July 1, 2004.*) The counties, cities, and transportation authorities under

RCW 82.14.045, public facilities districts under chapters 36.100 and 35.57 RCW, public transportation benefit areas under RCW 82.14.440, and regional transportation investment districts shall contract, prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by this chapter that is collected by the department of revenue shall be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Moneys in the local sales and use tax account may be spent only for distribution to counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, and regional transportation investment districts imposing a sales and use tax. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local sales and use tax account shall be credited to the local sales and use tax account and distributed to the counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, and regional transportation investment districts monthly. [2003 c 83 § 208; 2002 c 56 § 406; 1999 c 165 § 14; 1991 sp.s. c 13 § 34; 1991 c 207 § 2; 1990 2nd ex.s. c 1 § 201; 1985 c 57 § 81; 1981 2nd ex.s. c 4 § 10; 1971 ex.s. c 296 § 3; 1970 ex.s. c 94 § 6.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

Severability—1999 c 164: See RCW 35.57.900.

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

Applicability—1990 2nd ex.s. c 1 §§ 201-204: "Sections 201 through 204 of this act shall not be effective for earnings on balances prior to July 1, 1990, regardless of when a distribution is made." [1990 2nd ex.s. c 1 § 205.]

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

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

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

Legislative finding, declaration—Severability—1971 ex.s. c 296: See notes following RCW 82.14.045.

82.14.050 Administration and collection—Local sales and use tax account. (*Effective July 1, 2004.*) The counties, cities, and transportation authorities under RCW 82.14.045, public facilities districts under chapters 36.100 and 35.57 RCW, public transportation benefit areas under RCW 82.14.440, and regional transportation investment districts shall contract, prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by this chapter

that is collected by the department of revenue shall be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Moneys in the local sales and use tax account may be spent only for distribution to counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, and regional transportation investment districts imposing a sales and use tax. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter. Counties, cities, transportation authorities, public facilities districts, and regional transportation investment districts may not conduct independent sales or use tax audits of sellers registered under the streamlined sales tax agreement. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local sales and use tax account shall be credited to the local sales and use tax account and distributed to the counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, and regional transportation investment districts monthly. [2003 c 168 § 201; 2003 c 83 § 208; 2002 c 56 § 406; 1999 c 165 § 14; 1991 sp.s. c 13 § 34; 1991 c 207 § 2; 1990 2nd ex.s. c 1 § 201; 1985 c 57 § 81; 1981 2nd ex.s. c 4 § 10; 1971 ex.s. c 296 § 3; 1970 ex.s. c 94 § 6.]

Reviser's note: This section was amended by 2003 c 83 § 208 and by 2003 c 168 § 201, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

Severability—1999 c 164: See RCW 35.57.900.

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

Applicability—1990 2nd ex.s. c 1 §§ 201-204: "Sections 201 through 204 of this act shall not be effective for earnings on balances prior to July 1, 1990, regardless of when a distribution is made." [1990 2nd ex.s. c 1 § 205.]

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

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

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

Legislative finding, declaration—Severability—1971 ex.s. c 296: See notes following RCW 82.14.045.

82.14.055 Tax changes. (Effective July 1, 2004.) (1) Except as provided in subsections (2), (3), and (4) of this section, a local sales and use tax change shall take effect (a) no sooner than seventy-five days after the department receives notice of the change and (b) only on the first day of January, April, July, or October.

(2) In the case of a local sales and use tax that is a credit against the state sales tax or use tax, a local sales and use tax change shall take effect (a) no sooner than thirty days after the department receives notice of the change and (b) only on the first day of a month.

(3)(a) A local sales and use tax rate increase imposed on services applies to the first billing period starting on or after the effective date of the increase.

(b) A local sales and use tax rate decrease imposed on services applies to bills rendered on or after the effective date of the decrease.

(c) For the purposes of this subsection (3), "services" means retail services such as installing and constructing and retail services such as telecommunications, but does not include services such as tattooing.

(4) For the purposes of this section, "local sales and use tax change" means enactment or revision of local sales and use taxes under this chapter or any other statute, including changes resulting from referendum or annexation. [2003 c 168 § 206; 2001 c 320 § 7; 2000 c 104 § 2.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective date—2001 c 320: See note following RCW 11.02.005.

Findings—Intent—2000 c 104: "The legislature finds that retailers have an important role in the state's tax system by collecting sales or use tax from consumers and remitting it to the state. Frequent changes to the tax system place a burden on these businesses. To alleviate that burden and to improve the accuracy of tax collection, it is the intent of the legislature to provide that changes to sales and use tax may be made four times a year and that the department of revenue be provided adequate time to give advance notice to retailers of any such change. Changes in sales and use tax rates that are the result of annexation are also restricted to this time period, for uniformity and simplification. Additionally, retailers who rely on technology developed and provided by the department of revenue, such as the department's geographic information system, to calculate tax rates shall be held harmless from errors resulting from such use." [2000 c 104 § 1.]

Effective date—2000 c 104: "This act takes effect July 1, 2000." [2000 c 104 § 7.]

Statewide sales and use tax changes: RCW 82.08.064.

82.14.070 Uniformity—Rule making—Model ordinance. (Effective July 1, 2004.) It is the intent of this chapter that any local sales and use tax adopted pursuant to this chapter be identical to the state sales and use tax, unless otherwise prohibited by federal law, and with other local sales and use taxes adopted pursuant to this chapter. It is further the intent of this chapter that the local sales and use tax shall be imposed upon an individual taxable event simultaneously with the imposition of the state sales or use tax upon the same taxable event. The rule making powers of the state department of revenue contained in RCW 82.08.060 and 82.32.300 shall be applicable to this chapter. The department shall, as soon as practicable, and with the assistance of the appropriate associations of county prosecutors and city attorneys, draft a model resolution and ordinance. [2003 c 168 § 202; 2000 c 104 § 5; 1970 ex.s. c 94 § 10.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Findings—Intent—Effective date—2000 c 104: See notes following RCW 82.14.055.

82.14.200 County sales and use tax equalization account—Allocation procedure. There is created in the state treasury a special account to be known as the "county sales and use tax equalization account." Into this account shall be placed a portion of all motor vehicle excise tax receipts as provided in *RCW 82.44.110. Funds in this account shall be allocated by the state treasurer according to the following procedure:

(1) Prior to April 1st of each year the director of revenue shall inform the state treasurer of the total and the per capita

levels of revenues for the unincorporated area of each county and the statewide weighted average per capita level of revenues for the unincorporated areas of all counties imposing the sales and use tax authorized under RCW 82.14.030(1) for the previous calendar year.

(2) At such times as distributions are made under *RCW 82.44.150, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than one hundred fifty thousand dollars from the tax for the previous calendar year, an amount from the county sales and use tax equalization account sufficient, when added to the amount of revenues received the previous calendar year by the county, to equal one hundred fifty thousand dollars.

The department of revenue shall establish a governmental price index as provided in this subsection. The base year for the index shall be the end of the third quarter of 1982. Prior to November 1, 1983, and prior to each November 1st thereafter, the department of revenue shall establish another index figure for the third quarter of that year. The department of revenue may use the implicit price deflators for state and local government purchases of goods and services calculated by the United States department of commerce to establish the governmental price index. Beginning on January 1, 1984, and each January 1st thereafter, the one hundred fifty thousand dollar base figure in this subsection shall be adjusted in direct proportion to the percentage change in the governmental price index from 1982 until the year before the adjustment. Distributions made under this subsection for 1984 and thereafter shall use this adjusted base amount figure.

(3) Subsequent to the distributions under subsection (2) of this section and at such times as distributions are made under *RCW 82.44.150, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than seventy percent of the statewide weighted average per capita level of revenues for the unincorporated areas of all counties as determined by the department of revenue under subsection (1) of this section, an amount from the county sales and use tax equalization account sufficient, when added to the per capita level of revenues for the unincorporated area received the previous calendar year by the county, to equal seventy percent of the statewide weighted average per capita level of revenues for the unincorporated areas of all counties determined under subsection (1) of this section, subject to reduction under subsections (6) and (7) of this section. When computing distributions under this section, any distribution under subsection (2) of this section shall be considered revenues received from the tax imposed under RCW 82.14.030(1) for the previous calendar year.

(4) Subsequent to the distributions under subsection (3) of this section and at such times as distributions are made under *RCW 82.44.150, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (2) of this section, a third distribution from the county sales and use tax equalization account. The distribution to each qualifying county shall be equal to the distribution to the county under subsection (2) of this section, subject to the reduction under subsections (6) and (7) of this section. To qualify for the total distribution under this sub-

section, the county must impose the tax under RCW 82.14.030(2) for the entire calendar year. Counties imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(5) Subsequent to the distributions under subsection (4) of this section and at such times as distributions are made under *RCW 82.44.150, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (3) of this section, a fourth distribution from the county sales and use tax equalization account. The distribution to each qualifying county shall be equal to the distribution to the county under subsection (3) of this section, subject to the reduction under subsections (6) and (7) of this section. To qualify for the distributions under this subsection, the county must impose the tax under RCW 82.14.030(2) for the entire calendar year. Counties imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(6) Revenues distributed under subsections (2) through (5) of this section in any calendar year shall not exceed an amount equal to seventy percent of the statewide weighted average per capita level of revenues for the unincorporated areas of all counties during the previous calendar year. If distributions under subsections (3) through (5) of this section cannot be made because of this limitation, then distributions under subsections (3) through (5) of this section shall be reduced ratably among the qualifying counties.

(7) If inadequate revenues exist in the county sales and use tax equalization account to make the distributions under subsections (3) through (5) of this section, then the distributions under subsections (3) through (5) of this section shall be reduced ratably among the qualifying counties. At such time during the year as additional funds accrue to the county sales and use tax equalization account, additional distributions shall be made under subsections (3) through (5) of this section to the counties.

(8) If the level of revenues in the county sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (5) of this section, at such times as distributions are made under *RCW 82.44.150, the state treasurer shall apportion an amount to the county public health account created in RCW 70.05.125 equal to the adjustment under RCW 70.05.125(2)(b).

(9) If the level of revenues in the county sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (5) and (8) of this section, then the additional revenues shall be credited and transferred as follows:

(a) Fifty percent to the public facilities construction loan revolving account under RCW 43.160.080; and

(b) Fifty percent to the distressed county public facilities construction loan account under RCW 43.160.220, or so much thereof as will not cause the balance in the account to exceed twenty-five million dollars. Any remaining funds shall be deposited into the public facilities construction loan revolving account.

(10) During the 2003-2005 fiscal biennium, the legislature may transfer from the county sales and use tax equaliza-

tion account to the state general fund such amounts as reflect the excess fund balance of the account. [2003 1st sp.s. c 25 § 941; 1998 c 321 § 8 (Referendum Bill No. 49, approved November 3, 1998); 1997 c 333 § 2; 1991 sp.s. c 13 § 15; 1990 c 42 § 313; 1985 c 57 § 82; 1984 c 225 § 5; 1983 c 99 § 1; 1982 1st ex.s. c 49 § 21.]

***Reviser's note:** RCW 82.44.110 and 82.44.150 were repealed by 2003 c 1 § 5.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.14.045.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.14.045.

Effective date—1997 c 333: See note following RCW 70.05.125.

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

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

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

Rules—1984 c 225: See note following RCW 82.14.210.

Severability—1983 c 99: "If any provision of this act or chapter 49, Laws of 1982 1st ex. sess. or their application to any person or circumstance is held invalid, the remainder of these acts or the application of the provision to other persons or circumstances is not affected." [1983 c 99 § 10.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.14.210 Municipal sales and use tax equalization account—Allocation procedure. There is created in the state treasury a special account to be known as the "municipal sales and use tax equalization account." Into this account shall be placed such revenues as are provided under *RCW 82.44.110(1)(e). Funds in this account shall be allocated by the state treasurer according to the following procedure:

(1) Prior to January 1st of each year the department of revenue shall determine the total and the per capita levels of revenues for each city and the statewide weighted average per capita level of revenues for all cities imposing the sales and use tax authorized under RCW 82.14.030(1) for the previous calendar year.

(2) At such times as distributions are made under *RCW 82.44.150, the state treasurer shall apportion to each city not imposing the sales and use tax under RCW 82.14.030(2) an amount from the municipal sales and use tax equalization account equal to the amount distributed to the city under RCW 82.44.155, multiplied by forty-five fifty-fifths.

(3) Subsequent to the distributions under subsection (2) of this section, and at such times as distributions are made under *RCW 82.44.150, the state treasurer shall apportion to each city imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than seventy percent of the statewide weighted average per capita level of revenues for all cities as determined by the department of revenue under subsection (1) of this section, an amount from the municipal sales and use tax equalization account sufficient, when added to the per capita level of revenues received the previous calendar year by the city, to equal seventy percent of the statewide weighted average per capita level of revenues for all cities determined under sub-

section (1) of this section, subject to reduction under subsection (6) of this section.

(4) Subsequent to the distributions under subsection (3) of this section, and at such times as distributions are made under *RCW 82.44.150, the state treasurer shall apportion to each city imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (3) of this section, a third distribution from the municipal sales and use tax equalization account. The distribution to each qualifying city shall be equal to the distribution to the city under subsection (3) of this section, subject to the reduction under subsection (6) of this section. To qualify for the distributions under this subsection, the city must impose the tax under RCW 82.14.030(2) for the entire calendar year. Cities imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(5) For a city with an official incorporation date after January 1, 1990, municipal sales and use tax equalization distributions shall be made according to the procedures in this subsection. Municipal sales and use tax equalization distributions to eligible new cities shall be made at the same time as distributions are made under subsections (3) and (4) of this section. The department of revenue shall follow the estimating procedures outlined in this subsection until the new city has received a full year's worth of revenues under RCW 82.14.030(1) as of the January municipal sales and use tax equalization distribution.

(a) Whether a newly incorporated city determined to receive funds under this subsection receives its first equalization payment at the January, April, July, or October municipal sales and use tax equalization distribution shall depend on the date the city first imposes the tax authorized under RCW 82.14.030(1).

(i) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of January 1st shall be eligible to receive funds under this subsection beginning with the April municipal sales and use tax equalization distribution of that year.

(ii) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of February 1st, March 1st, or April 1st shall be eligible to receive funds under this subsection beginning with the July municipal sales and use tax equalization distribution of that year.

(iii) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of May 1st, June 1st, or July 1st shall be eligible to receive funds under this subsection beginning with the October municipal sales and use tax equalization distribution of that year.

(iv) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of August 1st, September 1st, or October 1st shall be eligible to receive funds under this subsection beginning with the January municipal sales and use tax equalization distribution of the next year.

(v) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of November 1st or December 1st shall be eligible to receive funds under this subsection beginning with the April municipal sales and use tax equalization distribution of the next year.

(b) For purposes of calculating the amount of funds the new city should receive under this subsection, the department of revenue shall:

(i) Estimate the per capita amount of revenues from the tax authorized under RCW 82.14.030(1) that the new city would have received had the city received revenues from the tax the entire calendar year;

(ii) Calculate the amount provided under subsection (3) of this section based on the per capita revenues determined under (b)(i) of this subsection;

(iii) Prorate the amount determined under (b)(ii) of this subsection by the number of months the tax authorized under RCW 82.14.030(1) is imposed.

(c) A new city imposing the tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution calculated under (b) of this subsection shall receive another distribution from the municipal sales and use tax equalization account. This distribution shall be equal to the calculation made under (b)(ii) of this subsection, prorated by the number of months the city imposes the tax authorized under RCW 82.14.030(2) at the full rate.

(d) The department of revenue shall advise the state treasurer of the amounts calculated under (b) and (c) of this subsection and the state treasurer shall distribute these amounts to the new city from the municipal sales and use tax equalization account subject to the limitations imposed in subsection (6) of this section.

(e) Revenues estimated under this subsection shall not affect the calculation of the statewide weighted average per capita level of revenues for all cities made under subsection (1) of this section.

(6) If inadequate revenues exist in the municipal sales and use tax equalization account to make the distributions under subsection (3), (4), or (5) of this section, then the distributions under subsections (3), (4), and (5) of this section shall be reduced ratably among the qualifying cities. At such time during the year as additional funds accrue to the municipal sales and use tax equalization account, additional distributions shall be made under subsections (3), (4), and (5) of this section to the cities.

(7) If the level of revenues in the municipal sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (5) of this section, then the additional revenues shall be apportioned among the several cities within the state ratably on the basis of population as last determined by the office of financial management: PROVIDED, That no such distribution shall be made to those cities receiving a distribution under subsection (2) of this section.

(8) During the 2003-2005 fiscal biennium, the legislature may transfer from the municipal sales and use tax equalization account to the state general fund such amounts as reflect the excess fund balance in the account. [2003 1st sp.s. c 25 § 942; 1996 c 64 § 1; 1991 sp.s. c 13 § 16; 1990 2nd ex.s. c 1 § 701; 1990 c 42 § 314; 1985 c 57 § 83; 1984 c 225 § 2; 1982 1st ex.s. c 49 § 22.]

***Reviser's note:** RCW 82.44.110 and 82.44.150 were repealed by 2003 c 1 § 5.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Effective date—1996 c 64: "This act shall take effect July 1, 1996." [1996 c 64 § 2.]

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

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

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

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

Intent—1984 c 225: "It is the intent of the legislature to provide for the allocation of moneys by the department of revenue from the municipal sales and use tax equalization account to cities and towns initially incorporated on or after January 1, 1983." [1984 c 225 § 1.]

Applicability—1984 c 225: "Sections 1 and 2 of this act apply to distributions for calendar year 1984 and thereafter which are made to cities and towns that were initially incorporated on or after January 1, 1983, and that impose the tax authorized by RCW 82.14.030(1)." [1984 c 225 § 3.]

Rules—1984 c 225: "The department of revenue shall adopt rules as necessary to implement this act." [1984 c 225 § 7.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

82.14.330 Municipal criminal justice assistance account—Transfers from general fund—Distributions based on crime rate, population, and innovation—Limitations. (1) Beginning in fiscal year 2000, the state treasurer shall transfer into the municipal criminal justice assistance account for distribution under this section from the general fund the sum of four million six hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer shall increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year. The moneys deposited in the municipal criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under subsection (4) of this section, shall be distributed to the cities of the state as follows:

(a) Twenty percent appropriated for distribution shall be distributed to cities with a three-year average violent crime rate for each one thousand in population in excess of one hundred fifty percent of the statewide three-year average violent crime rate for each one thousand in population. The three-year average violent crime rate shall be calculated using the violent crime rates for each of the preceding three years from the annual reports on crime in Washington state as published by the Washington association of sheriffs and police chiefs. Moneys shall be distributed under this subsection (1)(a) ratably based on population as last determined by the office of financial management, but no city may receive more than one dollar per capita. Moneys remaining undistributed under this subsection at the end of each calendar year shall be distributed to the criminal justice training commission to reimburse participating city law enforcement agencies with ten or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training, as provided in RCW 43.101.200.

(b) Sixteen percent shall be distributed to cities ratably based on population as last determined by the office of financial management, but no city may receive less than one thousand dollars.

The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection shall not be distributed at such times as distributions are made under *RCW 82.44.150.

Moneys distributed under this subsection shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(2) In addition to the distributions under subsection (1) of this section:

(a) Ten percent shall be distributed on a per capita basis to cities that contract with another governmental agency for the majority of the city's law enforcement services. Cities that subsequently qualify for this distribution shall notify the department of community, trade, and economic development by November 30th for the upcoming calendar year. The department of community, trade, and economic development shall provide a list of eligible cities to the state treasurer by December 31st. The state treasurer shall modify the distribution of these funds in the following year. Cities have the responsibility to notify the department of community, trade, and economic development of any changes regarding these contractual relationships. Adjustments in the distribution formula to add or delete cities may be made only for the upcoming calendar year; no adjustments may be made retroactively.

(b) The remaining fifty-four percent shall be distributed to cities and towns by the state treasurer on a per capita basis. These funds shall be used for: (i) Innovative law enforcement strategies; (ii) programs to help at-risk children or child abuse victim response programs; and (iii) programs designed to reduce the level of domestic violence or to provide counseling for domestic violence victims.

The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection, less any moneys appropriated for purposes under subsection (4) of this section, shall be distributed at the times as distributions are made under *RCW 82.44.150. Moneys remaining undistributed under this subsection at the end of each calendar year shall be distributed to the criminal justice training commission to reimburse participating city law enforcement agencies with ten or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training, as provided in RCW 43.101.200.

If a city is found by the state auditor to have expended funds received under this subsection in a manner that does

not comply with the criteria under which the moneys were received, the city shall be ineligible to receive future distributions under this subsection until the use of the moneys are justified to the satisfaction of the director or are repaid to the state general fund.

(3) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), shall be made to the county in which the city is located.

(4) Not more than five percent of the funds deposited to the municipal criminal justice assistance account shall be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements shall not supplant existing funds from the state general fund. [2003 c 90 § 1; 1998 c 321 § 13 (Referendum Bill No. 49, approved November 3, 1998); 1995 c 398 § 13; 1994 c 273 § 22; 1993 sp.s. c 21 § 3; 1991 c 311 § 4; 1990 2nd ex.s. c 1 § 105.]

***Reviser's note:** RCW 82.44.150 was repealed by 2003 c 1 (Initiative 776), however, the constitutionality of Initiative Measure No. 776 is being challenged in *Pierce Co. v. State of Washington*, King Co. Superior Ct. No. 02-2-35125-5 SEA.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.14.045.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.14.045.

Effective date—1994 c 273 § 22: "Section 22 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 273 § 24.]

Effective dates—1993 sp.s. c 21: See note following RCW 82.14.310.

Retroactive application—1991 c 311: "The changes contained in sections 2, 3, 4, and 5 of this act are remedial, curative, and clarify ambiguities in prior existing law. These changes shall apply retroactively to July 1, 1990." [1991 c 311 § 6.]

Severability—1991 c 311: See note following RCW 82.14.310.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

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

82.14.440 Sales and use tax for passenger-only ferry service. Public transportation benefit areas providing passenger-only ferry service as provided in RCW 36.57A.200 whose boundaries (1) are on the Puget Sound, but (2) do not include an area where a regional transit authority has been formed, may submit an authorizing proposition to the voters and, if approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter, solely for the purpose of providing passenger-only ferry service.

The tax authorized by this section is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of a taxable event within the

taxing district. The maximum rate of the tax must be approved by the voters and may not exceed four-tenths of one percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax. [2003 c 83 § 207.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

82.14.450 Sales and use tax for counties and cities.

(1) A county legislative authority may submit an authorizing proposition to the county voters at a primary or general election and, if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used. Funds raised under this tax shall not supplant existing funds used for these purposes. The rate of tax under this section shall not exceed three-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(2) The tax authorized in this section is in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county.

(3) The retail sale or use of motor vehicles, and the lease of motor vehicles for up to the first thirty-six months of the lease, are exempt from tax imposed under this section.

(4) One-third of all money received under this section shall be used solely for criminal justice purposes. For the purposes of this subsection, "criminal justice purposes" means additional police protection, mitigation of congested court systems, or relief of overcrowded jails or other local correctional facilities.

(5) Money received under this section shall be shared between the county and the cities as follows: Sixty percent shall be retained by the county and forty percent shall be distributed on a per capita basis to cities in the county. [2003 1st sp.s. c 24 § 2.]

Finding—Intent—2003 1st sp.s. c 24: "The legislature finds that local governments in the state of Washington face enormous challenges in the area of criminal justice and public health. It is the legislature's intent to allow general local governments to raise revenues in order to better protect the health and safety of Washington state and its residents. It is further the intent of the legislature to provide such local governments relief from regulatory burdens that do not harm the public health and safety of the citizens of the state as a means of minimizing the need to generate new revenues authorized under this act." [2003 1st sp.s. c 24 § 1.]

Effective date—2003 1st sp.s. c 24: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 1st sp.s. c 24 § 6.]

Severability—2003 1st sp.s. c 24: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 24 § 7.]

Chapter 82.16 RCW PUBLIC UTILITY TAX

Sections

82.16.048 Repealed.
82.16.049 Repealed.

Commute trip reduction incentives: Chapter 82.70 RCW.

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

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

Chapter 82.19 RCW LITTER TAX

Sections

82.19.050 Exemptions.

82.19.050 Exemptions. The litter tax imposed in this chapter does not apply to:

(1) The manufacture or sale of products for use and consumption outside the state;

(2) The value of products or gross proceeds of the sales exempt from tax under RCW 82.04.330;

(3) The sale of products for resale by a qualified grocery distribution cooperative to customer-owners of the grocery distribution cooperative. For the purposes of this section, "qualified grocery distribution cooperative" and "customer-owner" have the meanings given in RCW 82.04.298; or

(4) The sale of food or beverages by retailers that are sold solely for consumption indoors on the seller's premises. [2003 c 120 § 1; 2001 1st sp.s. c 9 § 7; (2001 1st sp.s. c 9 § 8 expired July 22, 2001); 2001 c 118 § 7; 1992 c 175 § 7; 1971 ex.s. c 307 § 17. Formerly RCW 70.93.170.]

Effective date—2003 c 120: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 120 § 2.]

Effective dates—2001 1st sp.s. c 9: See note following RCW 82.04.298.

Expiration dates—2001 1st sp.s. c 9: See note following RCW 82.04.290.

Chapter 82.23B RCW OIL SPILL RESPONSE TAX

Sections

82.23B.020 Oil spill response tax—Oil spill administration tax.

82.23B.020 Oil spill response tax—Oil spill administration tax. (1) An oil spill response tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a waterborne vessel or barge at the rate of one cent per barrel of crude oil or petroleum product received.

(2) In addition to the tax imposed in subsection (1) of this section, an oil spill administration tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a

waterborne vessel or barge at the rate of four cents per barrel of crude oil or petroleum product.

(3) The taxes imposed by this chapter shall be collected by the marine terminal operator from the taxpayer. If any person charged with collecting the taxes fails to bill the taxpayer for the taxes, or in the alternative has not notified the taxpayer in writing of the imposition of the taxes, or having collected the taxes, fails to pay them to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she shall, nevertheless, be personally liable to the state for the amount of the taxes. Payment of the taxes by the owner to a marine terminal operator shall relieve the owner from further liability for the taxes.

(4) Taxes collected under this chapter shall be held in trust until paid to the department. Any person collecting the taxes who appropriates or converts the taxes collected shall be guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. The taxes required by this chapter to be collected shall be stated separately from other charges made by the marine terminal operator in any invoice or other statement of account provided to the taxpayer.

(5) If a taxpayer fails to pay the taxes imposed by this chapter to the person charged with collection of the taxes and the person charged with collection fails to pay the taxes to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the taxes.

(6) The taxes shall be due from the marine terminal operator, along with reports and returns on forms prescribed by the department, within twenty days after the end of the month in which the taxable activity occurs.

(7) The amount of taxes, until paid by the taxpayer to the marine terminal operator or to the department, shall constitute a debt from the taxpayer to the marine terminal operator. Any person required to collect the taxes under this chapter who, with intent to violate the provisions of this chapter, fails or refuses to do so as required and any taxpayer who refuses to pay any taxes due under this chapter, shall be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

(8) Upon prior approval of the department, the taxpayer may pay the taxes imposed by this chapter directly to the department. The department shall give its approval for direct payment under this section whenever it appears, in the department's judgment, that direct payment will enhance the administration of the taxes imposed under this chapter. The department shall provide by rule for the issuance of a direct payment certificate to any taxpayer qualifying for direct payment of the taxes. Good faith acceptance of a direct payment certificate by a terminal operator shall relieve the marine terminal operator from any liability for the collection or payment of the taxes imposed under this chapter.

(9) All receipts from the tax imposed in subsection (1) of this section shall be deposited into the state oil spill response account. All receipts from the tax imposed in subsection (2) of this section shall be deposited into the oil spill prevention account.

(10) Within forty-five days after the end of each calendar quarter, the office of financial management shall determine the balance of the oil spill response account as of the last day

of that calendar quarter. Balance determinations by the office of financial management under this section are final and shall not be used to challenge the validity of any tax imposed under this chapter. The office of financial management shall promptly notify the departments of revenue and ecology of the account balance once a determination is made. For each subsequent calendar quarter, the tax imposed by subsection (1) of this section shall be imposed during the entire calendar quarter unless:

(a) Tax was imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than nine million dollars; or

(b) Tax was not imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than eight million dollars. [2003 1st sp.s. c 13 § 9; 2000 c 69 § 25; 1999 sp.s. c 7 § 1; 1997 c 449 § 2; 1995 c 399 § 214; 1992 c 73 § 7; 1991 c 200 § 802.]

Effective dates—2003 1st sp.s c 13: See note following RCW 63.29.020.

Effective date—1999 sp.s. c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 7, 1999]." [1999 sp.s. c 7 § 4.]

Effective date—1997 c 449: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 449 § 6.]

Severability—1992 c 73: See RCW 90.56.905.

Chapter 82.24 RCW TAX ON CIGARETTES

Sections

82.24.020	Tax imposed—Additional taxes for specific purposes—Absorption of tax—Possession defined.
82.24.030	Stamps.
82.24.040	Duty of wholesaler.
82.24.050	Retailer—Possession of unstamped cigarettes.
82.24.110	Other offenses—Penalties.
82.24.130	Seizure and forfeiture.
82.24.145	Forfeited property—Retention, sale, or destruction—Use of sale proceeds.
82.24.210	Redemption of stamps.
82.24.250	Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect.
82.24.260	Selling or disposal of unstamped cigarettes—Person to pay and remit tax or affix stamps—Liability.
82.24.500	Business of cigarette purchase, sale, consignment, or distribution—License required—Penalty.
82.24.570	Counterfeit cigarette offenses—Penalties.

82.24.020 Tax imposed—Additional taxes for specific purposes—Absorption of tax—Possession defined.

(1) There is levied and there shall be collected as provided in this chapter, a tax upon the sale, use, consumption, handling, possession or distribution of all cigarettes, in an amount equal to the rate of eleven and one-half mills per cigarette.

(2) An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to the rate of five and one-fourth mills per cigarette. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(3) An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to the rate of ten mills per cigarette through June 30, 1994, eleven and one-fourth mills per cigarette for the period July 1, 1994, through June 30, 1995, twenty mills per cigarette for the period July 1, 1995, through June 30, 1996, and twenty and one-half mills per cigarette thereafter. All revenues collected during any month from this additional tax shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month.

(4) Wholesalers subject to the payment of this tax may, if they wish, absorb one-half mill per cigarette of the tax and not pass it on to purchasers without being in violation of this section or any other act relating to the sale or taxation of cigarettes.

(5) For purposes of this chapter, "possession" shall mean both (a) physical possession by the purchaser and, (b) when cigarettes are being transported to or held for the purchaser or his or her designee by a person other than the purchaser, constructive possession by the purchaser or his or her designee, which constructive possession shall be deemed to occur at the location of the cigarettes being so transported or held. [2003 c 114 § 1; 1994 sp.s. c 7 § 904 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 307; 1989 c 271 § 504; 1987 c 80 § 1; 1983 2nd ex.s. c 3 § 15; 1982 1st ex.s. c 35 § 8; 1981 c 172 § 6; 1972 ex.s. c 157 § 3; 1971 ex.s. c 299 § 13; 1965 ex.s. c 173 § 23; 1961 ex.s. c 24 § 3; 1961 c 15 § 82.24.020. Prior: 1959 c 270 § 2; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Severability—1972 ex.s. c 157: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1972 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 157 § 8.]

82.24.030 Stamps. (1) In order to enforce collection of the tax hereby levied, the department of revenue shall design and have printed stamps of such size and denominations as may be determined by the department. The stamps must be affixed on the smallest container or package that will be handled, sold, used, consumed, or distributed, to permit the department to readily ascertain by inspection, whether or not such tax has been paid or whether an exemption from the tax applies.

(2) Except as otherwise provided in this chapter, only a wholesaler shall cause to be affixed on every package of cigarettes, stamps of an amount equaling the tax due thereon or stamps identifying the cigarettes as exempt before he or she sells, offers for sale, uses, consumes, handles, removes, or otherwise disturbs and distributes the same: PROVIDED, That where it is established to the satisfaction of the department that it is impractical to affix such stamps to the smallest container or package, the department may authorize the affixing of stamps of appropriate denomination to a large container or package.

(3) Only wholesalers may purchase or obtain cigarette stamps. Wholesalers shall not sell or provide stamps to any other wholesaler or person.

(4) Each roll of stamps, or group of sheets, shall have a separate serial number, which shall be legible at the point of sale. The department of revenue shall keep records of which wholesaler purchases each roll or group of sheets. If the department of revenue permits wholesalers to purchase partial rolls or sheets, in no case may stamps bearing the same serial number be sold to more than one wholesaler. The remainder of the roll or sheet, if any, shall either be retained for later purchases by the same wholesaler or destroyed.

(5) Nothing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW. [2003 c 114 § 2; 1995 c 278 § 2; 1990 c 216 § 1; 1975 1st ex.s. c 278 § 61; 1961 c 15 § 82.24.030. Prior: 1959 c 270 § 3; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Effective date—1995 c 278: See note following RCW 82.24.010.

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

82.24.040 Duty of wholesaler. (1) Except as authorized by this chapter, no person other than a licensed wholesaler shall possess in this state unstamped cigarettes.

(2) No wholesaler in this state may possess within this state unstamped cigarettes except that:

(a) Every wholesaler in the state who is licensed under Washington state law may possess within this state unstamped cigarettes for such period of time after receipt as is reasonably necessary to affix the stamps as required; and

(b) Any wholesaler in the state who is licensed under Washington state law and who furnishes a surety bond in a sum satisfactory to the department, shall be permitted to set aside, without affixing the stamps required by this chapter, such part of the wholesaler's stock as may be necessary for the conduct of the wholesaler's business in making sales to persons in another state or foreign country or to instrumentalities of the federal government. Such unstamped stock shall be kept separate and apart from stamped stock.

(3) Every wholesaler licensed under Washington state law shall, at the time of shipping or delivering any of the articles taxed herein to a point outside of this state or to a federal instrumentality, make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery, whether or not stamps were affixed thereto, and shall transmit such true duplicate invoice to the department, at Olympia, not later than the fifteenth day of the following

calendar month. For failure to comply with the requirements of this section, the department may revoke the permission granted to the taxpayer to maintain a stock of goods to which the stamps required by this chapter have not been affixed.

(4) Unstamped cigarettes possessed by a wholesaler under subsection (2) of this section that are transferred by the wholesaler to another facility of the wholesaler within the borders of Washington shall be transferred in compliance with RCW 82.24.250.

(5) Every wholesaler who is licensed by Washington state law shall sell cigarettes to retailers located in Washington only if the retailer has a current cigarette retailer's license or is an Indian tribal organization authorized to possess untaxed cigarettes under this chapter and the rules adopted by the department.

(6) Nothing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW. [2003 c 114 § 3; 1995 c 278 § 3; 1990 c 216 § 2; 1969 ex.s. c 214 § 1; 1961 c 15 § 82.24.040. Prior: 1959 c 270 § 4; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.050 Retailer—Possession of unstamped cigarettes. (1) No retailer in this state may possess unstamped cigarettes within this state unless the person is also a wholesaler in possession of the cigarettes in accordance with RCW 82.24.040.

(2) A retailer may obtain cigarettes only from a wholesaler subject to the provisions of this chapter. [2003 c 114 § 4; 1995 c 278 § 4; 1990 c 216 § 3; 1969 ex.s. c 214 § 2; 1961 c 15 § 82.24.050. Prior: 1959 c 270 § 5; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.110 Other offenses—Penalties. (1) Each of the following acts is a gross misdemeanor and punishable as such:

(a) To sell, except as a licensed wholesaler engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

(b) To sell in Washington as a wholesaler to a retailer who does not possess and is required to possess a current cigarette retailer's license;

(c) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

(d) For any person other than the department of revenue or its duly authorized agent to sell any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(e) To violate any of the provisions of this chapter;

(f) To violate any lawful rule made and published by the department of revenue or the board;

(g) To use any stamps more than once;

(h) To refuse to allow the department of revenue or its duly authorized agent, on demand, to make full inspection of

any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;

(i) For any retailer to have in possession in any place of business any of the articles herein taxed, unless the same have the proper stamps attached;

(j) For any person to make, use, or present or exhibit to the department of revenue or its duly authorized agent, any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;

(k) For any wholesaler or retailer or his or her agents or employees to fail to produce on demand of the department of revenue all invoices of all the articles herein taxed or stamps bought by him or her or received in his or her place of business within five years prior to such demand unless he or she can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond his or her control;

(l) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of unstamped cigarettes do so to avoid payment of the tax imposed herein;

(m) For any person to possess or transport in this state a quantity of sixty thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless: (i) Notice of the possession or transportation has been given as required by RCW 82.24.250; (ii) the person transporting the cigarettes has in actual possession invoices or delivery tickets which show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (iii) the cigarettes are consigned to or purchased by any person in this state who is authorized by this chapter to possess unstamped cigarettes in this state;

(n) To possess, sell, or transport within this state any container or package of cigarettes that does not comply with this chapter.

(2) It is unlawful for any person knowingly or intentionally to possess or to transport in this state a quantity in excess of sixty thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless: (a) Proper notice as required by RCW 82.24.250 has been given; (b) the person transporting the cigarettes actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (c) the cigarettes are consigned to or purchased by a person in this state who is authorized by this chapter to possess unstamped cigarettes in this state. Violation of this section shall be punished as a class C felony under Title 9A RCW.

(3) All agents, employees, and others who aid, abet, or otherwise participate in any way in the violation of the provisions of this chapter or in any of the offenses described in this chapter shall be guilty and punishable as principals, to the same extent as any wholesaler or retailer or any other person violating this chapter. [2003 c 114 § 5; 1999 c 193 § 2; 1997 c 420 § 4; 1995 c 278 § 7; 1990 c 216 § 4; 1987 c 496 § 1; 1975 1st ex.s. c 278 § 63; 1961 c 15 § 82.24.110. Prior: 1941 c 178 § 15; 1935 c 180 § 86; Rem. Supp. 1941 § 8370-86.]

Intent—Finding—Severability—Effective date—1999 c 193: See notes following RCW 82.24.035.

Effective date—1995 c 278: See note following RCW 82.24.010.

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

82.24.130 Seizure and forfeiture. (1) The following are subject to seizure and forfeiture:

(a) Subject to RCW 82.24.250, any articles taxed in this chapter that are found at any point within this state, which articles are held, owned, or possessed by any person, and that do not have the stamps affixed to the packages or containers; any container or package of cigarettes possessed or held for sale that does not comply with this chapter; and any container or package of cigarettes that is manufactured, sold, or possessed in violation of RCW 82.24.570.

(b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) of this subsection, except:

(i) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner thereof establishes to have been committed or omitted without his or her knowledge or consent;

(iii) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(c) Any vending machine used for the purpose of violating the provisions of this chapter.

(d) Any cigarettes that are stamped, sold, imported, or offered or possessed for sale in this state in violation of RCW 70.158.030(3). For the purposes of this subsection (1)(d), "cigarettes" has the meaning as provided in RCW 70.158.020(3).

(e) All cigarettes sold, delivered, or attempted to be delivered in violation of RCW 70.155.105.

(2) Property subject to forfeiture under this chapter may be seized by any agent of the department authorized to collect taxes, any enforcement officer of the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, the board, or the law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(3) Notwithstanding the foregoing provisions of this section, articles taxed in this chapter which are in the possession

of a wholesaler, licensed under Washington state law, for a period of time necessary to affix the stamps after receipt of the articles, shall not be considered contraband unless they are manufactured, sold, or possessed in violation of RCW 82.24.570. [2003 c 114 § 7; 2003 c 113 § 4; 2003 c 25 § 9; 1999 c 193 § 3; 1997 c 420 § 5; 1990 c 216 § 5; 1987 c 496 § 2; 1972 ex.s. c 157 § 5; 1961 c 15 § 82.24.130. Prior: 1941 c 178 § 16; 1935 c 180 § 88; Rem. Supp. 1941 § 8370-88.]

Reviser's note: This section was amended by 2003 c 25 § 9, 2003 c 113 § 4, and by 2003 c 114 § 7, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict of law—Severability—Effective date—2003 c 25: See RCW 70.158.900 and 70.158.901.

Intent—Finding—Severability—Effective date—1999 c 193: See notes following RCW 82.24.035.

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

82.24.145 Forfeited property—Retention, sale, or destruction—Use of sale proceeds. When property is forfeited under this chapter the department may:

(1) Retain the property or any part thereof for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing the provisions of this chapter or the laws of any other state or the District of Columbia or of the United States.

(2) Sell the property at public auction to the highest bidder after due advertisement, but the department before delivering any of the goods so seized shall require the person to whom the property is sold to affix the proper amount of stamps. The proceeds of the sale and all moneys forfeited under this chapter shall be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds and all moneys shall be deposited in the general fund of the state. Proper expenses of investigation includes costs incurred by any law enforcement agency or any federal, state, or local agency.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, cigarettes seized for a violation of RCW 82.24.035 or 70.158.030(3) shall be destroyed. For the purposes of this subsection (3) "cigarettes" has the same meaning as provided in RCW 70.158.020(3). [2003 c 25 § 10; 1999 c 193 § 4; 1987 c 496 § 4.]

Conflict of law—Severability—Effective date—2003 c 25: See RCW 70.158.900 and 70.158.901.

Intent—Finding—Severability—Effective date—1999 c 193: See notes following RCW 82.24.035.

82.24.210 Redemption of stamps. The department of revenue may promulgate rules and regulations providing for the refund to dealers for the cost of stamps affixed to articles taxed herein, which by reason of damage become unfit for sale and are destroyed by the dealer or returned to the manufacturer or jobber. In the case of any articles to which stamps have been affixed, and which articles have been sold and shipped to a regular dealer in such articles in another state, the seller in this state shall be entitled to a refund of the actual amount of the stamps so affixed, less the affixing discount,

upon condition that the seller in this state makes affidavit that the articles were sold and shipped outside of the state and that he has received from the purchaser outside the state a written acknowledgment that he has received such articles with the amount of stamps affixed thereto, together with the name and address of such purchaser. The department of revenue may redeem any unused stamps purchased from it at the face value thereof less the affixing discount. A distributor or wholesaler that has lawfully affixed stamps to cigarettes, and subsequently is unable to sell those cigarettes lawfully because the cigarettes are removed from the directory created pursuant to RCW 70.158.030(2), may apply to the department for a refund of the cost of the stamps. [2003 c 25 § 11; 1975 1st ex.s. c 278 § 68; 1961 c 15 § 82.24.210. Prior: 1949 c 228 § 17; 1941 c 178 § 17; 1935 c 180 § 92; Rem. Supp. 1949 § 8370-92.]

Conflict of law—Severability—Effective date—2003 c 25: See RCW 70.158.900 and 70.158.901.

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

82.24.250 Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect.

(1) No person other than: (a) A licensed wholesaler in the wholesaler's own vehicle; or (b) a person who has given notice to the board in advance of the commencement of transportation shall transport or cause to be transported in this state cigarettes not having the stamps affixed to the packages or containers.

(2) When transporting unstamped cigarettes, such persons shall have in their actual possession or cause to have in the actual possession of those persons transporting such cigarettes on their behalf invoices or delivery tickets for such cigarettes, which shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported.

(3) If the cigarettes are consigned to or purchased by any person in this state such purchaser or consignee must be a person who is authorized by this chapter to possess unstamped cigarettes in this state.

(4) In the absence of the notice of transportation required by this section or in the absence of such invoices or delivery tickets, or, if the name or address of the consignee or purchaser is falsified or if the purchaser or consignee is not a person authorized by this chapter to possess unstamped cigarettes, the cigarettes so transported shall be deemed contraband subject to seizure and sale under the provisions of RCW 82.24.130.

(5) Transportation of cigarettes from a point outside this state to a point in some other state will not be considered a violation of this section provided that the person so transporting such cigarettes has in his possession adequate invoices or delivery tickets which give the true name and address of such out-of-state seller or consignor and such out-of-state purchaser or consignee.

(6) In any case where the department or its duly authorized agent, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this section, the department,

such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

(7) For purposes of this section, the term "person authorized by this chapter to possess unstamped cigarettes" means:

- (a) A wholesaler, licensed under Washington state law;
- (b) The United States or an agency thereof; and
- (c) Any person, including an Indian tribal organization,

who, after notice has been given to the board as provided in this section, brings or causes to be brought into the state unstamped cigarettes, if within a period of time after receipt of the cigarettes as the department determines by rule to be reasonably necessary for the purpose the person has caused stamps to be affixed in accordance with RCW 82.24.030 or otherwise made payment of the tax required by this chapter in the manner set forth in rules adopted by the department.

(8) Nothing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW. [2003 c 114 § 8; 1997 c 420 § 7; 1995 c 278 § 10; 1990 c 216 § 6; 1972 ex.s. c 157 § 6.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

82.24.260 Selling or disposal of unstamped cigarettes—Person to pay and remit tax or affix stamps—Liability. (1) Other than:

(a) A wholesaler required to be licensed under this chapter;

(b) A federal instrumentality with respect to sales to authorized military personnel; or

(c) An Indian tribal organization with respect to sales to enrolled members of the tribe,

a person who is in lawful possession of unstamped cigarettes and who intends to sell or otherwise dispose of the cigarettes shall pay, or satisfy its precollection obligation that is imposed by this chapter, the tax required by this chapter by remitting the tax or causing stamps to be affixed in the manner provided in rules adopted by the department.

(2) When stamps are required to be affixed, the person may deduct from the tax collected the compensation allowable under this chapter. The remittance or the affixing of stamps shall, in the case of cigarettes obtained in the manner set forth in RCW 82.24.250(7)(c), be made at the same time and manner as required in RCW 82.24.250(7)(c).

(3) This section shall not relieve the buyer or possessor of unstamped cigarettes from personal liability for the tax imposed by this chapter.

(4) Nothing in this section shall relieve a wholesaler from the requirements of affixing stamps pursuant to RCW 82.24.040 and 82.24.050. [2003 c 114 § 9; 1995 c 278 § 11; 1987 c 80 § 3; 1986 c 3 § 13. Prior: 1983 c 189 § 3; 1983 c 3 § 217; 1975 1st ex.s. c 22 § 1; 1972 ex.s. c 157 § 7.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Severability—1986 c 3: See RCW 70.146.900.

Effective dates—1986 c 3: See note following RCW 82.24.027.

Severability—1983 c 189: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 189 § 10.]

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

82.24.500 Business of cigarette purchase, sale, consignment, or distribution—License required—Penalty. No person may engage in or conduct the business of purchasing, selling, consigning, or distributing cigarettes in this state without a license under this chapter. A violation of this section is a class C felony. [2003 c 114 § 10; 1986 c 321 § 4.]

Policy—Intent—1986 c 321: "It is the policy of the legislature to encourage competition by reducing the government's role in price setting. It is the legislature's intent to leave price setting mainly to the forces of the marketplace. In the field of cigarette sales, the legislature finds that the goal of open competition should be balanced against the public policy disallowing use of cigarette sales as loss leaders. To balance these public policies, it is the intent of the legislature to repeal the unfair cigarette sales below cost act and to declare the use of cigarettes as loss leaders as an unfair practice under the consumer protection act." [1986 c 321 § 1.]

Savings—1986 c 321: "A cigarette wholesalers or retailers license issued by the department of licensing under RCW 19.91.130 in good standing on the July 1, 1991, constitutes a license under RCW 82.24.500." [1986 c 321 § 11.]

Effective date—1986 c 321: "Sections 1 and 4 through 14 of this act shall take effect on July 1, 1991." [1986 c 321 § 15.]

82.24.570 Counterfeit cigarette offenses—Penalties.

(1) It is unlawful for any person to knowingly manufacture, sell, or possess counterfeit cigarettes. A cigarette is "counterfeit" if:

(a) The cigarette or its packaging bears any reproduction or copy of a trademark, service mark, trade name, label, term, design, or work adopted or used by a manufacturer to identify its own cigarettes; and

(b) The cigarette is not manufactured by the owner or holder of that trademark, service mark, trade name, label, term, design, or work, or by any authorized licensee of that person.

(2) Any person who violates the provisions of this section is guilty of a class C felony which is punishable by up to five years in prison and a fine of up to ten thousand dollars.

(3) Any person who is convicted of a second or subsequent violation of the provisions of this section is guilty of a class B felony which is punishable by up to ten years in prison and a fine of up to twenty thousand dollars. [2003 c 114 § 6.]

Chapter 82.27 RCW

TAX ON ENHANCED FOOD FISH

Sections

- 82.27.060 Payment of tax—Remittance—Returns.
82.27.070 Deposit of taxes.

82.27.060 Payment of tax—Remittance—Returns.

The taxes levied by this chapter shall be due for payment monthly and remittance therefor shall be made within twenty days after the end of the month in which the taxable activity occurs. The taxpayer on or before the due date shall make out a signed return, setting out such information as the department of revenue may require, including the gross measure of the tax, any deductions, credits, or exemptions claimed, and the amount of tax due for the preceding monthly period, which amount shall be transmitted to the department along with the return.

The department may relieve any taxpayer from the obligation of filing a monthly return and may require the return to

cover other periods, but in no event may periodic returns be filed for a period greater than one year. In such cases tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return. [2003 1st sp.s. c 13 § 10; 1990 c 214 § 1; 1980 c 98 § 6.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

82.27.070 Deposit of taxes. All taxes collected by the department of revenue under this chapter shall be deposited in the state general fund except for the excise tax on anadromous game fish, which shall be deposited in the wildlife fund, and, during the period January 1, 2000, to December 31, 2005, twenty-five forty-sixths of the revenues derived from the excise tax on sea urchins collected under RCW 82.27.020 shall be deposited into the sea urchin dive fishery account created in RCW 77.70.150, and twenty-five forty-sixths of the revenues derived from the excise tax on sea cucumbers collected under RCW 82.27.020 shall be deposited into the sea cucumber dive fishery account created in RCW 77.70.190. [2003 c 39 § 46; 1999 c 126 § 4; 1988 c 36 § 61; 1983 c 284 § 7; 1980 c 98 § 7.]

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Chapter 82.29A RCW

LEASEHOLD EXCISE TAX

Sections

- 82.29A.135 Exemptions—Property used to manufacture alcohol, biodiesel, or wood biomass fuel.
82.29A.137 Exemptions—Certain leasehold interests related to the manufacture of superefficient airplanes. (*Contingent effective date; expires July 1, 2024.*)

82.29A.135 Exemptions—Property used to manufacture alcohol, biodiesel, or wood biomass fuel. (1) For the purposes of this section:

(a) "Alcohol fuel" means any alcohol made from a product other than petroleum or natural gas, which is used alone or in combination with gasoline or other petroleum products for use as a fuel for motor vehicles, farm implements, and machines or implements of husbandry.

(b) "Biodiesel feedstock" means oil that is produced from an agricultural crop for the sole purpose of ultimately producing biodiesel fuel.

(c) "Biodiesel fuel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

(d) "Wood biomass fuel" means a pyrolytic liquid fuel or synthesis gas-derived liquid fuel, used in internal combustion engines, and produced from wood, forest, or field residue, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic.

(2)(a) All leasehold interests in buildings, machinery, equipment, and other personal property which is used primarily for the manufacturing of alcohol fuel, wood biomass fuel, biodiesel fuel, or biodiesel feedstock, the land upon which this property is located, and land that is reasonably necessary in the manufacturing of alcohol fuel, wood biomass fuel,

biodiesel fuel, or biodiesel feedstock, but not land necessary for growing of crops, which together comprise a new manufacturing facility or an addition to an existing manufacturing facility, are exempt from leasehold taxes for a period of six years from the date on which the facility or the addition to the existing facility becomes operational.

(b) For manufacturing facilities which produce products in addition to alcohol fuel, wood biomass fuel, biodiesel fuel, or biodiesel feedstock, the amount of the leasehold tax exemption shall be based upon the annual percentage of the total value of all products manufactured that is the value of the alcohol fuel, wood biomass fuel, biodiesel fuel, and biodiesel feedstock manufactured.

(3) Claims for exemptions authorized by this section shall be filed with the department of revenue on forms prescribed by the department of revenue and furnished by the department of revenue. Once filed, the exemption is valid for six years and shall not be renewed. The department of revenue shall verify and approve claims as the department of revenue determines to be justified and in accordance with this section. No claims may be filed after December 31, 2009.

The department of revenue may promulgate such rules, pursuant to chapter 34.05 RCW, as are necessary to properly administer this section. [2003 c 339 § 10; 2003 c 261 § 10; 1985 c 371 § 3; 1980 c 157 § 2.]

Reviser's note: This section was amended by 2003 c 261 § 10 and by 2003 c 339 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2003 c 339: See note following RCW 82.69.030.

Effective dates—2003 c 261: See note following RCW 82.68.030.

82.29A.137 Exemptions—Certain leasehold interests related to the manufacture of superefficient airplanes. (Contingent effective date; expires July 1, 2024.) (1) All leasehold interests in port district facilities exempt from tax under RCW 82.08.980 or 82.12.980 and used by a manufacturer engaged in the manufacturing of superefficient airplanes, as defined in RCW 82.32.550, are exempt from tax under this chapter. A person taking the credit under RCW 82.04.4463 is not eligible for the exemption under this section.

(2) In addition to all other requirements under this title, a person taking the exemption under this section must report as required under RCW 82.32.545.

(3) This section expires July 1, 2024. [2003 2nd sp.s. c 1 § 13.]

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Chapter 82.32 RCW

GENERAL ADMINISTRATIVE PROVISIONS

Sections

82.32.020	Definitions.
82.32.033	Registration certificates—Special events—Promoter's duties—Penalties—Definitions.
82.32.045	Taxes—When due and payable—Reporting periods—Verified annual returns—Relief from filing requirements.
82.32.050	Deficient tax or penalty payments—Notice—Interest—Limitations.
82.32.060	Excess payment of tax, penalty, or interest—Credit or refund—Payment of judgments for refund. (Effective January 1, 2004.)

82.32.090	Late payment—Disregard of written instructions—Evasion—Penalties.
82.32.140	Taxpayer quitting business—Liability of successor.
82.32.430	Liability for tax rate calculation errors. (Effective July 1, 2004.)
82.32.520	Sourcing of calls. (Effective July 1, 2004.)
82.32.525	Purchaser's cause of action for over-collected sales or use tax. (Effective July 1, 2004.)
82.32.530	Seller nexus. (Effective July 1, 2004.)
82.32.535	Annual report by semiconductor businesses. (Contingent effective date.)
82.32.540	Report to department by certain aviation repair businesses. (Expires July 1, 2006.)
82.32.545	Annual report for airplane manufacturing tax preferences. (Contingent effective date.)
82.32.550	Contingent effective date for aerospace tax incentives—Department date determinations and notice requirements.

82.32.020 Definitions. For the purposes of this chapter:

The meaning attributed in chapters 82.01 through 82.27 RCW to the words and phrases "tax year," "taxable year," "person," "company," "gross proceeds of sales," "gross income of the business," "business," "engaging in business," "successor," "gross operating revenue," "gross income," "taxpayer," "retail sale," and "value of products" shall apply equally to the provisions of this chapter. [2003 1st sp.s. c 13 § 16; 1983 c 3 § 220; 1961 c 15 § 82.32.020. Prior: 1935 c 180 § 186; RRS § 8370-186.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

82.32.033 Registration certificates—Special events—Promoter's duties—Penalties—Definitions. (1) A promoter of a special event within the state of Washington shall not permit a vendor to make or solicit retail sales of tangible personal property or services at the special event unless the promoter obtains verification that the vendor has obtained a certificate of registration from the department.

(2) A promoter of a special event shall:

(a) Keep, in addition to the records required under RCW 82.32.070, a record of the dates and place of each special event, and the name, address, and registration certificate number of vendors permitted to make or solicit retail sales of tangible personal property or services at the special event; and

(b) Provide to the department, within twenty days of receipt of a written request from the department, a list of vendors permitted to make or solicit retail sales of tangible personal property or services. The list shall be in a form and contain such information as the department may require, and shall include the date and place of the event, and the name, address, and registration certificate number of each vendor.

(3) If a promoter fails to comply with the provisions of this section, the promoter is liable for the penalties provided in this subsection (3).

(a) If a promoter fails to comply with the provisions of subsection (1) of this section, the department shall impose a penalty of one hundred dollars for each vendor permitted to make or solicit retail sales of tangible personal property or services at the special event.

(b) If a promoter fails to comply with the provisions of subsection (2)(b) of this section, the department shall impose a penalty of:

(i) Two hundred fifty dollars if the information requested is not received by the department within twenty days of the department's written request; and

(ii) One hundred dollars for each vendor for whom the information as required by subsection (2)(b) of this section is not provided to the department.

(4) The aggregate of penalties imposed under subsection (3) of this section may not exceed two thousand five hundred dollars for a special event if the promoter has not previously been penalized under this section. Under no circumstances is a promoter liable for sales tax or business and occupation tax not remitted to the department by a vendor at a special event.

(5) The department shall notify a promoter by mail of any penalty imposed under this section, and the penalty shall be due within thirty days from the date of the notice. If any penalty imposed under this section is not received by the department by the due date, there shall be assessed interest on the unpaid amount beginning the day following the due date until the penalty is paid in full. The rate of interest shall be computed on a daily basis on the amount of outstanding penalty at the rate as computed under RCW 82.32.050(2). The rate computed shall be adjusted annually in the same manner as provided in RCW 82.32.050(1)(c).

(6) For purposes of this section:

(a) "Promoter" means a person who organizes, operates, or sponsors a special event and who contracts with vendors for participation in the special event.

(b) "Special event" means an entertainment, amusement, recreational, educational, or marketing event, whether held on a regular or irregular basis, at which more than one vendor makes or solicits retail sales of tangible personal property or services. The term includes, but is not limited to: Auto shows, recreational vehicle shows, boat shows, home shows, garden shows, hunting and fishing shows, stamp shows, comic book shows, sports memorabilia shows, craft shows, art shows, antique shows, flea markets, exhibitions, festivals, concerts, swap meets, bazaars, carnivals, athletic contests, circuses, fairs, or other similar activities. "Special event" does not include an event that is organized for the exclusive benefit of any nonprofit organization as defined in RCW 82.04.3651. An event is organized for the exclusive benefit of a nonprofit organization if all of the gross proceeds of retail sales of all vendors at the event inure to the benefit of the nonprofit organization on whose behalf the event is being held. "Special event" does not include athletic contests that involve competition between teams, when such competition consists of more than five contests in a calendar year by at least one team at the same facility or site.

(c) "Vendor" means a person who, at a special event, makes or solicits retail sales of tangible personal property or services.

(7) This section does not apply to:

(a) A special event whose promoter does not charge more than two hundred dollars for a vendor to participate in a special event;

(b) A special event whose promoter charges a percentage of sales instead of, or in addition to, a flat charge for a vendor to participate in a special event if the promoter, in good faith, believes that no vendor will pay more than two hundred dollars to participate in the special event; or

(c) A person who does not organize, operate, or sponsor a special event, but only provides a venue, supplies, furnishings, fixtures, equipment, or services to a promoter of a special event. [2003 1st sp.s. c 13 § 15.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

82.32.045 Taxes—When due and payable—Reporting periods—Verified annual returns—Relief from filing requirements. (1) Except as otherwise provided in this chapter, payments of the taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW, along with reports and returns on forms prescribed by the department, are due monthly within twenty days after the end of the month in which the taxable activities occur.

(2) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. For these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

(3) The department of revenue may also require verified annual returns from any taxpayer, setting forth such additional information as it may deem necessary to correctly determine tax liability.

(4) Notwithstanding subsections (1) and (2) of this section, the department may relieve any person of the requirement to file returns if the following conditions are met:

(a) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than twenty-eight thousand dollars per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twenty-four thousand dollars per year; and

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect. [2003 1st sp.s. c 13 § 8; 1999 c 357 § 1; 1996 c 111 § 3; 1983 2nd ex.s. c 3 § 63; 1982 1st ex.s. c 35 § 27; 1981 c 172 § 7; 1981 c 7 § 1.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

Intent—1999 c 357: "It is the intent of the legislature to allow the department of revenue to increase its ability to provide timely and cost-effective service to taxpayers." [1999 c 357 § 2.]

Effective date—1999 c 357: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 c 357 § 4.]

Findings—Purpose—Effective date—1996 c 111: See notes following RCW 82.32.030.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1981 c 7: "This act shall take effect October 1, 1981." [1981 c 172 § 9; 1981 c 7 § 5.]

82.32.050 Deficient tax or penalty payments—Notice—Interest—Limitations. (1) If upon examination of

any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail of the additional amount and the additional amount shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest shall be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(c) Interest imposed after December 31, 1998, shall be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice. If payment in full is not made by the due date of the notice, additional interest shall be computed until the date of payment. The rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(4) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department of revenue and that has a statutorily defined due date. [2003 c 73 § 1; 1997 c 157 §

1; 1996 c 149 § 2; 1992 c 169 § 1; 1991 c 142 § 9; 1989 c 378 § 19; 1971 ex.s. c 299 § 16; 1965 ex.s. c 141 § 1; 1961 c 15 § 82.32.050. Prior: 1951 1st ex.s. c 9 § 5; 1949 c 228 § 20; 1945 c 249 § 9; 1939 c 225 § 27; 1937 c 227 § 17; 1935 c 180 § 188; Rem. Supp. 1949 § 8370-188.]

Findings—Intent—1996 c 149: "The legislature finds that a consistent application of interest and penalties is in the best interest of the residents of the state of Washington. The legislature also finds that the goal of the department of revenue's interest and penalty system should be to encourage taxpayers to voluntarily comply with Washington's tax code in a timely manner. The administration of tax programs requires that there be consequences for those taxpayers who do not timely satisfy their reporting and tax obligations, but these consequences should not be so severe as to discourage taxpayers from voluntarily satisfying their tax obligations.

It is the intent of the legislature that, to the extent possible, a single interest and penalty system apply to all tax programs administered by the department of revenue." [1996 c 149 § 1.]

Effective date—1996 c 149: "This act shall take effect January 1, 1997." [1996 c 149 § 20.]

Effective date—Applicability—1992 c 169: "(1) This act shall take effect July 1, 1992.

(2) This act is effective for all written waivers that remain enforceable as of July 1, 1992." [1992 c 169 § 4.]

Effective date—1991 c 142 §§ 9-11: "Sections 9 through 11 of this act shall take effect January 1, 1992." [1991 c 142 § 13.]

Severability—1991 c 142: See RCW 82.32A.900.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.060 Excess payment of tax, penalty, or interest—Credit or refund—Payment of judgments for refund. (Effective January 1, 2004.) (1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2) The execution of a written waiver under RCW 82.32.050 or 82.32.100 shall extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(3) Any such refunds shall be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 shall have any refunds paid by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer shall be paid in the same man-

ner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum shall be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest shall apply for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, shall be computed at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest shall be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest shall apply for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, shall be computed at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, shall be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest shall be computed from January 31st following each calendar year included in a notice or refund; or

(ii) Interest shall be computed from the last day of the month following the final month included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest shall be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice shall accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest shall be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice. [2003 c 73 § 2; 1999 c 358 § 13; 1997 c 157 § 2; 1992 c 169 § 2; 1991 c 142 § 10; 1990 c 69 § 1; 1989 c 378 § 20; 1979 ex.s. c 95 § 4; 1971 ex.s. c 299 § 17; 1965 ex.s. c 173 § 27; 1963 c 22 § 1; 1961 c 15 § 82.32.060. Prior: 1951 1st ex.s. c 9 § 6; 1949 c 228 § 21; 1935 c 180 § 189; Rem. Supp. 1949 § 8370-189.]

Effective date—2003 c 73 § 2: "Section 2 of this act takes effect January 1, 2004." [2003 c 73 § 3.]

Effective date—1999 c 358 §§ 1 and 3-21: See note following RCW 82.04.3651.

Effective date—Applicability—1992 c 169: See note following RCW 82.32.050.

Effective date—1991 c 142 §§ 9-11: See note following RCW 82.32.050.

Severability—1991 c 142: See RCW 82.32A.900.

Effective date—1990 c 69: "This act shall take effect January 1, 1991." [1990 c 69 § 5.]

Severability—1990 c 69: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 69 § 4.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.090 Late payment—Disregard of written instructions—Evasion—Penalties. (1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there shall be assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there shall be assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added shall be less than five dollars.

(2) If the department of revenue determines that any tax is due, there shall be assessed a penalty of five percent of the amount of the tax determined by the department to be due; and if payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there shall be assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if the tax is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, there shall be assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added shall be less than five dollars.

(3) If a warrant be issued by the department of revenue for the collection of taxes, increases, and penalties, there shall be added thereto a penalty of ten percent of the amount of the tax, but not less than ten dollars.

(4) If the department finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the department a registration certificate as required by RCW 82.32.030, the department shall impose a penalty of five percent of the amount of tax due from that person for the period that the person was not registered as required by RCW 82.32.030. The department shall not impose the penalty under this subsection (4) if a person who has engaged in business taxable under this title without first having registered as required by RCW 82.32.030, prior to any notification by the department of the need to register, obtains a registration certificate from the department.

(5) If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting or tax liabilities, the department shall add

a penalty of ten percent of the amount of the additional tax found due because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department of revenue has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department shall not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. Specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement, provided that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents. Any specific written instructions by the department of revenue shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

(6) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added.

(7) The penalties imposed under subsections (1) through (4) of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(8) The department of revenue may not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

(9) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department of revenue, and that has a statutorily defined due date. [2003 1st sp.s. c 13 § 13; 2000 c 229 § 7; 1999 c 277 § 11; 1996 c 149 § 15; 1992 c 206 § 3; 1991 c 142 § 11; 1987 c 502 § 9; 1983 2nd ex.s. c 3 § 23; 1983 c 7 § 32; 1981 c 172 § 8; 1981 c 7 § 2; 1971 ex.s. c 179 § 1; 1967 ex.s. c 149 § 26; 1965 ex.s. c 141 § 3; 1963 ex.s. c 28 § 7; 1961 c 15 § 82.32.090. Prior: 1959 c 197 § 12; 1955 c 110 § 1; 1951 1st ex.s. c 9 § 9; 1949 c 228 § 23; 1937 c 227 § 18; 1935 c 180 § 192; Rem. Supp. 1949 § 8370-192.]

Application—2003 1st sp.s. c 13 § 13: "Except as otherwise provided in this section, section 13 of this act applies to all penalties imposed after June 30, 2003. The five percent penalty imposed in section 13(2) of this act applies to all assessments originally issued after June 30, 2003." [2003 1st sp.s. c 13 § 14.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

Effective date—2000 c 229: See note following RCW 46.16.010.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Effective date—1992 c 206: See note following RCW 82.04.170.

Effective date—1991 c 142 §§ 9-11: See note following RCW 82.32.050.

Severability—1991 c 142: See RCW 82.32A.900.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—Severability—Effective dates—1983 c 7: See notes following RCW 82.08.020.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1981 c 7: See note following RCW 82.32.045.

Construction—1971 ex.s. c 179: "This 1971 amendatory act shall apply only to taxes becoming due and payable in June, 1971 and thereafter." [1971 ex.s. c 179 § 2.]

82.32.140 Taxpayer quitting business—Liability of successor. (1) Whenever any taxpayer quits business, or sells out, exchanges, or otherwise disposes of more than fifty percent of the fair market value of either its tangible or intangible assets, any tax payable hereunder shall become immediately due and payable, and such taxpayer shall, within ten days thereafter, make a return and pay the tax due.

(2) Any person who becomes a successor shall withhold from the purchase price a sum sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the department of revenue showing payment in full of any tax due or a certificate that no tax is due. If any tax is not paid by the taxpayer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax. If the fair market value of the assets acquired by a successor is less than fifty thousand dollars, the successor's liability for payment of the unpaid tax is limited to the fair market value of the assets acquired from the taxpayer. The burden of establishing the fair market value of the assets acquired is on the successor.

(3) The payment of any tax by a successor shall, to the extent thereof, be deemed a payment upon the purchase price; and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due the successor from the taxpayer.

(4) No successor shall be liable for any tax due from the person from whom the successor has acquired a business or stock of goods if the successor gives written notice to the department of revenue of such acquisition and no assessment is issued by the department of revenue within six months of receipt of such notice against the former operator of the business and a copy thereof mailed to the successor. [2003 1st sp.s. c 13 § 12; 1985 c 414 § 7; 1975 1st ex.s. c 278 § 82; 1961 c 15 § 82.32.140. Prior: 1957 c 88 § 1; 1935 c 180 § 197; RRS § 8370-197.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

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

82.32.430 Liability for tax rate calculation errors. (Effective July 1, 2004.) (1) A person who collects and remits sales or use tax to the department and who calculates the tax using geographic information system technology developed and provided by the department shall be held harmless and is not liable for the difference in amount due nor subject to penalties or interest in regards to rate calculation errors resulting from the proper use of such technology.

(2) Except as provided in subsection (3) of this section, the department shall notify sellers who collect and remit sales or use tax to the department of changes in boundaries and rates to taxes imposed by chapter 82.14 RCW no later than sixty days before the effective date of the change.

(3) The department shall notify sellers who collect and remit sales or use tax to the department and make sales from

printed catalogs of changes, as to such sales, of boundaries and rates to taxes imposed by chapter 82.14 RCW no later than one hundred twenty days before the effective date of the change.

(4) Sellers who have not received timely notice of rate and boundary changes under subsections (2) and (3) of this section due to actions or omissions of the department are not liable for the difference in the amount due until they have received the appropriate period of notice. Purchasers are liable for any uncollected amounts of tax. [2003 c 168 § 207; 2001 c 320 § 11; 2000 c 104 § 4.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective date—2001 c 320: See note following RCW 11.02.005.

Findings—Intent—Effective date—2000 c 104: See notes following RCW 82.14.055.

82.32.520 Sourcing of calls. (Effective July 1, 2004.)

(1) Except for the defined telecommunications services listed in this section, the sale of telephone service as defined in RCW 82.04.065 sold on a call-by-call basis shall be sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunications services listed in this section, a sale of telephone service as defined in RCW 82.04.065 sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(3) The sales of telephone service as defined in RCW 82.04.065 that are listed in this section shall be sourced to each level of taxing jurisdiction as follows:

(a) A sale of mobile telecommunications services, other than air-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by RCW 82.08.066.

(b) A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its home service provider, where the system used to transport such signals is not that of the seller.

(c) A sale of prepaid calling service is sourced as follows:

(i) When a prepaid calling service is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(ii) When a prepaid calling service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(iii) When (c)(i) and (ii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(iv) When (c)(i), (ii), and (iii) of this subsection do not apply, the sale is sourced to the location indicated by an

address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(v) When (c)(i), (ii), (iii), and (iv) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service defined as a retail sale under RCW 82.04.050 was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold;

(vi) In the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, (c)(iv) of this subsection shall include as an option the location associated with the mobile telephone number.

(d) A sale of a private communication service is sourced as follows:

(i) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(ii) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(iii) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(iv) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

(4) The definitions in this subsection apply throughout this chapter.

(a) "Air-ground radiotelephone service" means air-ground radio service, as defined in 47 C.F.R. Sec. 22.99, as amended or renumbered as of January 1, 2003, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(b) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(c) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(d) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier

under an agreement to serve the customer outside the home service provider's licensed service area.

(e) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(f) "End user" means the person who uses the telecommunications service. In the case of an entity, the term end user means the individual who uses the service on behalf of the entity.

(g) "Home service provider" means the same as that term is defined in RCW 82.04.065.

(h) "Mobile telecommunications service" means the same as that term is defined in RCW 82.04.065.

(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

(j) "Postpaid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunications service.

(k) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using and [an] access number and/or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(l) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(m) "Service address" means:

(i) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(ii) If the location in (m)(i) of this subsection is not known, the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its home service provider, where the system used to transport such signals is not that of the seller;

(iii) If the location[s] in (m)(i) and (ii) of this subsection are not known, the location of the customer's place of primary use. [2003 c 168 § 501.]

Study of sourcing provisions—Report to legislature—2003 c 168: "The department of revenue shall conduct a study of the fiscal impact on

local jurisdictions of the sourcing provisions proposed in the streamlined sales and use tax agreement. The department shall use, and regularly consult, a committee composed of city and county officials to assist with the study. Committee responsibilities include identification of elements of the study including mitigation options for jurisdictions negatively impacted by the sourcing provision. The department shall report the results of the study, which at minimum shall include the identification of the fiscal impacts on local governments of the sourcing provisions, by December 1, 2003, to the governor and fiscal committees of the legislature." [2003 c 168 § 504.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.32.525 Purchaser's cause of action for over-collected sales or use tax. (Effective July 1, 2004.) A purchaser's cause of action against the seller for over-collected sales or use tax does not accrue until the purchaser has provided written notice to the seller and the seller has sixty days to respond. The notice to the seller must contain the information necessary to determine the validity of the request. [2003 c 168 § 211.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.32.530 Seller nexus. (Effective July 1, 2004.) The department may not attribute nexus with Washington to any seller solely by virtue of the seller registering under the streamlined sales and use tax agreement. [2003 c 168 § 213.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.32.535 Annual report by semiconductor businesses. (Contingent effective date.) (1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.240(2) or who claims an exemption or credit under RCW 82.04.426, 82.08.965, 82.12.965, 82.08.970, 82.12.970, 82.04.448, or 84.36.645, shall make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report shall not include names of employees. The report shall also detail employment by the total number of full-time, part-time, and temporary positions. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.240(2), or tax exemption or credit under RCW 82.04.426, 82.08.965, 82.12.965, 82.08.970, 82.12.970, 82.04.448, or 84.36.645. The report is due by March 31st following any year in which a preferential tax rate under RCW 82.04.240(2) is used, or tax exemption or credit under RCW 82.04.426, 82.08.965, 82.12.965, 82.08.970, 82.12.970, 82.04.448, or 84.36.645 is taken. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit an annual report under (a) of this subsection the department shall declare the amount of taxes exempted or credited for that year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest, as provided under this chapter. This information is not subject to the confidentiality provisions of

RCW 82.32.330 and may be disclosed to the public upon request.

(3) By November 1st of the year occurring five years after *the effective date of this act, and November 1st of the year occurring eleven years after *the effective date of this act, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of chapter 149, Laws of 2003 in regard to keeping Washington competitive. The report shall measure the effect of chapter 149, Laws of 2003 on job retention, net jobs created for Washington residents, company growth, diversification of the state's economy, cluster dynamics, and other factors as the committees select. The reports shall include a discussion of principles to apply in evaluating whether the legislature should reenact any or all of the tax preferences in chapter 149, Laws of 2003. [2003 c 149 § 11.]

*Contingent effective date—Findings—Intent—2003 c 149: See notes following RCW 82.04.426.

82.32.540 Report to department by certain aviation repair businesses. (Expires July 1, 2006.) (1) A person reporting tax under RCW 82.04.250(3) shall file a report to the department of revenue in the month following each calendar quarter containing the following information:

- (a) Number of production workers;
- (b) Average wage of production workers;
- (c) Total wages for production workers;
- (d) Total sales as measured by taxable receipts for activities reported under RCW 82.04.250(3); and
- (e) Total wages for production workers as a percent of total sales reported under RCW 82.04.250(3).

(2) A recipient who fails to submit a complete report under this section is ineligible on a prospective basis for the rate provided in RCW 82.04.250(3). The department of revenue shall notify the recipient in writing by mail that he or she is no longer eligible for the rate. The recipient is ineligible on the effective date of the postmark of the notice letter from the department of revenue. If the recipient satisfactorily completes the report, the department of revenue shall send a letter to the recipient indicating that the basis for the ineligibility has been corrected. The letter from the department of revenue is proof that eligibility has been restored, and eligibility is effective prospectively beginning on the date the letter is postmarked. [2003 1st sp.s. c 2 § 2.]

Expiration date—Effective date—2003 1st sp.s. c 2: See notes following RCW 82.04.250.

82.32.545 Annual report for airplane manufacturing tax preferences. (Contingent effective date.) (1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.260(13) or who claims an exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463 shall make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report shall not include names of employees.

The report shall also detail employment by the total number of full-time, part-time, and temporary positions. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463. The report is due by March 31st following any year in which a preferential tax rate under RCW 82.04.260(13) is used, or tax exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463 is taken. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit an annual report under (a) of this subsection by the due date of the report, the department shall declare the amount of taxes exempted or credited, or reduced in the case of the preferential business and occupation tax rate, for that year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(3) By November 1, 2010, and by November 1, 2023, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of chapter 1, Laws of 2003 2nd sp. sess. in regard to keeping Washington competitive. The report shall measure the effect of chapter 1, Laws of 2003 2nd sp. sess. on job retention, net jobs created for Washington residents, company growth, diversification of the state's economy, cluster dynamics, and other factors as the committees select. The reports shall include a discussion of principles to apply in evaluating whether the legislature should reenact any or all of the tax preferences in chapter 1, Laws of 2003 2nd sp. sess. [2003 2nd sp.s. c 1 § 16.]

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

82.32.550 Contingent effective date for aerospace tax incentives—Department date determinations and notice requirements. (1)(a) Chapter 1, Laws of 2003 2nd sp. sess. takes effect on the first day of the month in which the governor and a manufacturer of commercial airplanes sign a memorandum of agreement regarding an affirmative final decision to site a significant commercial airplane final assembly facility in Washington state. The department shall provide notice of the effective date of chapter 1, Laws of 2003 2nd sp. sess. to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(b) Chapter 1, Laws of 2003 2nd sp. sess. is contingent upon the siting of a significant commercial airplane final assembly facility in the state of Washington. If a memorandum of agreement under subsection (1) of this section is not signed by June 30, 2005, chapter 1, Laws of 2003 2nd sp. sess. is null and void.

(c)(i) The department shall make a determination regarding the date final assembly of a superefficient airplane begins in Washington state. The rates in RCW 82.04.260(13) (a)(ii)

and (b)(ii) take effect the first day of the month such assembly begins, or July 1, 2007, whichever is later. The department shall provide notice of the effective date of such rates to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(ii) If on December 31, 2007, final assembly of a super-efficient airplane has not begun in Washington state, the department shall provide notice of such to affected taxpayers, the legislature, and others as deemed appropriate by the department.

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

(a) "Commercial airplane" has its ordinary meaning, which is an airplane certified by the federal aviation administration for transporting persons or property, and any military derivative of such an airplane.

(b) "Component" means a part or system certified by the federal aviation administration for installation or assembly into a commercial airplane.

(c) "Final assembly of a superefficient airplane" means the activity of assembling an airplane from components parts necessary for its mechanical operation such that the finished commercial airplane is ready to deliver to the ultimate consumer.

(d) "Significant commercial airplane final assembly facility" means a location with the capacity to produce at least thirty-six superefficient airplanes a year.

(e) "Siting" means a final decision by a manufacturer to locate a significant commercial airplane final assembly facility in Washington state.

(f) "Superefficient airplane" means a twin aisle airplane that carries between two hundred and three hundred fifty passengers, with a range of more than seven thousand two hundred nautical miles, a cruising speed of approximately mach .85, and that uses fifteen to twenty percent less fuel than other similar airplanes on the market. [2003 2nd sp.s. c 1 § 17.]

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Chapter 82.36 RCW

MOTOR VEHICLE FUEL TAX

Sections

82.36.025	Motor vehicle fuel tax rate—Expiration of subsection.
82.36.306	Repealed.
82.36.330	Payment of refunds—Interest—Penalty. (<i>Effective July 1, 2004.</i>)
82.36.380	Violations—Penalties.
82.36.400	Other offenses—Penalties. (<i>Effective July 1, 2004.</i>)
82.36.440	State preempts tax field.
82.36.470	Fuel tax evasion—Seizure and forfeiture.
82.36.475	Fuel tax evasion—Forfeiture procedure.
82.36.480	Fuel tax evasion—Forfeited property.
82.36.485	Fuel tax evasion—Return of seized property.
82.36.490	Fuel tax evasion—Search and seizure.
82.36.495	Fuel tax evasion—Rules.

82.36.025 Motor vehicle fuel tax rate—Expiration of subsection. (1) A motor vehicle fuel tax rate of twenty-three cents per gallon applies to the sale, distribution, or use of motor vehicle fuel.

(2) Beginning July 1, 2003, an additional and cumulative motor fuel tax rate of five cents per gallon applies to the sale, distribution, or use of motor vehicle fuel. This subsection (2) expires when the bonds issued for transportation 2003

projects are retired. [2003 c 361 § 401. Prior: 1999 c 269 § 16; 1999 c 94 § 29; 1994 c 179 § 30; 1991 c 342 § 57; 1990 c 42 § 101; 1983 1st ex.s. c 49 § 27; 1981 c 342 § 2; 1979 c 158 § 224; 1977 ex.s. c 317 § 6.]

Findings—2003 c 361: "The legislature finds that the state's transportation system is in critical need of repair, restoration, and enhancement. The state's economy, the ability to move goods to market, and the overall mobility and safety of the citizens of the state rely on the state's transportation system. The revenues generated by this act are dedicated to funds, accounts, and activities that are necessary to improve the delivery of state transportation projects and services." [2003 c 361 § 101.]

Part headings not law—2003 c 361: "Part headings used in this act are not any part of the law." [2003 c 361 § 701.]

Severability—2003 c 361: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 361 § 702.]

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Effective dates—1991 c 342: See note following RCW 47.26.167.

Purpose of state and local transportation funding program—1990 c 42: "(1) The legislature finds that a new comprehensive funding program is required to maintain the state's commitment to the growing mobility needs of its citizens and commerce. The transportation funding program is intended to satisfy the following state policies and objectives:

(a) State-wide system: Provide for preservation of the existing state-wide system and improvements for current and expected capacity needs in rural, established urban, and growing suburban areas throughout the state;

(b) Local flexibility: Provide for necessary state highway improvements, as well as providing local governments with the option to use new funding sources for projects meeting local and regional needs;

(c) Multimodal: Provide a source of funds that may be used for multimodal transportation purposes;

(d) Program compatibility: Implement transportation facilities and services that are consistent with adopted land use and transportation plans and coordinated with recently authorized programs such as the act authorizing creation of transportation benefit districts and the local transportation act of 1988;

(e) Interjurisdictional cooperation: Encourage transportation planning and projects that are multijurisdictional in their conception, development, and benefit, recognizing that mobility problems do not respect jurisdictional boundaries;

(f) Public and private sector: Use a state, local, and private sector partnership that equitably shares the burden of meeting transportation needs.

(2) The legislature further recognizes that the revenues currently available to the state and to counties, cities, and transit authorities for highway, road, and street construction and preservation fall far short of the identified need. The 1988 Washington road jurisdiction study identified a state-wide funding shortfall of between \$14.6 and \$19.9 billion to bring existing roads to acceptable standards. The gap between identified transportation needs and available revenues continues to increase. A comprehensive transportation funding program is required to meet the current and anticipated future needs of this state.

(3) The legislature further recognizes the desirability of making certain changes in the collection and distribution of motor vehicle excise taxes with the following objectives: Simplifying administration and collection of the taxes including adoption of a predictable depreciation schedule for vehicles; simplifying the allocation of the taxes among various recipients; and the dedication of a portion of motor vehicle excise taxes for transportation purposes.

(4) The legislature, therefore, declares a need for the three-part funding program embodied in this act: (a) State-wide funding for highways, roads, and streets in urban and rural areas; (b) local option funding authority, available immediately, for the construction and preservation of roads, streets, and transit improvements and facilities; and (c) the creation of a multimodal transportation fund that is funded through dedication of a portion of motor vehicle excise tax. This funding program is intended, by targeting certain new revenues, to produce a significant increase in the overall capacity of the state, county, and city transportation systems to satisfy and efficiently accommodate the movement of people and goods." [1990 c 42 § 1.]

Headings—1990 c 42: "The index and part and section headings as used in this act do not constitute any part of the law." [1990 c 42 § 502.]

Severability—1990 c 42: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 42 § 503.]

Effective dates—Application—Implementation—1990 c 42: "(1) Sections 101 through 104, 115 through 117, 201 through 214, 405 through 411, and 503, chapter 42, Laws of 1990 are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1990.

(2) Sections 105 through 114, chapter 42, Laws of 1990 shall take effect September 1, 1990. The additional fees in sections 105 through 108, chapter 42, Laws of 1990 apply for all motor vehicle registrations that expire August 31, 1991, and thereafter.

(3) Sections 301 through 303 and 305 through 328, chapter 42, Laws of 1990 shall take effect September 1, 1990, and apply to the purchase of vehicle registrations that expire August 31, 1991, and thereafter.

(4) Section 304, chapter 42, Laws of 1990 shall take effect July 1, 1991, and apply to all vehicles registered for the first time with an expiration date of June 30, 1992, and thereafter.

(5) The director of licensing may immediately take such steps as are necessary to ensure that the sections of chapter 42, Laws of 1990 are implemented on their effective dates.

(6) *Sections 401 through 404, chapter 42, Laws of 1990 shall take effect September 1, 1990, only if the bonds issued under RCW 47.56.711 for the Spokane river toll bridge have been retired or fully defeased, and shall become null and void if the bonds have not been retired or fully defeased on that date." [1990 c 298 § 38; 1990 c 42 § 504.]

***Reviser's note:** The bonds were fully defeased on June 1, 1990.

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

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

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

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

82.36.330 Payment of refunds—Interest—Penalty. (Effective July 1, 2004.) (1) Upon the approval of the director of the claim for refund, the state treasurer shall draw a warrant upon the state treasury for the amount of the claim in favor of the person making such claim and the warrant shall be paid from the excise tax collected on motor vehicle fuel: PROVIDED, That the state treasurer shall deduct from each marine use refund claim an amount equivalent to one cent per gallon and shall deposit the same in the coastal protection fund created by RCW 90.48.390.

(2) Applications for refunds of excise tax shall be filed in the office of the director not later than the close of the last business day of a period thirteen months from the date of purchase of such motor fuel, and if not filed within this period the right to refund shall be forever barred, except that such limitation shall not apply to claims for loss or destruction of motor vehicle fuel as provided by the provisions of RCW 82.36.370.

(3) The department shall pay interest of one percent on any refund payable under this chapter that is issued more than thirty state business days after the receipt of a claim properly filed and completed in accordance with this section. After the end of the thirty business-day period, additional interest shall accrue at the rate of one percent on the amount payable for each thirty calendar-day period, until the refund is issued.

(4) Any person or the member of any firm or the officer or agent of any corporation who makes any false statement in any claim required for the refund of excise tax, as provided in this chapter, or who collects or causes to be repaid to him or her or to any other person any such refund without being entitled to the same under the provisions of this chapter is guilty of a gross misdemeanor. [2003 c 53 § 401; 1998 c 176 § 39; 1971 ex.s. c 180 § 9; 1965 ex.s. c 79 § 14; 1961 c 15 § 82.36.330. Prior: 1957 c 218 § 9; prior: 1955 c 90 § 1; 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—Short title—Construction—1971 ex.s. c 180: See RCW 90.48.903, 90.48.906, and 90.56.900.

Coastal protection fund: RCW 90.48.390 and 90.48.400.

Definitions: RCW 90.56.010.

Rules and regulations: RCW 90.56.050 and 90.56.900.

82.36.380 Violations—Penalties. (1) It is unlawful for a person or corporation to:

- (a) Evade a tax or fee imposed under this chapter;
- (b) File a false statement of a material fact on a motor fuel license application or motor fuel refund application;
- (c) Act as a motor fuel importer, motor fuel blender, or motor fuel supplier unless the person holds an uncanceled motor fuel license issued by the department authorizing the person to engage in that business;
- (d) Knowingly assist another person to evade a tax or fee imposed by this chapter;
- (e) Knowingly operate a conveyance for the purpose of hauling, transporting, or delivering motor vehicle fuel in bulk and not possess an invoice, bill of sale, or other statement showing the name, address, and tax license number of the seller or consignor, the destination, the name, address, and tax license number of the purchaser or consignee, and the number of gallons.

(2) A violation of subsection (1) of this section is a class C felony under chapter 9A.20 RCW. In addition to other penalties and remedies provided by law, the court shall order a person or corporation found guilty of violating subsection (1) of this section to:

- (a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and
- (b) Pay a penalty of one hundred percent of the tax evaded, to the multimodal transportation account of the state. [2003 c 358 § 13; 2000 2nd sp.s. c 4 § 9; 1995 c 287 § 2; 1961 c 15 § 82.36.380. Prior: 1949 c 234 § 2, part; 1933 c 58 § 19, part; Rem. Supp. 1949 § 8327-19, part; prior: 1921 c 173 § 12, part.]

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

Effective dates—2000 2nd sp.s. c 4 §§ 4-10: See note following RCW 43.89.010.

82.36.400 Other offenses—Penalties. (Effective July 1, 2004.) (1) It shall be unlawful for any person to commit any of the following acts:

(a) To display, or cause to permit to be displayed, or to have in possession, any motor vehicle fuel license knowing the same to be fictitious or to have been suspended, canceled, revoked or altered;

(b) To lend to, or knowingly permit the use of, by one not entitled thereto, any motor vehicle fuel license issued to the person lending it or permitting it to be used;

(c) To display or to represent as one's own any motor vehicle fuel license not issued to the person displaying the same;

(d) To use a false or fictitious name or give a false or fictitious address in any application or form required under the provisions of this chapter, or otherwise commit a fraud in any application, record, or report;

(e) To refuse to permit the director, or any agent appointed by him or her in writing, to examine his or her books, records, papers, storage tanks, or other equipment pertaining to the use or sale and delivery of motor vehicle fuels within the state.

(2) Except as otherwise provided, any person violating any of the provisions of this chapter is guilty of a gross misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars nor more than one thousand dollars and costs of prosecution, or imprisonment for not more than one year, or both. [2003 c 53 § 402; 1998 c 176 § 46; 1971 ex.s. c 156 § 3; 1967 c 153 § 6; 1961 c 15 § 82.36.400. Prior: 1949 c 234 § 2, part; 1933 c 58 § 19, part; Rem. Supp. 1949 § 8327-19, part; prior: 1921 c 173 § 12, part.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

82.36.440 State preempts tax field. The tax levied in this chapter is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing motor vehicle fuel, and no city, town, county, township or other subdivision or municipal corporation of the state shall levy or collect any excise tax upon or measured by the sale, receipt, distribution, or use of motor vehicle fuel, except as provided in chapter 82.80 RCW and RCW 82.47.020. [2003 c 350 § 5; 1991 c 173 § 4; 1990 c 42 § 204; 1979 ex.s. c 181 § 5; 1961 c 15 § 82.36.440. Prior: 1933 c 58 § 23; RRS § 8327-23.]

Effective date—1991 c 173: See note following RCW 82.47.010.

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

Effective date—1979 ex.s. c 181: "This 1979 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 ex.s. c 181 § 10.]

Severability—1979 ex.s. c 181: "If any provision of this 1979 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 181 § 8.]

82.36.470 Fuel tax evasion—Seizure and forfeiture.

(1) The following are subject to seizure and forfeiture:

(a) Motor vehicle fuel imported into this state by a person not licensed in this state in accordance with this chapter to import fuel;

(b) Motor vehicle fuel that is blended or manufactured by a person not licensed in this state in accordance with this chapter to blend or manufacture fuel;

(c) All conveyances that are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) and (b) of this subsection, except where the owner of the conveyance neither had knowledge of nor consented to the transportation of the fuel by an unlicensed importer, blender, or manufacturer of fuel.

(2) Before seizing a common carrier conveyance, contract carrier conveyance, or a conveyance secured by a bona fide security interest where the secured party neither had knowledge of or consented to the unlawful act or omission, the state patrol or the department of licensing shall give the common carrier, contract carrier, or secured party, or their representatives within twenty-four hours, a notice in writing served by mail or other means to cease transporting fuel for any person not licensed to import, blend, or manufacture fuel in this state.

(3) Property subject to forfeiture under this chapter may be seized by the state patrol upon process issued by a superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant; or

(b) The state patrol has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable. [2003 c 358 § 1.]

Captions not law—2003 c 358: "Captions used in this act are not part of the law." [2003 c 358 § 16.]

Severability—2003 c 358: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 358 § 17.]

82.36.475 Fuel tax evasion—Forfeiture procedure.

In all cases of seizure of property made subject to forfeiture under this chapter, the state patrol shall proceed as follows:

(1) Forfeiture is deemed to have commenced by the seizure.

(2) The state patrol shall list and particularly describe in duplicate the conveyance seized. After the appropriate appeal period has expired, a seized conveyance must be sold at a public auction in accordance with chapter 43.19 RCW.

(3) The state patrol shall list and particularly describe in duplicate the fuel seized. The selling price of the fuel seized will be the average terminal rack price for similar fuel, at the closest terminal rack on the day of sale, unless circumstance warrants that a different selling price is appropriate. The method used to value the fuel must be documented. The fuel will be sold at the earliest point in time, and the total price must include all appropriate state and federal taxes. The state patrol or the department may enter into contracts for the transportation, handling, storage, and sale of fuel subject to forfeiture. The money received must be deposited in the motor vehicle account, after deduction for expenses provided for in this section.

(4) The state patrol shall, within five days after the seizure of a conveyance or fuel, cause notice to be served on the

owner of the property seized, if known, on the person in charge of the property, and on any other person having any known right or interest in the property, of the seizure and intended forfeiture. The notice may be served by any method authorized by law or court rule including but not limited to service by mail. If service is by mail it must be by both certified mail with return receipt requested and regular mail. Service by mail is deemed complete upon mailing within the five-day period after the date of seizure.

(5) If no person notifies the state patrol in writing of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the items seized are considered forfeited.

(6) If any person notifies the state patrol, in writing, of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the person or persons must be given a reasonable opportunity to be heard as to the claim or right. The hearing must be before the director of licensing, or the director's designee. A hearing and any appeals must be in accordance with chapter 34.05 RCW. The burden of proof by a preponderance of the evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the items seized. The state patrol and the department shall promptly return the conveyance seized, and money from the sale of fuel seized, to the claimant upon a determination that the claimant is the present lawful owner and is lawfully entitled to possession of the items seized. [2003 c 358 § 2.]

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

82.36.480 Fuel tax evasion—Forfeited property. When property is forfeited under this chapter, the state patrol or the department may use the proceeds of the sale and all moneys forfeited for the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. Proper expenses of investigation include costs incurred by a law enforcement agency or a federal, state, or local agency. The balance of the proceeds must be deposited in the motor vehicle account. [2003 c 358 § 3.]

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

82.36.485 Fuel tax evasion—Return of seized property. (1) The state patrol and the department may return property seized and proceeds from the sale of fuel under this chapter when it is shown that there was no intention to violate this chapter.

(2) When property is returned under this section, the state patrol and the department may return the goods to the parties from whom they were seized if and when the parties pay all applicable taxes and interest. [2003 c 358 § 4.]

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

82.36.490 Fuel tax evasion—Search and seizure. When the state patrol has good reason to believe that motor vehicle fuel is being unlawfully imported, kept, sold, offered

for sale, blended, or manufactured in violation of this chapter or rules adopted under it, the state patrol may make an affidavit of that fact, describing the place or thing to be searched, before a judge of any court in this state, and the judge shall issue a search warrant directed to the state patrol commanding the officer diligently to search any place or vehicle designated in the affidavit and search warrant, and to seize the fuel and conveyance so possessed and to hold them until disposed of by law, and to arrest the person in possession or control of them. [2003 c 358 § 5.]

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

82.36.495 Fuel tax evasion—Rules. The department and the state patrol shall adopt rules necessary to implement RCW 82.36.470 through 82.36.490. [2003 c 358 § 6.]

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

Chapter 82.38 RCW SPECIAL FUEL TAX ACT

Sections

82.38.030	Tax imposed—Rate—Incidence—Allocation of proceeds—Expiration of subsection.
82.38.035	Remittance of tax.
82.38.047	Liability of terminal operator for taxes when documentation incorrectly indicates internal revenue service compliance.
82.38.182	Repealed.
82.38.270	Violations—Penalties.
82.38.280	State preempts tax field.
82.38.360	Fuel tax evasion—Seizure and forfeiture.
82.38.365	Fuel tax evasion—Forfeiture procedure.
82.38.370	Fuel tax evasion—Forfeited property.
82.38.375	Fuel tax evasion—Return of seized property.
82.38.380	Fuel tax evasion—Search and seizure.
82.38.385	Fuel tax evasion—Rules.

82.38.030 Tax imposed—Rate—Incidence—Allocation of proceeds—Expiration of subsection. (1) There is hereby levied and imposed upon special fuel users a tax at the rate of twenty-three cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature.

(2) Beginning July 1, 2003, an additional and cumulative tax rate of five cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel users. This subsection (2) expires when the bonds issued for transportation 2003 projects are retired.

(3) Taxes are imposed when:

(a) Special fuel is removed in this state from a terminal if the special fuel is removed at the rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is to a special fuel distributor for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(b) Special fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the special fuel immediately before the removal is not a licensee; or

(ii) The removal is at the refinery rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is to a special fuel

distributor for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(c) Special fuel enters into this state for sale, consumption, use, or storage if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a licensee; or

(ii) The entry is not by bulk transfer;

(d) Special fuel is sold or removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the special fuel;

(e) Blended special fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended special fuel subject to tax is the difference between the total number of gallons of blended special fuel removed or sold and the number of gallons of previously taxed special fuel used to produce the blended special fuel;

(f) Dyed special fuel is used on a highway, as authorized by the internal revenue code, unless the use is exempt from the special fuel tax;

(g) Dyed special fuel is held for sale, sold, used, or is intended to be used in violation of this chapter;

(h) Special fuel purchased by an international fuel tax agreement licensee under RCW 82.38.320 is used on a highway; and

(i) Special fuel is sold by a licensed special fuel supplier to a special fuel distributor, special fuel importer, or special fuel blender and the special fuel is not removed from the bulk transfer-terminal system.

(4) The tax imposed by this chapter, if required to be collected by the licensee, is held in trust by the licensee until paid to the department, and a licensee who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to collect the tax imposed by this section, or who has collected the tax and fails to pay it to the department in the manner prescribed by this chapter, is personally liable to the state for the amount of the tax. [2003 c 361 § 402; 2002 c 183 § 2; 2001 c 270 § 6; 1998 c 176 § 51; 1996 c 104 § 7; 1989 c 193 § 3; 1983 1st ex.s. c 49 § 30; 1979 c 40 § 3; 1977 ex.s. c 317 § 5; 1975 1st ex.s. c 62 § 1; 1973 1st ex.s. c 156 § 1; 1972 ex.s. c 135 § 2; 1971 ex.s. c 175 § 4.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

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

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

82.38.035 Remittance of tax. (1) A licensed supplier shall remit tax on special fuel to the department as provided in RCW 82.38.030(3)(a). On a two-party exchange, or buy-sell agreement between two licensed suppliers, the receiving exchange partner or buyer shall remit the tax.

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(2) A refiner shall remit tax to the department on special fuel removed from a refinery as provided in RCW 82.38.030(3)(b).

(3) An importer shall remit tax to the department on special fuel imported into this state as provided in RCW 82.38.030(3)(c).

(4) A blender shall remit tax to the department on the removal or sale of blended special fuel as provided in RCW 82.38.030(3)(e).

(5) A dyed special fuel user shall remit tax to the department on the use of dyed special fuel as provided in RCW 82.38.030(3)(f). [2003 c 361 § 405; 2001 c 270 § 7; 1998 c 176 § 53.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

82.38.047 Liability of terminal operator for taxes when documentation incorrectly indicates internal revenue service compliance. A terminal operator is jointly and severally liable for remitting the tax imposed under RCW 82.38.030 if, in connection with the removal of special fuel that is not dyed or marked in accordance with internal revenue service requirements, the terminal operator provides a person with a bill of lading, shipping paper, or similar document indicating that the special fuel is dyed or marked in accordance with internal revenue service requirements. [2003 c 361 § 406; 1998 c 176 § 55.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

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

82.38.270 Violations—Penalties. (1) It is unlawful for a person or corporation to:

(a) Have dyed diesel in the fuel supply tank of a vehicle that is licensed or required to be licensed for highway use or maintain dyed diesel in bulk storage for highway use, unless the person or corporation maintains an uncanceled dyed diesel user license or is otherwise exempted by this chapter;

(b) Evade a tax or fee imposed under this chapter;

(c) File a false statement of a material fact on a special fuel license application or special fuel refund application;

(d) Act as a special fuel importer, special fuel blender, or special fuel supplier unless the person holds an uncanceled special fuel license issued by the department authorizing the person to engage in that business;

(e) Knowingly assist another person to evade a tax or fee imposed by this chapter;

(f) Knowingly operate a conveyance for the purpose of hauling, transporting, or delivering special fuel in bulk and not possess an invoice, bill of sale, or other statement showing the name, address, and tax license number of the seller or consignor, the destination, the name, address, and tax license number of the purchaser or consignee, and the number of gallons.

(2)(a) A single violation of subsection (1)(a) of this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) Multiple violations of subsection (1)(a) of this section and violations of subsection (1)(b) through (f) of this section are a class C felony under chapter 9A.20 RCW.

(3) In addition to other penalties and remedies provided by law, the court shall order a person or corporation found guilty of violating subsection (1)(b) through (f) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded, to the multimodal transportation account of the state. [2003 c 358 § 14; 2000 2nd sp.s. c 4 § 10; 1995 c 287 § 4; 1979 c 40 § 19; 1977 c 26 § 4; 1971 ex.s. c 175 § 28.]

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

Effective dates—2000 2nd sp.s. c 4 §§ 4-10: See note following RCW 43.89.010.

82.38.280 State preempts tax field. The tax levied in this chapter is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing special fuel, and no city, town, county, township or other subdivision or municipal corporation of the state shall levy or collect any excise tax upon or measured by the sale, receipt, distribution, or use of special fuel, except as provided in chapter 82.80 RCW and RCW 82.47.020. [2003 c 350 § 6; 1991 c 173 § 5; 1990 c 42 § 205; 1979 ex.s. c 181 § 6; 1971 ex.s. c 175 § 29.]

Effective date—1991 c 173: See note following RCW 82.47.010.

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

Effective date—Severability—1979 ex.s. c 181: See notes following RCW 82.36.440.

82.38.360 Fuel tax evasion—Seizure and forfeiture.

(1) The following are subject to seizure and forfeiture:

(a) Special fuel imported into this state by a person not licensed in this state in accordance with this chapter to import fuel;

(b) Special fuel that is blended or manufactured by a person not licensed in this state in accordance with this chapter to blend or manufacture fuel;

(c) All conveyances that are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) and (b) of this subsection, except where the owner of the conveyance neither had knowledge of nor consented to the transportation of the special fuel by an unlicensed importer, blender, or manufacturer of fuel.

(2) Before seizing a common carrier conveyance, contract carrier conveyance, or a conveyance secured by a bona fide security interest where the secured party neither had knowledge of or consented to the unlawful act or omission, the state patrol or the department of licensing shall give the common carrier, contract carrier, or secured party, or their representatives within twenty-four hours, a notice in writing served by mail or other means to cease transporting fuel for any person not licensed to import, blend, or manufacture fuel in this state.

(3) Property subject to forfeiture under this chapter may be seized by the state patrol upon process issued by a superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an administrative inspection; or

(b) The state patrol has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable. [2003 c 358 § 7.]

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

82.38.365 Fuel tax evasion—Forfeiture procedure.

In all cases of seizure of property made subject to forfeiture under this chapter, the state patrol shall proceed as follows:

(1) Forfeiture is deemed to have commenced by the seizure.

(2) The state patrol shall list and particularly describe in duplicate the conveyance seized. After the appropriate appeal period has expired, a seized conveyance must be sold at a public auction in accordance with chapter 43.19 RCW.

(3) The state patrol shall list and particularly describe in duplicate the special fuel seized. The selling price of the fuel seized will be the average terminal rack price for similar fuel, at the closest terminal rack on the day of sale, unless circumstance warrants that a different selling price is appropriate. The method used to value the fuel must be documented. The fuel will be sold at the earliest point in time, and the total price must include all appropriate state and federal taxes. The state patrol or the department may enter into contracts for the transportation, handling, storage, and sale of fuel subject to forfeiture. The money received must be deposited in the motor vehicle account, after deduction for expenses provided for in this section.

(4) The state patrol shall, within five days after the seizure of a conveyance or fuel, cause notice to be served on the owner of the property seized, if known, on the person in charge of the property, and on any other person having any known right or interest in the property, of the seizure and intended forfeiture. The notice may be served by any method authorized by law or court rule including but not limited to service by mail. If service is by mail it must be by both certified mail with return receipt requested and regular mail. Service by mail is deemed complete upon mailing within the five-day period after the date of seizure.

(5) If no person notifies the state patrol in writing of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the items seized are considered forfeited.

(6) If any person notifies the state patrol, in writing, of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the person or persons must be given a reasonable opportunity to be heard as to the claim or right. The hearing must be before the director of licensing, or the director's designee. A hearing and any appeals must be in accordance with chapter 34.05 RCW. The burden of proof by a preponderance of the evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the items seized. The state patrol and the

department shall promptly return the conveyance seized, and money from the sale of fuel seized, to the claimant upon a determination that the claimant is the present lawful owner and is lawfully entitled to possession of the items seized. [2003 c 358 § 8.]

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

82.38.370 Fuel tax evasion—Forfeited property.

When property is forfeited under this chapter, the state patrol or the department may use the proceeds of the sale and all moneys forfeited for the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. Proper expenses of investigation include costs incurred by a law enforcement agency or a federal, state, or local agency. The balance of the proceeds must be deposited in the motor vehicle fund. [2003 c 358 § 9.]

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

82.38.375 Fuel tax evasion—Return of seized property.

(1) The state patrol and the department may return property seized and proceeds from the sale of fuel under this chapter when it is shown that there was no intention to violate this chapter.

(2) When property is returned under this section, the state patrol and the department may return the goods to the parties from whom they were seized if and when the parties pay all applicable taxes and interest. [2003 c 358 § 10.]

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

82.38.380 Fuel tax evasion—Search and seizure.

When the state patrol has good reason to believe that special fuel is being unlawfully imported, kept, sold, offered for sale, blended, or manufactured in violation of this chapter or rules adopted under it, the state patrol may make an affidavit of that fact, describing the place or thing to be searched, before a judge of any court in this state, and the judge shall issue a search warrant directed to the state patrol commanding the officer diligently to search any place or vehicle designated in the affidavit and search warrant, and to seize the fuel and conveyance so possessed and to hold them until disposed of by law, and to arrest the person in possession or control of them. [2003 c 358 § 11.]

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

82.38.385 Fuel tax evasion—Rules. The department and the state patrol shall adopt rules necessary to implement RCW 82.38.360 through 82.38.380. [2003 c 358 § 12.]

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

**Chapter 82.42 RCW
AIRCRAFT FUEL TAX**

Sections

[2003 RCW Supp—page 1098]

- 82.42.020 Aircraft fuel tax imposed—Exception—Rate to be computed—Misappropriation or conversion—Penalties, liability.
- 82.42.025 Repealed.

82.42.020 Aircraft fuel tax imposed—Exception—Rate to be computed—Misappropriation or conversion—Penalties, liability. There is hereby levied, and there shall be collected by every distributor of aircraft fuel, an excise tax at the rate of ten cents on each gallon of aircraft fuel sold, delivered or used in this state: PROVIDED HOWEVER, That such aircraft fuel excise tax shall not apply to fuel for aircraft that both operate from a private, non-state-funded airfield during at least ninety-five percent of the aircraft's normal use and are used principally for the application of pesticides, herbicides, or other agricultural chemicals and shall not apply to fuel for emergency medical air transport entities: PROVIDED FURTHER, That there shall be collected from every consumer or user of aircraft fuel either the use tax imposed by RCW 82.12.020, as amended, or the retail sales tax imposed by RCW 82.08.020, as amended, collection procedure to be as prescribed by law and/or rule or regulation of the department of revenue. The taxes imposed by this chapter shall be collected and paid to the state but once in respect to any aircraft fuel.

The tax required by this chapter, to be collected by the seller, is held in trust by the seller until paid to the department, and a seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to collect the tax imposed by this section, or who has collected the tax and fails to pay it to the department in the manner prescribed by this chapter, is personally liable to the state for the amount of the tax. [2003 c 375 § 5; 1996 c 104 § 13; 1982 1st ex.s. c 25 § 2; 1969 ex.s. c 254 § 2; 1967 ex.s. c 10 § 2.]

Effective date—2003 c 375: See note following RCW 47.68.233.

Severability—Effective date—1982 1st ex.s. c 25: See notes following RCW 82.42.010.

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

**Chapter 82.44 RCW
MOTOR VEHICLE EXCISE TAX**

Sections

- 82.44.041 Valuation of vehicles. *(Effective if Initiative Measure No. 776 is declared unconstitutional by pending court action.)*
- 82.44.041 Repealed. *(Effective if Initiative Measure No. 776 is upheld by pending court action.)*
- 82.44.110 Disposition of revenue. *(Effective if Initiative Measure No. 776 is declared unconstitutional by pending court action.)*
- 82.44.110 Repealed. *(Effective if Initiative Measure No. 776 is upheld by pending court action.)*
- 82.44.120 Refunds, collections of erroneous amounts—Claims—False statement, penalty. *(Effective July 1, 2004.)*
- 82.44.150 Apportionment and distribution of motor vehicle excise taxes generally. *(Effective if Initiative Measure No. 776 is declared unconstitutional by pending court action.)*
- 82.44.150 Repealed. *(Effective if Initiative Measure No. 776 is upheld by pending court action.)*

82.44.041 Valuation of vehicles. (*Effective if Initiative Measure No. 776 is declared unconstitutional by pending court action.*) (1) For the purpose of determining the tax under this chapter, the value of a truck-type power or trailing unit shall be the latest purchase price of the vehicle, excluding applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the following percentage based on year of service of the vehicle since last sale. The latest purchase year shall be considered the first year of service.

YEAR OF SERVICE	PERCENTAGE
1	100
2	90
3	83
4	75
5	67
6	59
7	52
8	44
9	36
10	28
11	21
12	13
13 or older	10

(2) The reissuance of title and registration for a truck-type power or trailing unit because of the installation of body or special equipment shall be treated as a sale, and the value of the truck-type power or trailing unit at that time, as determined by the department from such information as may be available, shall be considered the latest purchase price.

(3) For the purpose of determining the tax under this chapter, the value of a motor vehicle other than a truck-type power or trailing unit shall be the manufacturer's base suggested retail price of the vehicle when first offered for sale as a new vehicle, excluding any optional equipment, applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the applicable percentage listed in this subsection based on year of service of the vehicle.

If the manufacturer's base suggested retail price is unavailable or otherwise unascertainable at the time of initial registration in this state, the department shall determine a value equivalent to a manufacturer's base suggested retail price as follows:

(a) The department shall determine a value using any information that may be available, including any guidebook, report, or compendium of recognized standing in the automotive industry or the selling price and year of sale of the vehicle. The department may use an appraisal by the county assessor. In valuing a vehicle for which the current value or selling price is not indicative of the value of similar vehicles of the same year and model, the department shall establish a value that more closely represents the average value of similar vehicles of the same year and model.

(b) The value determined in (a) of this subsection shall be divided by the applicable percentage listed in this subsection to establish a value equivalent to a manufacturer's base suggested retail price. The applicable percentage shall be based on the year of service of the vehicle for which the value is determined.

YEAR OF SERVICE	PERCENTAGE
1	100
2	95
3	89
4	83
5	74
6	65
7	57
8	48
9	40
10	31
11	22
12	14
13 or older	10

(4) For purposes of this chapter, value shall exclude value attributable to modifications of a motor vehicle and equipment that are designed to facilitate the use or operation of the motor vehicle by a handicapped person. [1998 c 321 § 4 (Referendum Bill No. 49, approved November 3, 1998); 1990 c 42 § 303.]

Reviser's note: See note following RCW 82.44.010.

Purpose—Severability—1998 c 321: See notes following RCW 82.44.110.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.44.110.

Contingent effective dates—1998 c 321 §§ 23-42: See note following RCW 82.50.410.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.44.110.

Transitional valuation method and tax limitation—1990 c 42: "Notwithstanding any other provision of this act, motor vehicles and travel trailers and campers that are valued under the system in effect before September 1, 1990, shall be valued by using the initial valuation of the vehicle under chapter 82.44 or 82.50 RCW multiplied by the applicable percentage under section 303 or 323 of this act [RCW 82.44.041 or 82.50.425]. Before December 1992 vehicle license expirations, no tax may be imposed on any motor vehicle or travel trailer or camper that is greater than one hundred ten percent of the tax imposed during the registration period in effect before September 1, 1990." [1990 c 42 § 326.] For codification of "this act" [1990 c 42], see Codification Tables, Volume 0.

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

82.44.041 Repealed. (*Effective if Initiative Measure No. 776 is upheld by pending court action.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Reviser's note: The constitutionality of Initiative Measure No. 776 is being challenged in *Pierce Co. v. State of Washington*, King Co. Superior Ct. No. 02-2-35125-5 SEA.

82.44.110 Disposition of revenue. (*Effective if Initiative Measure No. 776 is declared unconstitutional by pending court action.*) The county auditor shall regularly, when remitting license fee receipts, pay over and account to the director of licensing for the excise taxes collected under the provisions of this chapter. The director shall forthwith transmit the excise taxes to the state treasurer.

(1) The state treasurer shall deposit the excise taxes collected under RCW 82.44.020(1) as follows:

(a) 1.455 percent into the motor vehicle fund through June 30, 1999, and 1.71 percent beginning July 1, 1999, to defray administrative and other expenses incurred by the department in the collection of the excise tax.

(b) 7.409 percent into the Puget Sound capital construction account in the motor vehicle fund through June 30, 1999, and 8.712 percent beginning July 1, 1999.

(c) 3.70 percent into the Puget Sound ferry operations account in the motor vehicle fund through June 30, 1999, and 4.351 percent beginning July 1, 1999.

(d) 5.345 percent into the city police and fire protection assistance account under RCW 82.44.155 through June 30, 1999, and 6.286 percent beginning July 1, 1999.

(e) 4.318 percent into the municipal sales and use tax equalization account created in RCW 82.14.210 through June 30, 1999, and 5.628 percent beginning July 1, 1999.

(f) 1.455 percent into the county sales and use tax equalization account created in RCW 82.14.200 through June 30, 1999, and 1.71 percent beginning July 1, 1999.

(g) 13.573 percent into the general fund through June 30, 1999.

(h) 43.605 percent into the transportation fund created in RCW 82.44.180 through June 30, 1999, and 51.203 percent beginning July 1, 1999.

(i) 5.426 percent into the county criminal justice assistance account created in RCW 82.14.310 through June 30, 1999, and 3.892 percent beginning July 1, 1999.

(j) 1.085 percent into the municipal criminal justice assistance account for distribution under RCW 82.14.320 through June 30, 1999, and 0.778 percent beginning July 1, 1999.

(k) 1.085 percent into the municipal criminal justice assistance account for distribution under RCW 82.14.330 through June 30, 1999, and 0.778 percent beginning July 1, 1999.

(l) 2.682 percent into the county public health account created in RCW 70.05.125 through June 30, 1999, and 3.153 percent beginning July 1, 1999.

(m) 8.862 percent into the motor vehicle fund through June 30, 1999, and 10.422 percent beginning July 1, 1999.

(n) 1.377 percent into the distressed county assistance account under RCW 82.14.380 beginning July 1, 1999.

Notwithstanding (i) through (k) of this subsection, for each fiscal year through fiscal year 1999, the amounts deposited into the accounts specified in (i) through (k) of this subsection shall not increase by more than the amounts deposited into those accounts in the previous fiscal year increased by the implicit price deflator for the previous fiscal year. Any revenues in excess of this amount shall be deposited into the violence reduction and drug enforcement account.

(2) The state treasurer shall deposit the excise tax imposed by RCW 82.44.020(2) into the air pollution control account created by RCW 70.94.015. [1998 c 321 § 5 (Referendum Bill No. 49, approved November 3, 1998); 1997 c 338 § 68; 1997 c 149 § 911. Prior: 1995 1st sp.s. c 15 § 2; 1995 c 398 § 14; prior: 1993 sp.s. c 21 § 7; 1993 c 492 § 253; 1993 c 491 § 1; 1991 c 199 § 221; 1990 2nd ex.s. c 1 § 801; 1990 c 42 § 306; 1987 1st ex.s. c 9 § 7; 1982 1st ex.s. c 35 § 12; 1979 c 158 § 235; 1977 ex.s. c 332 § 2; 1974 ex.s. c 54 § 3; 1967 c 121 § 1; 1961 c 15 § 82.44.110; prior: 1957 c 128 § 1; 1955 c 259 § 6; 1943 c 144 § 10; Rem. Supp. 1943 § 6312-124; prior: 1937 c 228 § 9.]

Reviser's note: See note following RCW 82.44.010.

Purpose—1998 c 321: "The purpose of this act is to reallocate the general fund portion of the state's motor vehicle excise tax revenues among the taxpayers, local governments, and the state's transportation programs. By reallocating motor vehicle excise taxes, the state revenue portion can be dedicated to increased transportation funding purposes. Since the general fund currently has a budget surplus, due to a strong economy, the legislature feels that this reallocation is an appropriate short-term solution to the state's transportation needs and is a first step in meeting longer-term transportation funding needs. These reallocated funds must be used to provide relief from traffic congestion, improve freight mobility, and increase traffic safety.

In reallocating general fund resources, the legislature also ensures that other programs funded from the general fund are not adversely impacted by the reallocation of surplus general fund revenues. The legislature also adopts this act to continue the general fund revenue and expenditure limitations contained in chapter 43.135 RCW after this one-time transfer of funds.

In order to develop a long-term and comprehensive solution to the state's transportation problems, a joint committee will be created to study the state's transportation needs and the appropriate sources of revenue necessary to implement the state's long-term transportation needs as provided in *section 22 of this act." [1998 c 321 § 1 (Referendum Bill No. 49, approved November 3, 1998).]

***Reviser's note:** Section 22 of this act was vetoed by the governor.

Severability—1998 c 321: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 321 § 45 (Referendum Bill No. 49, approved November 3, 1998).]

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: "(1) Sections 1 through 3, 5 through 21, 44, and 45 of this act take effect January 1, 1999.

(2) Section 4 of this act takes effect July 1, 1999, and applies to registrations that are due or become due in July 1999, and thereafter." [1998 c 321 § 46 (Referendum Bill No. 49, approved November 3, 1998).]

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: "The secretary of state shall submit sections 1 through 21 and 44 through 46 of this act to the people for their adoption and ratification, or rejection, at the next general election to be held in this state, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate its operation." [1998 c 321 § 49 (Referendum Bill No. 49, approved November 3, 1998).]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Severability—Effective date—1997 c 149: See notes following RCW 43.08.250.

Effective date—1995 1st sp.s. c 15: See note following RCW 70.05.125.

Effective dates—1993 sp.s. c 21: See note following RCW 82.14.310.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective date—1993 c 491: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1993." [1993 c 491 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

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

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective date—Severability—1977 ex.s. c 332: See notes following RCW 82.44.020.

Effective dates—1974 ex.s. c 54: "Section 6 of this 1974 amendatory act shall not take effect until June 30, 1981, and the remainder of this 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1974 ex.s. c 54 § 13.]

Severability—1974 ex.s. c 54: "If any provision of this 1974 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 54 § 14.]

82.44.110 Repealed. (*Effective if Initiative Measure No. 776 is upheld by pending court action.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Reviser's note: The constitutionality of Initiative Measure No. 776 is being challenged in *Pierce Co. v. State of Washington*, King Co. Superior Ct. No. 02-2-35125-5 SEA.

82.44.120 Refunds, collections of erroneous amounts—Claims—False statement, penalty. (*Effective July 1, 2004.*)

(1) Whenever any person has paid a motor vehicle license fee, and together therewith has paid an excise tax imposed under the provisions of this chapter, and the director determines that the payor is entitled to a refund of the entire amount of the license fee as provided by law, then the payor shall also be entitled to a refund of the entire excise tax collected under the provisions of this chapter. In case the director determines that any person is entitled to a refund of only a part of the license fee so paid, the payor shall be entitled to a refund of the difference, if any, between the excise tax collected and that which should have been collected.

(2) In case no claim is to be made for the refund of the license fee or any part thereof, but claim is made by any person that he or she has paid an erroneously excessive amount of excise tax, the department shall determine in the manner generally provided in this chapter the amount of such excess, if any, that has been paid and shall certify to the state treasurer that such person is entitled to a refund in such amount.

(3) In any case where due to error, a person has been required to pay an excise tax pursuant to this chapter and a

vehicle license fee pursuant to Title 46 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, regardless of whether or not a refund of the overpayment has been requested. Conversely, if due to error, the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax.

(4) Any claim for refund of an erroneously excessive amount of excise tax or overpayment of excise tax with a motor vehicle license fee must be filed with the director within three years after the claimed erroneous payment was made.

(5) If the department approves the claim it shall notify the state treasurer to that effect, and the treasurer shall make such approved refunds from the general fund and shall mail or deliver the same to the person entitled thereto.

(6) Any person making any false statement under which he or she obtains any amount of refund to which he or she is not entitled under the provisions of this section is guilty of a gross misdemeanor. [2003 c 53 § 403; 1993 c 307 § 3; 1990 c 42 § 307; 1989 c 68 § 2; 1983 c 26 § 3; 1979 c 120 § 2; 1975 1st ex.s. c 278 § 95; 1974 ex.s. c 54 § 4; 1967 c 121 § 2; 1963 c 199 § 5; 1961 c 15 § 82.44.120. Prior: 1949 c 196 § 18; 1945 c 152 § 3; 1943 c 144 § 11; Rem. Supp. 1949 § 6312-125.]

Reviser's note: See note following RCW 82.44.010.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

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

Severability—Effective dates—1974 ex.s. c 54: See notes following RCW 82.44.110.

82.44.150 Apportionment and distribution of motor vehicle excise taxes generally. (*Effective if Initiative Measure No. 776 is declared unconstitutional by pending court action.*) (1) The director of licensing shall, on the twenty-fifth day of February, May, August, and November of each year, advise the state treasurer of the total amount of motor vehicle excise taxes imposed by *RCW 82.44.020(1) remitted to the department during the preceding calendar quarter ending on the last day of March, June, September, and December, respectively, except for those payable under *RCW 82.44.030, from motor vehicle owners residing within each municipality which has levied a tax under **RCW 35.58.273, which amount of excise taxes shall be determined by the director as follows:

The total amount of motor vehicle excise taxes remitted to the department, except those payable under *RCW 82.44.020(2) and 82.44.030, from each county shall be multiplied by a fraction, the numerator of which is the population of the municipality residing in such county, and the denominator of which is the total population of the county in which such municipality or portion thereof is located. The product of this computation shall be the amount of excise taxes from motor vehicle owners residing within such municipality or portion thereof. Where the municipality levying a tax under **RCW 35.58.273 is located in more than one county, the above computation shall be made by county, and the combined products shall provide the total amount of motor vehicle excise taxes from motor vehicle owners residing in the municipality as a whole. Population figures required for these computations shall be supplied to the director by the office of financial management, who shall adjust the fraction annually.

(2) On the first day of the months of January, April, July, and October of each year, the state treasurer based upon information provided by the department shall, from motor vehicle excise taxes deposited in the transportation fund under RCW 82.44.110, make the following deposits:

(a) To the high capacity transportation account created in RCW 47.78.010, a sum equal to four and five-tenths percent of the special excise tax levied under **RCW 35.58.273 by those municipalities authorized to levy a special excise tax within each county that has a population of one hundred seventy-five thousand or more and has an interstate highway within its borders; except that in a case of a municipality located in a county that has a population of one hundred seventy-five thousand or more that does not have an interstate highway located within its borders, that sum shall be deposited in the passenger ferry account;

(b) To the public transportation systems account created in RCW 82.44.180, for revenues distributed after June 30, 1999, within a county with a population of one million or more and a county with a population of from two hundred thousand to less than one million bordering a county with a population of one million or more with which it shares a border of more than five miles, a sum equal to 6.8688 percent of the special excise tax distributed under **RCW 35.58.273; and

(c) To the public transportation systems account created in RCW 82.44.180, for revenues distributed after June 30, 1999, within counties not described in (b) of this subsection, a sum equal to 1.0534 percent of the special excise tax levied and collected under **RCW 35.58.273.

(3) On the first day of the months of January, April, July, and October of each year, the state treasurer, based upon information provided by the department, shall remit motor vehicle excise tax revenues imposed and collected under **RCW 35.58.273 as follows:

(a) The amount required to be remitted by the state treasurer to the treasurer of any municipality levying the tax shall not exceed in any calendar year the amount of locally-generated tax revenues, excluding (i) the excise tax imposed under **RCW 35.58.273 for the purposes of this section, which shall have been budgeted by the municipality to be collected in such calendar year for any public transportation purposes including but not limited to operating costs, capital costs, and debt service on general obligation or revenue bonds issued for these purposes; and (ii) the sales and use tax equalization distributions provided under RCW 82.14.046; and

(b) In no event may the amount remitted in a single calendar quarter exceed the amount collected on behalf of the municipality under **RCW 35.58.273 during the calendar quarter next preceding the immediately preceding quarter, excluding the sales and use tax equalization distributions provided under RCW 82.14.046.

(4) At the close of each calendar year accounting period, but not later than April 1, each municipality that has received motor vehicle excise taxes under subsection (3) of this section shall transmit to the director of licensing and the state auditor a written report showing by source the previous year's budgeted tax revenues for public transportation purposes as compared to actual collections. Any municipality that has not submitted the report by April 1 shall cease to be eligible to receive motor vehicle excise taxes under subsection (3) of this section until the report is received by the director of licensing. If a municipality has received more or less money under subsection (3) of this section for the period covered by the report than it is entitled to receive by reason of its locally-generated collected tax revenues, the director of licensing shall, during the next ensuing quarter that the municipality is eligible to receive motor vehicle excise tax funds, increase or decrease the amount to be remitted in an amount equal to the difference between the locally-generated budgeted tax revenues and the locally-generated collected tax revenues. In no event may the amount remitted for a calendar year exceed the amount collected on behalf of the municipality under **RCW 35.58.273 during that same calendar year excluding the sales and use tax equalization distributions provided under RCW 82.14.046. At the time of the next fiscal audit of each municipality, the state auditor shall verify the accuracy of the report submitted and notify the director of licensing of any discrepancies.

(5) The motor vehicle excise taxes imposed under **RCW 35.58.273 and required to be remitted under this section and RCW 82.14.046 shall be remitted without legislative appropriation.

(6) Any municipality levying and collecting a tax under **RCW 35.58.273 which does not have an operating, public transit system or a contract for public transportation services in effect within one year from the initial effective date of the tax shall return to the state treasurer all motor vehicle excise taxes received under subsection (3) of this section. [1999 c 94 § 30; 1998 c 321 § 6 (Referendum Bill No. 49, approved November 3, 1998); 1995 2nd sp.s. c 14 § 538; 1994 c 241 § 1; 1993 c 491 § 2. Prior: 1991 c 309 § 5; 1991 c 199 § 222; (1991 c 363 § 159 repealed by 1991 c 309 § 6); 1990 c 42 § 308; 1988 c 18 § 1; prior: 1987 1st ex.s. c 9 § 8; 1987 c 428 § 3; prior: 1982 1st ex.s. c 49 § 20; 1982 1st ex.s. c 35 § 13; 1979 ex.s. c 175 § 4; 1979 c 158 § 238; 1974 ex.s. c 54 § 5; 1972 ex.s. c 87 § 1; prior: 1971 ex.s. c 199 § 2; 1971 ex.s. c 80 § 1; 1969 ex.s. c 255 § 15; 1961 c 15 § 82.44.150; prior: 1957 c 175 § 12; 1945 c 152 § 5; 1943 c 144 § 14; Rem. Supp. 1945 § 6312-128.]

Reviser's note: (1) See note following RCW 82.44.010.

*(2) RCW 82.44.020 and 82.44.030 were repealed by 2000 1st sp.s. c 1 § 2.

** (3) RCW 35.58.273 was repealed by 2002 c 6 § 2.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.14.045.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.14.045.

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Effective date—1993 c 491: See note following RCW 82.44.110.

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Transitional distributions—1990 c 42: "Distributions under RCW 82.44.150 for excise taxes collected under RCW 35.58.273, before September 1, 1990, shall be under the provisions of RCW 82.44.150 as it existed before September 1, 1990." [1990 c 42 § 327.]

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

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Effective date—1987 c 428: See note following RCW 47.78.010.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective date—1979 ex.s. c 175: "Section 4 of this act shall take effect on January 1, 1980." [1979 ex.s. c 175 § 6.]

Severability—Effective dates—1974 ex.s. c 54: See notes following RCW 82.44.110.

82.44.150 Repealed. (*Effective if Initiative Measure No. 776 is upheld by pending court action.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Reviser's note: The constitutionality of Initiative Measure No. 776 is being challenged in *Pierce Co. v. State of Washington*, King Co. Superior Ct. No. 02-2-35125-5 SEA.

Chapter 82.45 RCW

EXCISE TAX ON REAL ESTATE SALES

Sections

82.45.090 Payment of tax and fee—Evidence of payment—Recording—Sale of beneficial interest. (*Effective July 1, 2004.*)

82.45.090 Payment of tax and fee—Evidence of payment—Recording—Sale of beneficial interest. (*Effective July 1, 2004.*) (1) Except for a sale of a beneficial interest in real property where no instrument evidencing the sale is recorded in the official real property records of the county in which the property is located, the tax imposed by this chapter shall be paid to and collected by the treasurer of the county within which is located the real property which was sold. In collecting the tax the treasurer shall act as agent for the state. The county treasurer shall cause a stamp evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales and used

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floating home sales. A receipt issued by the county treasurer for the payment of the tax imposed under this chapter shall be evidence of the satisfaction of the lien imposed hereunder and may be recorded in the manner prescribed for recording satisfactions of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax shall be accepted by the county auditor for filing or recording until the tax shall have been paid and the stamp affixed thereto; in case the tax is not due on the transfer, the instrument shall not be so accepted until suitable notation of such fact has been made on the instrument by the treasurer.

(2) For a sale of a beneficial interest in real property where a tax is due under this chapter and where no instrument is recorded in the official real property records of the county in which the property is located, the sale shall be reported to the department of revenue within five days from the date of the sale on such returns or forms and according to such procedures as the department may prescribe. Such forms or returns shall be signed by both the transferor and the transferee and shall be accompanied by payment of the tax due.

(3) Any person who intentionally makes a false statement on any return or form required to be filed with the department under this chapter is guilty of perjury under chapter 9A.72 RCW. [2003 c 53 § 404; 1993 sp.s. c 25 § 506; 1991 c 327 § 6; 1990 c 171 § 7; 1984 c 192 § 2; 1980 c 154 § 4; 1979 ex.s. c 266 § 2; 1969 ex.s. c 223 § 28A.45.090. Prior: 1951 2nd ex.s. c 19 § 4; 1951 1st ex.s. c 11 § 11. Formerly RCW 28A.45.090, 28.45.090.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Effective date—1990 c 171 §§ 6, 7, 8: "Sections 6, 7, and 8 of this act shall take effect July 1, 1990." [1990 c 171 § 11.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Chapter 82.49 RCW

WATERCRAFT EXCISE TAX

Sections

82.49.065 Refunds, collections of erroneous amounts—Claims—Penalty for false statement. (*Effective July 1, 2004.*)

82.49.065 Refunds, collections of erroneous amounts—Claims—Penalty for false statement. (*Effective July 1, 2004.*) (1) Whenever any person has paid a vessel license fee, and with the fee has paid an excise tax imposed under this chapter, and the director of licensing determines that the payor is entitled to a refund of the entire amount of the license fee as provided by law, then the payor shall also be entitled to a refund of the entire excise tax collected under this chapter together with interest at the rate specified in RCW 82.32.060. If the director determines that any person is entitled to a refund of only a part of the license fee paid, the payor shall be entitled to a refund of the difference, if any, between the excise tax collected and that which should have been collected together with interest at the rate specified in RCW 82.32.060. The state treasurer shall determine the amount of such refund by reference to the applicable excise

tax schedule prepared by the department of revenue in cooperation with the department of licensing.

(2) If no claim is to be made for the refund of the license fee, or any part of the fee, but claim is made by any person that he or she has paid an erroneously excessive amount of excise tax, the department of licensing shall determine in the manner generally provided in this chapter the amount of such excess, if any, that has been paid and shall certify to the state treasurer that the person is entitled to a refund in that amount together with interest at the rate specified in RCW 82.32.060.

(3) If due to error a person has been required to pay an excise tax pursuant to this chapter and a license fee under chapter 88.02 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, together with interest at the rate specified in RCW 82.32.060, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and any penalties or interest at the rate specified in RCW 82.32.050.

(4) If the department approves the claim, it shall notify the state treasurer to that effect and the treasurer shall make such approved refunds and the other refunds provided for in this section from the general fund and shall mail or deliver the same to the person entitled to the refund.

(5) Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor. [2003 c 53 § 405; 1992 c 154 § 4; 1989 c 68 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—1992 c 154: See note following RCW 82.48.020.

Chapter 82.50 RCW

TRAVEL TRAILERS AND CAMPERS EXCISE TAX

Sections

82.50.170 Refund, collection of erroneous amounts—Penalty for false statement. (*Effective July 1, 2004.*)

82.50.170 Refund, collection of erroneous amounts—Penalty for false statement. (*Effective July 1, 2004.*) (1) In case a claim is made by any person that the person has erroneously paid the tax or a part thereof or any charge hereunder, the person may apply in writing to the department of licensing for a refund of the amount of the claimed erroneous payment within thirteen months of the time of payment of the tax on such a form as is prescribed by the department of licensing. The department of licensing shall review such application for refund, and, if it determines that an erroneous payment has been made by the taxpayer, it shall certify the amount to be refunded to the state treasurer that such person is entitled to a refund in such amount together with interest at the rate specified in RCW 82.32.060, and the treasurer shall make such approved refund together with interest at the rate specified in RCW 82.32.060 herein provided for from the general fund and shall mail or deliver the same to the person entitled thereto.

(2) If due to error a person has been required to pay an excise tax under this chapter and a vehicle license fee under Title 46 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, together with interest at the rate specified in RCW 82.32.060, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and any penalties or interest at the rate specified in RCW 82.32.050.

(3) Any person making any false statement in the claim herein mentioned, under which the person obtains any amount of refund to which the person is not entitled under the provisions of this section, is guilty of a gross misdemeanor. [2003 c 53 § 406; 1992 c 154 § 6. Prior: 1989 c 378 § 26; 1989 c 68 § 4; 1981 c 260 § 16; prior: 1975 1st ex.s. c 278 § 97; 1975 1st ex.s. c 9 § 1; 1974 ex.s. c 54 § 9; 1961 c 15 § 82.50.170; prior: 1955 c 139 § 17.]

Reviser's note: See note following RCW 82.50.010.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—1992 c 154: See note following RCW 82.48.020.

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

Severability—Effective dates—1974 ex.s. c 54: See notes following RCW 82.44.110.

Chapter 82.68 RCW

SALES AND USE TAX DEFERRALS FOR THE MANUFACTURE OF BIODIESEL AND ALCOHOL FUEL

Sections

- 82.68.010 Definitions. (*Contingent effective date.*)
- 82.68.020 Application for deferral of taxes. (*Contingent effective date.*)
- 82.68.030 Sales and use tax deferral certificate. (*Contingent effective date.*)
- 82.68.040 Additional investment projects that qualify for sales and use tax deferral. (*Contingent effective date.*)
- 82.68.050 Yearly report. (*Contingent effective date.*)
- 82.68.060 Employment and wage certification by employment security department. (*Contingent effective date.*)
- 82.68.070 Applicability of general administrative provisions. (*Contingent effective date.*)
- 82.68.080 Confidentiality. (*Contingent effective date.*)

82.68.010 Definitions. (*Contingent effective date.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Alcohol fuel" has the same meaning as provided in RCW 82.29A.135.

(2) "Applicant" means a person applying for a tax deferral under this chapter.

(3) "Biodiesel feedstock" means oil that is produced from an agricultural crop for the sole purpose of ultimately producing biodiesel fuel.

(4) "Biodiesel fuel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

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

(6) "Eligible area" means a county with fewer than one hundred persons per square mile as determined annually by the office of financial management and published by the department effective for the period July 1st through June 30th, or a county that has a population of less than two hundred twenty-five thousand as determined by the office of financial management and has an area greater than two hundred twenty-five square miles.

(7)(a) "Eligible investment project" means an investment project in an eligible area.

(b) The lessor or owner of a qualified building is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(c) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010(5), other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part, or investment projects which have already received deferrals under this chapter.

(8) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(9) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(10) "Person" has the meaning given in RCW 82.04.030.

(11) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(12) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

(13) "Recipient" means a person receiving a tax deferral under this chapter.

(14) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars. [2003 c 261 § 1.]

Effective dates—2003 c 261: See note following RCW 82.68.030.

Contingency—2003 c 261 §§ 1-8: See note following RCW 82.68.030.

82.68.020 Application for deferral of taxes. (Contingent effective date.) (1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department.

(2) The department shall rule on the application within sixty days. The department shall keep a running total of all deferrals granted under this chapter during each fiscal biennium. [2003 c 261 § 2.]

Effective dates—2003 c 261: See note following RCW 82.68.030.

Contingency—2003 c 261 §§ 1-8: See note following RCW 82.68.030.

82.68.030 Sales and use tax deferral certificate. (Contingent effective date.) (1) The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project that is located in an eligible area as defined in RCW 82.68.010, if the investment project is undertaken for the purpose of manufacturing biodiesel, biodiesel feedstock, or alcohol fuel.

(2) This section expires July 1, 2009. [2003 c 261 § 3.]

Effective dates—2003 c 261: "(1) Sections 9 through 15 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of state government and its existing public institutions, and take effect July 1, 2003.

(2) Sections 1 through 8 of this act take effect July 1, 2004." [2003 c 261 § 13.]

Contingency—2003 c 261 §§ 1-8: "Sections 1 through 8 of this act are null and void if the legislature passes and the governor signs any bill into law before July 1, 2004, that extends the termination date in RCW 82.60.050." [2003 c 261 § 14.]

82.68.040 Additional investment projects that qualify for sales and use tax deferral. (Contingent effective date.) (1) For the purposes of this section:

(a) "Eligible area" means a designated community empowerment zone approved under RCW 43.31C.020 or a county containing a community empowerment zone.

(b) "Eligible investment project" means an investment project undertaken for the purpose of manufacturing biodiesel, biodiesel feedstock, or alcohol fuel that is located in an eligible area.

(c) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire year.

(2) In addition to the provisions of RCW 82.68.030, the department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW, on each eligible investment project that is located in an eligible area, if the applicant establishes that at the time the project is operationally complete:

(a) The applicant will hire at least one qualified employment position for each seven hundred fifty thousand dollars of investment on which a deferral is requested; and

(b) The positions will be filled by persons who at the time of hire are residents of the community empowerment zone. As used in this subsection, "resident" means the person makes his or her home in the community empowerment zone. A mailing address alone is insufficient to establish that a person is a resident for the purposes of this section. The persons must be hired after the date the application is filed with the department.

(3) All other provisions and eligibility requirements of this chapter apply to applicants eligible under this section.

(4) The qualified employment position must be filled by the end of the calendar year following the year in which the project is certified as operationally complete. If a person does not meet the requirements for qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due. [2003 c 261 § 4.]

Effective dates—2003 c 261: See note following RCW 82.68.030.

Contingency—2003 c 261 §§ 1-8: See note following RCW 82.68.030.

82.68.050 Yearly report. (Contingent effective date.)

(1) Each recipient of a deferral granted under this chapter after June 30, 2003, shall submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report shall contain information, as required by the department, from which the department may determine whether the recipient is meeting the requirements of this chapter. If the recipient fails to submit a report or submits an inadequate report, the department may declare the amount of deferred taxes outstanding to be immediately assessed and payable.

(2) If, on the basis of a report under this section or other information, the department finds that an investment project is not eligible for tax deferral under this chapter, the amount of deferred taxes outstanding for the project are immediately due. For any taxes that are due, penalties and interest applicable to delinquent excise taxes shall be assessed and imposed for delinquent payments under this chapter. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(3) Deferred taxes need not be repaid if the department determines, in accordance with the provisions of subsection (1) of this section, that the recipient has met the requirements of this chapter for the seven calendar years following the certification by the department that the investment project has been operationally completed. [2003 c 261 § 5.]

Effective dates—2003 c 261: See note following RCW 82.68.030.

Contingency—2003 c 261 §§ 1-8: See note following RCW 82.68.030.

82.68.060 Employment and wage certification by employment security department. (Contingent effective date.) The employment security department shall make, and certify to the department of revenue, all determinations of employment and wages as requested by the department under this chapter. [2003 c 261 § 6.]

Effective dates—2003 c 261: See note following RCW 82.68.030.

Contingency—2003 c 261 §§ 1-8: See note following RCW 82.68.030.

82.68.070 Applicability of general administrative provisions. (Contingent effective date.) Chapter 82.32 RCW applies to the administration of this chapter. [2003 c 261 § 7.]

Effective dates—2003 c 261: See note following RCW 82.68.030.

Contingency—2003 c 261 §§ 1-8: See note following RCW 82.68.030.

82.68.080 Confidentiality. (Contingent effective date.) Applications, reports, and any other information received by the department under this chapter shall not be confidential and shall be subject to disclosure. [2003 c 261 § 8.]

Effective dates—2003 c 261: See note following RCW 82.68.030.

Contingency—2003 c 261 §§ 1-8: See note following RCW 82.68.030.

Chapter 82.69 RCW

SALES AND USE TAX DEFERRALS FOR THE MANUFACTURE OF WOOD BIOMASS FUEL

Sections

82.69.010	Definitions. (<i>Contingent effective date.</i>)
82.69.020	Application for deferral of taxes. (<i>Contingent effective date.</i>)
82.69.030	Sales and use tax deferral certificate. (<i>Contingent effective date.</i>)
82.69.040	Additional investment projects that qualify for sales and use tax deferral. (<i>Contingent effective date.</i>)
82.69.050	Yearly report. (<i>Contingent effective date.</i>)
82.69.060	Employment and wage certification by employment security department. (<i>Contingent effective date.</i>)
82.69.070	Applicability of general administrative provisions. (<i>Contingent effective date.</i>)
82.69.080	Confidentiality. (<i>Contingent effective date.</i>)

82.69.010 Definitions. (Contingent effective date.)

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

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Department" means the department of revenue.

(3) "Eligible area" means a county with fewer than one hundred persons per square mile as determined annually by the office of financial management and published by the department effective for the period July 1st through June 30th, or a county that has a population of less than two hundred twenty-five thousand as determined by the office of

financial management and has an area greater than two hundred twenty-five square miles.

(4)(a) "Eligible investment project" means an investment project in an eligible area.

(b) The lessor or owner of a qualified building is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(c) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010(5), other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part, or investment projects which have already received deferrals under this chapter.

(5) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(6) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(7) "Person" has the meaning given in RCW 82.04.030.

(8) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(9) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

(10) "Recipient" means a person receiving a tax deferral under this chapter.

(11) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(12) "Wood biomass fuel" means a pyrolytic liquid fuel or synthesis gas-derived liquid fuel, used in internal combustion engines, and produced from wood, forest, or field residue, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic. [2003 c 339 § 1.]

Effective dates—2003 c 339: See note following RCW 82.69.030.

Contingency—2003 c 339 §§ 1-8: See note following RCW 82.69.030.

82.69.020 Application for deferral of taxes. (*Contingent effective date.*) (1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department.

(2) The department shall rule on the application within sixty days. The department shall keep a running total of all deferrals granted under this chapter during each fiscal biennium. [2003 c 339 § 2.]

Effective dates—2003 c 339: See note following RCW 82.69.030.

Contingency—2003 c 339 §§ 1-8: See note following RCW 82.69.030.

82.69.030 Sales and use tax deferral certificate. (*Contingent effective date.*) (1) The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project that is located in an eligible area as defined in RCW 82.69.010, if the investment project is undertaken for the purpose of manufacturing wood biomass fuel.

(2) This section expires July 1, 2009. [2003 c 339 § 3.]

Effective dates—2003 c 339: "(1) Sections 9 through 15 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2003.

(2) Sections 1 through 8 of this act take effect July 1, 2004." [2003 c 339 § 16.]

Contingency—2003 c 339 §§ 1-8: "Sections 1 through 8 of this act are null and void if the legislature passes and the governor signs any bill into law before July 1, 2004, that extends the expiration date in RCW 82.60.050." [2003 c 339 § 17.]

82.69.040 Additional investment projects that qualify for sales and use tax deferral. (*Contingent effective date.*) (1) For the purposes of this section:

(a) "Eligible area" means a designated community empowerment zone approved under RCW 43.31C.020 or a county containing a community empowerment zone.

(b) "Eligible investment project" means an investment project undertaken for the purpose of manufacturing wood biomass fuel that is located in an eligible area.

(c) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire year.

(2) In addition to the provisions of RCW 82.69.030, the department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW, on each eligible investment project that is located in an eligible area, if the applicant establishes that at the time the project is operationally complete:

(a) The applicant will hire at least one qualified employment position for each seven hundred fifty thousand dollars of investment on which a deferral is requested; and

(b) The positions will be filled by persons who at the time of hire are residents of the community empowerment zone. As used in this subsection, "resident" means the person makes his or her home in the community empowerment zone. A mailing address alone is insufficient to establish that a person is a resident for the purposes of this section. The persons must be hired after the date the application is filed with the department.

(3) All other provisions and eligibility requirements of this chapter apply to applicants eligible under this section.

(4) The qualified employment position must be filled by the end of the calendar year following the year in which the project is certified as operationally complete. If a person does not meet the requirements for qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due. [2003 c 339 § 4.]

Effective dates—2003 c 339: See note following RCW 82.69.030.

Contingency—2003 c 339 §§ 1-8: See note following RCW 82.69.030.

82.69.050 Yearly report. (Contingent effective date.)

(1) Each recipient of a deferral granted under this chapter after June 30, 2003, shall submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report shall contain information, as required by the department, from which the department may determine whether the recipient is meeting the requirements of this chapter. If the recipient fails to submit a report or submits an inadequate report, the department may declare the amount of deferred taxes outstanding to be immediately assessed and payable.

(2) If, on the basis of a report under this section or other information, the department finds that an investment project is not eligible for tax deferral under this chapter, the amount of deferred taxes outstanding for the project are immediately due. For any taxes that are due, penalties and interest applicable to delinquent excise taxes shall be assessed and imposed for delinquent payments under this chapter. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(3) Deferred taxes need not be repaid if the department determines, in accordance with the provisions of subsection (1) of this section, that the recipient has met the requirements of this chapter for the seven calendar years following the cer-

tification by the department that the investment project has been operationally completed. [2003 c 339 § 5.]

Effective dates—2003 c 339: See note following RCW 82.69.030.

Contingency—2003 c 339 §§ 1-8: See note following RCW 82.69.030.

82.69.060 Employment and wage certification by employment security department. (Contingent effective date.) The employment security department shall make, and certify to the department of revenue, all determinations of employment and wages as requested by the department under this chapter. [2003 c 339 § 6.]

Effective dates—2003 c 339: See note following RCW 82.69.030.

Contingency—2003 c 339 §§ 1-8: See note following RCW 82.69.030.

82.69.070 Applicability of general administrative provisions. (Contingent effective date.) Chapter 82.32 RCW applies to the administration of this chapter. [2003 c 339 § 7.]

Effective dates—2003 c 339: See note following RCW 82.69.030.

Contingency—2003 c 339 §§ 1-8: See note following RCW 82.69.030.

82.69.080 Confidentiality. (Contingent effective date.) Applications, reports, and any other information received by the department under this chapter shall not be confidential and shall be subject to disclosure. [2003 c 339 § 8.]

Effective dates—2003 c 339: See note following RCW 82.69.030.

Contingency—2003 c 339 §§ 1-8: See note following RCW 82.69.030.

Chapter 82.70 RCW

COMMUTE TRIP REDUCTION INCENTIVES

Sections

82.70.010	Definitions. <i>(Expires July 1, 2013.)</i>
82.70.020	Tax credit authorized. <i>(Expires July 1, 2013.)</i>
82.70.030	Application for tax credit. <i>(Expires July 1, 2013.)</i>
82.70.040	Tax credit limitations. <i>(Expires July 1, 2013.)</i>
82.70.050	Fund transfer. <i>(Expires January 1, 2014.)</i>
82.70.060	Commute trip reduction task force report. <i>(Expires July 1, 2013.)</i>
82.70.070	Administration. <i>(Expires July 1, 2013.)</i>
82.70.900	Expiration of chapter. <i>(Expires July 1, 2013.)</i>

82.70.010 Definitions. (Expires July 1, 2013.) The definitions in this section apply throughout this chapter and RCW 70.94.996 unless the context clearly requires otherwise.

(1) "Public agency" means any county, city, or other local government agency or any state government agency, board, or commission.

(2) "Public transportation" means the same as "public transportation service" as defined in RCW 36.57A.010 and includes passenger services of the Washington state ferries.

(3) "Nonmotorized commuting" means commuting to and from the workplace by an employee by walking or running or by riding a bicycle or other device not powered by a motor.

(4) "Ride sharing" means the same as "flexible commuter ride sharing" as defined in RCW 46.74.010, including ride sharing on Washington state ferries.

(5) "Car sharing" means a membership program intended to offer an alternative to car ownership under which persons

or entities that become members are permitted to use vehicles from a fleet on an hourly basis.

(6) "Telework" means a program where work functions that are normally performed at a traditional workplace are instead performed by an employee at his or her home at least one day a week for the purpose of reducing the number of trips to the employee's workplace. [2003 c 364 § 1.]

Effective date—Contingency—Captions not law—2003 c 364: See notes following RCW 82.70.020.

82.70.020 Tax credit authorized. (Expires July 1, 2013.) (1) Employers in this state who are taxable under chapter 82.04 or 82.16 RCW and provide financial incentives to their own or other employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting before July 1, 2013, are allowed a credit against taxes payable under chapters 82.04 and 82.16 RCW for amounts paid to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, not to exceed sixty dollars per employee per year.

(2) Property managers who are taxable under chapter 82.04 or 82.16 RCW and provide financial incentives to persons employed at a worksite in this state managed by the property manager for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting before July 1, 2013, are allowed a credit against taxes payable under chapters 82.04 and 82.16 RCW for amounts paid to or on behalf of these persons for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, not to exceed sixty dollars per person per year.

(3) The credit under this section is equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per year. The credit may not exceed the amount of tax that would otherwise be due under chapters 82.04 and 82.16 RCW.

(4) A person may not receive credit under this section for amounts paid to or on behalf of the same employee under both chapters 82.04 and 82.16 RCW.

(5) A person may not take a credit under this section for amounts claimed for credit by other persons. [2003 c 364 § 2.]

Effective date—Contingency—2003 c 364: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect on July 1, 2003, but only if Engrossed Substitute House Bill No. 2231 becomes law by July 1, 2003. If Engrossed Substitute House Bill No. 2231 does not become law by July 1, 2003, this act is null and void." [2003 c 364 § 13.] Engrossed Substitute House Bill No. 2231 was signed into law by the governor on May 19, 2003.

Captions not law—2003 c 364: "Captions used in this act are not part of the law." [2003 c 364 § 14.]

82.70.030 Application for tax credit. (Expires July 1, 2013.) (1) Application for tax credit under RCW 82.70.020 may only be made in the form and manner prescribed in rules adopted by the department.

(2) The credit under this section must be taken or deferred under RCW 82.70.040 against taxes due for the same fiscal year in which the amounts for which credit is

claimed were paid to or on behalf of employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting and must be claimed by the due date of the last tax return for the fiscal year in which the payment is made.

(3) Any person who knowingly makes a false statement of a material fact in the application for a credit under RCW 82.70.020 is guilty of a gross misdemeanor. [2003 c 364 § 3.]

Effective date—Contingency—Captions not law—2003 c 364: See notes following RCW 82.70.020.

82.70.040 Tax credit limitations. (Expires July 1, 2013.) (1) The department shall keep a running total of all credits accrued under RCW 82.70.020 during each fiscal year. No person is eligible for tax credits under RCW 82.70.020 if the credits would cause the tabulation for the total amount of credits taken in any fiscal year to exceed two million two hundred fifty thousand dollars. This limitation includes any credits carried forward under subsection (2)(b) of this section from prior years.

(2)(a) No person is eligible for tax credits under RCW 82.70.020 in excess of the amount of tax that would otherwise be due under chapter 82.04 or 82.16 RCW.

(b) A person with taxes equal to or in excess of the credit under RCW 82.70.020, and therefore not subject to the limitation in (a) of this subsection, may defer tax credits for a period of not more than three years after the year in which the credits accrue. A person deferring tax credits under this subsection (2)(b) must submit an application in the year in which the tax credits will be applied. This application is subject to eligibility under subsection (1) of this section for the fiscal year in which the tax credits will be applied.

(3) No person is eligible for tax credits under RCW 82.70.020 in excess of two hundred thousand dollars in any fiscal year. This limitation does not apply to credits deferred in prior years under subsection (2)(b) of this section.

(4) No person is eligible for tax credits, including deferred credits authorized under subsection (2)(b) of this section, after June 30, 2013.

(5) Credits may not be carried forward or carried backward other than as authorized in subsection (2)(b) of this section.

(6) No person is eligible for tax credits under RCW 82.70.020 if the additional revenues for the multimodal transportation account created by Engrossed Substitute House Bill No. 2231 are terminated. [2003 c 364 § 4.]

Effective date—Contingency—Captions not law—2003 c 364: See notes following RCW 82.70.020.

82.70.050 Fund transfer. (Expires January 1, 2014.) (1) The director shall on the 25th of February, May, August, and November of each year advise the state treasurer of the amount of credit taken under RCW 82.70.020 during the preceding calendar quarter ending on the last day of December, March, June, and September, respectively.

(2) On the last day of March, June, September, and December of each year, the state treasurer, based upon information provided by the department, shall deposit to the general fund a sum equal to the dollar amount of the credit provided under RCW 82.70.020 from the multimodal transportation account. [2003 c 364 § 5.]

Effective date—Contingency—Captions not law—2003 c 364: See notes following RCW 82.70.020.

82.70.060 Commute trip reduction task force report. (Expires July 1, 2013.) The commute trip reduction task force shall determine the effectiveness of the tax credit under RCW 82.70.020, the grant program in RCW 70.94.996, and the relative effectiveness of the tax credit and the grant program as part of its ongoing evaluation of the commute trip reduction law and report to the legislative transportation committee and to the fiscal committees of the house of representatives and the senate. The report must include information on the amount of tax credits claimed to date and recommendations on future funding between the tax credit program and the grant program. The report must be incorporated into the recommendations required in RCW 70.94.537(5). [2003 c 364 § 6.]

Effective date—Contingency—Captions not law—2003 c 364: See notes following RCW 82.70.020.

82.70.070 Administration. (Expires July 1, 2013.) Chapter 82.32 RCW applies to the administration of this chapter. [2003 c 364 § 7.]

Effective date—Contingency—Captions not law—2003 c 364: See notes following RCW 82.70.020.

82.70.900 Expiration of chapter. (Expires July 1, 2013.) This chapter expires July 1, 2013, except for RCW 82.70.050, which expires January 1, 2014. [2003 c 364 § 8.]

Effective date—Contingency—Captions not law—2003 c 364: See notes following RCW 82.70.020.

Chapter 82.71 RCW

QUALITY MAINTENANCE FEE ON NURSING FACILITY OPERATORS

Sections

82.71.010	Definitions. (<i>Contingent expiration date.</i>)
82.71.020	Fee imposed. (<i>Contingent expiration date.</i>)
82.71.030	Administration of chapter. (<i>Contingent expiration date.</i>)

82.71.010 Definitions. (Contingent expiration date.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Gross income" means all revenue, without deduction, that is derived from the performance of nursing facility services. "Gross income" does not include other operating revenue or nonoperating revenue.

(3) "Other operating revenue" means income from non-patient care services to patients, as well as sales and activities to persons other than patients. It is derived in the course of operating the facility, such as providing personal laundry service for patients, or from other sources such as meals provided to persons other than patients, personal telephones, gift shops, and vending machine commissions.

(4) "Nonoperating revenue" means income from activities not relating directly to the day-to-day operations of an organization. "Nonoperating revenue" includes such items as gains on disposal of a facility's assets, dividends, and interest from security investments, gifts, grants, and endowments.

(5) "Patient day" means a calendar day of care provided to a nursing facility resident, excluding a medicare patient day. Patient days include the day of admission and exclude the day of discharge; except that, when admission and discharge occur on the same day, one day of care shall be deemed to exist.

(6) "Medicare patient day" means a patient day for medicare beneficiaries on a medicare Part A stay and a patient day for persons who have opted for managed care coverage using their medicare benefit.

(7) "Nonexempt nursing facility" means a nursing facility that is not exempt from the quality maintenance fee under RCW 74.46.091.

(8) "Nursing facility" has the same meaning as the term is defined in RCW 18.51.010; it does not include a boarding home as defined in RCW 18.20.020 or an adult family home as defined in RCW 70.128.010.

(9) "Nursing facility operator" means a person who engages in the business of operating a nursing facility or facilities within this state.

(10) "Nursing facility services" means health-related services to individuals who do not require hospital care, but whose mental or physical condition requires services that are above the level of room and board and can be made available only through institutional facilities. [2003 1st sp.s. c 16 § 1.]

Contingent expiration date—Severability—Effective date—2003 1st sp.s. c 16: See notes following RCW 82.71.020.

82.71.020 Fee imposed. (Contingent expiration date.)

(1) In addition to any other tax, a quality maintenance fee is imposed on every operator of a nonexempt nursing facility in this state. The quality maintenance fee shall be six dollars and fifty cents per patient day.

(2) Each operator of a nonexempt nursing facility shall file a return with the department on a monthly basis. The return shall include the following:

(a) The number of patient days for nonexempt nursing facilities operated by that person in that month; and

(b) Remittance of the nonexempt nursing facility operator's quality maintenance fee for that month. [2003 1st sp.s. c 16 § 2.]

Contingent expiration date—2003 1st sp.s. c 16: "(1) Sections 1 through 5 of this act shall expire on the effective date that federal medicaid matching funds are substantially reduced or that a federal sanction is imposed due to the quality maintenance fee under section 2 of this act, as such date is certified by the secretary of social and health services.

(2) The expiration of sections 1 through 5 of this act shall not be construed as affecting any existing right acquired or liability or obligation incurred under those sections or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [2003 1st sp.s. c 16 § 6.]

Severability—2003 1st sp.s. c 16: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 16 § 7.]

Effective date—2003 1st sp.s. c 16: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 1st sp.s. c 16 § 9.]

82.71.030 Administration of chapter. (Contingent expiration date.) All of chapter 82.32 RCW, except RCW 82.32.270, applies to the fee imposed by this chapter, in addition to

tion to any other provisions of law for the payment and enforcement of the fee imposed by this chapter. The department may adopt rules, in accordance with chapter 34.05 RCW, as necessary to provide for the effective administration of this chapter. [2003 1st sp.s. c 16 § 3.]

Contingent expiration date—Severability—Effective date—2003 1st sp.s. c 16: See notes following RCW 82.71.020.

Chapter 82.80 RCW

LOCAL OPTION TRANSPORTATION TAXES

Sections

82.80.010	Motor vehicle and special fuel tax.
82.80.020	Vehicle license fee—Exemptions—Limitations. (<i>Effective if Initiative Measure No. 776 is declared unconstitutional by pending court action.</i>)
82.80.020	Repealed. (<i>Effective if Initiative Measure No. 776 is upheld by pending court action.</i>)
82.80.110	Motor vehicle and special fuel tax—Dedication by county to regional transportation investment district plan.
82.80.120	Motor vehicle and special fuel tax—Regional transportation investment district.
82.80.130	Passenger-only ferry service—Local option motor vehicle excise tax authorized.

82.80.010 Motor vehicle and special fuel tax. (1) For purposes of this section:

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW 82.36.010 and 82.38.020, respectively, and sells or distributes the fuel into a county;

(b) "Person" has the same meaning as in RCW 82.04.030.

(2) Subject to the conditions of this section, any county may levy, by approval of its legislative body and a majority of the registered voters of the county voting on the proposition at a general or special election, additional excise taxes equal to ten percent of the statewide motor vehicle fuel tax rate under RCW 82.36.025 on each gallon of motor vehicle fuel as defined in RCW 82.36.010 and on each gallon of special fuel as defined in RCW 82.38.020 sold within the boundaries of the county. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the county fuel excise tax. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition shall state the tax rate that is proposed. The county's authority to levy additional excise taxes under this section includes the incorporated and unincorporated areas of the county. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapters 82.36 and 82.38 RCW. The proposed tax shall not be levied less than one month from the date the election results are certified by the county election officer. The commencement date for the levy of any tax under this section shall be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on each gallon of motor vehicle fuel and on each gallon of special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the bound-

aries of a county to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a county shall contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer shall distribute monthly to the levying county and cities contained therein the proceeds of the additional excise taxes collected under this section, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b) and under the conditions and limitations provided in RCW 82.80.080.

(8) The proceeds of the additional excise taxes levied under this section shall be used strictly for transportation purposes in accordance with RCW 82.80.070.

(9) A county may not levy the tax under this section if they are levying the tax in RCW 82.80.110 or if they are a member of a regional transportation investment district levying the tax in RCW 82.80.120. [2003 c 350 § 1; 1998 c 176 § 86; 1991 c 339 § 12; 1990 c 42 § 201.]

Rules—Findings—Effective date—1998 c 176: See RCW 82.36.800, 82.36.900, and 82.36.901.

82.80.020 Vehicle license fee—Exemptions—Limitations. (*Effective if Initiative Measure No. 776 is declared unconstitutional by pending court action.*) (1) The legislative authority of a county, or subject to subsection (7) of this section, a qualifying city or town located in a county that has not imposed a fifteen-dollar fee under this section, may fix and impose an additional fee, not to exceed fifteen dollars per vehicle, for each vehicle that is subject to license fees under RCW 46.16.0621 and for each vehicle that is subject to RCW 46.16.070 with an unladen weight of six thousand pounds or less, and that is determined by the department of licensing to be registered within the boundaries of the county.

(2) The department of licensing shall administer and collect the fee. The department shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected, for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer for monthly distribution under RCW 82.80.080.

(3) The proceeds of this fee shall be used strictly for transportation purposes in accordance with RCW 82.80.070.

(4) A county or qualifying city or town imposing this fee or initiating an exemption process shall delay the effective date at least six months from the date the ordinance is enacted to allow the department of licensing to implement administration and collection of or exemption from the fee.

(5) The legislative authority of a county or qualifying city or town may develop and initiate an exemption process of the fifteen dollar fee for the registered owners of vehicles residing within the boundaries of the county or qualifying city or town: (a) Who are sixty-one years old or older at the time payment of the fee is due and whose household income for the previous calendar year is less than an amount prescribed by the county or qualifying city or town legislative authority; or (b) who have a physical disability.

(6) The legislative authority of a county or qualifying city or town shall develop and initiate an exemption process of the fifteen-dollar fee for vehicles registered within the boundaries of the county that are licensed under RCW 46.16.374.

(7) For purposes of this section, a "qualifying city or town" means a city or town residing within a county having a population of greater than seventy-five thousand in which is located all or part of a national monument. A

qualifying city or town may impose the fee authorized in subsection (1) of this section subject to the following conditions and limitations:

(a) The city or town may impose the fee only if authorized to do so by a majority of voters voting at a general or special election on a proposition for that purpose. At a minimum, the ballot measure shall contain: (i) A description of the transportation project proposed for funding, properly identified by mileposts or other designations that specify the project parameters; (ii) the proposed number of months or years necessary to fund the city or town's share of the project cost; and (iii) the amount of fee to be imposed for the project.

(b) The city or town may not impose a fee that, if combined with the county fee, exceeds fifteen dollars. If a county imposes or increases a fee under this section that, if combined with the fee imposed by a city or town, exceeds fifteen dollars, the city or town fee shall be reduced or eliminated as needed so that in no city or town does the combined fee exceed fifteen dollars. All revenues from county-imposed fees shall be distributed as called for in RCW 82.80.080.

(c) Any fee imposed by a city or town under this section shall expire at the end of the term of months or years provided in the ballot measure, or when the city or town's bonded indebtedness on the project is retired, whichever is sooner.

(8) The fee imposed under subsection (7) of this section shall apply only to renewals and shall not apply to ownership transfer transactions. [2001 c 64 § 15; 2000 c 103 § 20; 1998 c 281 § 1; 1996 c 139 § 4; 1993 c 60 § 1; 1991 c 318 § 13; 1990 c 42 § 206.]

82.80.020 Repealed. (*Effective if Initiative Measure No. 776 is upheld by pending court action.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Reviser's note: The constitutionality of Initiative Measure No. 776 is being challenged in *Pierce Co. v. State of Washington*, King Co. Superior Ct. No. 02-2-35125-5 SEA.

82.80.110 Motor vehicle and special fuel tax—Dedication by county to regional transportation investment district plan. (1) For purposes of this section:

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW 82.36.010 and 82.38.020, respectively, and sells or distributes the fuel into a county;

(b) "Person" has the same meaning as in RCW 82.04.030.

(2) For purposes of dedication to a regional transportation investment district plan under chapter 36.120 RCW, subject to the conditions of this section, a county may levy additional excise taxes equal to ten percent of the statewide motor vehicle fuel tax rate under RCW 82.36.025 on each gallon of motor vehicle fuel as defined in RCW 82.36.010 and on each gallon of special fuel as defined in RCW 82.38.020 sold within the boundaries of the county. The additional excise tax is subject to the approval of the county's legislative body and a majority of the registered voters of the county voting on the proposition at a general or special election. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition must state that the revenues from the tax will be used for a regional transportation investment district plan. The county's authority to levy additional excise taxes under this section includes the incorporated and unincorporated areas of the county. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the county fuel excise tax. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapters 82.36 and 82.38

RCW. The proposed tax may not be levied less than one month from the date the election results are certified by the county election officer. The commencement date for the levy of any tax under this section will be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on each gallon of motor vehicle fuel and on each gallon of special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of a county to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a county shall contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer shall distribute monthly to the county levying the tax as part of a regional transportation investment plan, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b).

(8) The proceeds of the additional taxes levied by a county in this section, to be used as a part of a regional transportation investment plan, must be used in accordance with chapter 36.120 RCW, but only for those areas that are considered "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(9) A county may not levy the tax under this section if they are a member of a regional transportation investment district that is levying the tax in RCW 82.80.120 or the county is levying the tax in RCW 82.80.010. [2003 c 350 § 2.]

82.80.120 Motor vehicle and special fuel tax—Regional transportation investment district. (1) For purposes of this section:

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW 82.36.010 and 82.38.020, respectively, and sells or distributes the fuel into a county;

(b) "Person" has the same meaning as in RCW 82.04.030;

(c) "District" means a regional transportation investment district under chapter 36.120 RCW.

(2) A regional transportation investment district under chapter 36.120 RCW, subject to the conditions of this section, may levy additional excise taxes equal to ten percent of the statewide motor vehicle fuel tax rate under RCW 82.36.025 on each gallon of motor vehicle fuel as defined in RCW 82.36.010 and on each gallon of special fuel as defined in RCW 82.38.020 sold within the boundaries of the district. The additional excise tax is subject to the approval of a

majority of the voters within the district boundaries. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the district's fuel excise tax. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapters 82.36 and 82.38 RCW. The proposed tax may not be levied less than one month from the date the election results are certified. The commencement date for the levy of any tax under this section will be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on each gallon of motor vehicle fuel and on each gallon of special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of the district to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a district shall contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer shall distribute monthly to the district levying the tax as part of the regional transportation investment district plan, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b).

(8) The proceeds of the additional taxes levied by a district in this section, to be used as a part of a regional transportation investment district plan, must be used in accordance with chapter 36.120 RCW, but only for those areas that are considered "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(9) A district may not levy the tax in this section if a member county is levying the tax in RCW 82.80.010 or 82.80.110. [2003 c 350 § 3.]

82.80.130 Passenger-only ferry service—Local option motor vehicle excise tax authorized. (1) Public transportation benefit areas authorized to implement passenger-only ferry service under RCW 36.57A.200 whose boundaries (a) are on the Puget Sound, but (b) do not include an area where a regional transit authority has been formed, may submit an authorizing proposition to the voters and, if approved, may levy and collect an excise tax, at a rate approved by the voters, but not exceeding four-tenths of one percent on the value of every motor vehicle owned by a resident of the taxing district, solely for the purpose of providing passenger-only ferry service. The tax must be collected only at the time of vehicle license renewal under chapter 46.16 RCW. The tax will be imposed on vehicles previously registered in another state or nation when they are initially registered in this state. The tax will not be imposed at the time of

sale by a licensed vehicle dealer. In a county imposing a motor vehicle excise tax surcharge under RCW 81.100.060, the maximum tax rate under this section must be reduced to a rate equal to four-tenths of one percent on the value less the equivalent motor vehicle excise tax rate of the surcharge imposed under RCW 81.100.060. This rate does not apply to vehicles licensed under RCW 46.16.070 with an unladen weight more than six thousand pounds, or to vehicles licensed under RCW 46.16.079, 46.16.085, or 46.16.090.

(2) The department of licensing shall administer and collect the tax. The department shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected, for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer for monthly distribution to the public transportation benefit area.

(3) The public transportation benefit area imposing this tax shall delay the effective date at least six months from the date the fee is approved by the qualified voters of the authority area to allow the department of licensing to implement administration and collection of the tax.

(4) Before an authority may impose a tax authorized under this section, the authorization for imposition of the tax must be approved by a majority of the qualified electors of the authority area voting on that issue. [2003 c 83 § 206.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Title 84

PROPERTY TAXES

Chapters

- 84.08** General powers and duties of department of revenue.
- 84.33** Timber and forest lands.
- 84.34** Open space, agricultural, timber lands—Current use—Conservation futures.
- 84.36** Exemptions.
- 84.40** Listing of property.
- 84.52** Levy of taxes.
- 84.55** Limitations upon regular property taxes.
- 84.56** Collection of taxes.
- 84.64** Lien foreclosure.
- 84.69** Refunds.

Chapter 84.08 RCW

GENERAL POWERS AND DUTIES OF DEPARTMENT OF REVENUE

Sections

- 84.08.050 Additional powers—Access to books and records—Hearings—Investigation of complaints. (*Effective July 1, 2004.*)

84.08.050 Additional powers—Access to books and records—Hearings—Investigation of complaints. (*Effective July 1, 2004.*) (1) The department of revenue shall:

(a) Require individuals, partnerships, companies, associations and corporations to furnish information as to their capital, funded debts, investments, value of property, earnings, taxes and all other facts called for on these subjects so that the department may determine the taxable value of any property

or any other fact it may consider necessary to carry out any duties now or hereafter imposed upon it, or may ascertain the relative burdens borne by all kinds and classes of property within the state, and for these purposes their records, books, accounts, papers and memoranda shall be subject to production and inspection, investigation and examination by the department, or any employee thereof designated by the department for such purpose, and any or all real and/or personal property in this state shall be subject to visitation, investigation, examination and/or listing at any and all times by the department or by any employee thereof designated by the department.

(b) Summon witnesses to appear and testify on the subject of capital, funded debts, investments, value of property, earnings, taxes, and all other facts called for on these subjects, or upon any matter deemed material to the proper assessment of property, or to the investigation of the system of taxation, or the expenditure of public funds for state, county, district and municipal purposes: PROVIDED, HOWEVER, No person shall be required to testify outside of the county in which the taxpayer's residence, office or principal place of business, as the case may be, is located. Such summons shall be served in like manner as a subpoena issued out of the superior court and be served by the sheriff of the proper county, and such service certified by him or her to the department without compensation therefor. Persons appearing before the department in obedience to a summons shall in the discretion of the department receive the same compensation as witnesses in the superior court.

(c) Thoroughly investigate all complaints which may be made to it of illegal, unjust or excessive taxation, and shall endeavor to ascertain to what extent and in what manner, if at all, the present system is inequal or oppressive.

(2) Any member of the department or any employee thereof designated for that purpose may administer oaths to witnesses.

(3)(a) In case any witness shall fail to obey the summons to appear, or refuse to testify, or shall fail or refuse to comply with any of the provisions of subsection (1)(a) or (b) of this section, such person, for each separate or repeated offense, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars, nor more than five thousand dollars.

(b) Any person who shall testify falsely is guilty of perjury and shall be punished under chapter 9A.72 RCW. [2003 c 53 § 407; 1973 c 95 § 8; 1961 c 15 § 84.08.050. Prior: 1939 c 206 § 5, part; 1935 c 127 § 1, part; 1921 c 7 §§ 50, 53; 1907 c 220 § 1, part; 1905 c 115 § 2, part; RRS § 11091 (second, part).]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 84.33 RCW

TIMBER AND FOREST LANDS

Sections

- 84.33.035 Definitions.
- 84.33.078 Sale of timber on nonfederally owned public land—Notice of sale or prospectus to indicate tax treatment.
- 84.33.088 Reporting requirements on timber purchase. (*Expires July 1, 2007.*)
- 84.33.120 Repealed.

- 84.33.130 Forest land valuation—Application by owner that land be designated and valued as forest land—Hearing—Rules—Approval, denial of application—Appeal.
- 84.33.140 Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax.
- 84.33.210 Forest land valuation—Special benefit assessments.

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

(1) "Agricultural methods" means the cultivation of trees that are grown on land prepared by intensive cultivation and tilling, such as irrigating, plowing, or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising trees such as Christmas trees and short-rotation hardwoods.

(2) "Average rate of inflation" means the annual rate of inflation as determined by the department averaged over the period of time as provided in RCW 84.33.220 (1) and (2). This rate shall be published in the state register by the department not later than January 1st of each year for use in that assessment year.

(3) "Composite property tax rate" for a county means the total amount of property taxes levied upon forest lands by all taxing districts in the county other than the state, divided by the total assessed value of all forest land in the county.

(4) "Forest land" is synonymous with "designated forest land" and means any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres that is or are devoted primarily to growing and harvesting timber. Designated forest land means the land only and does not include a residential homesite. The term includes land used for incidental uses that are compatible with the growing and harvesting of timber but no more than ten percent of the land may be used for such incidental uses. It also includes the land on which appurtenances necessary for the production, preparation, or sale of the timber products exist in conjunction with land producing these products.

(5) "Harvested" means the time when in the ordinary course of business the quantity of timber by species is first definitely determined. The amount harvested shall be determined by the Scribner Decimal C Scale or other prevalent measuring practice adjusted to arrive at substantially equivalent measurements, as approved by the department.

(6) "Harvester" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use. When the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, the harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in the timber. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester.

(7) "Harvesting and marketing costs" means only those costs directly associated with harvesting the timber from the land and delivering it to the buyer and may include the costs of disposing of logging residues. Any other costs that are not directly and exclusively related to harvesting and marketing of the timber, such as costs of permanent roads or costs of reforesting the land following harvest, are not harvesting and marketing costs.

(8) "Incidental use" means a use of designated forest land that is compatible with its purpose for growing and harvesting timber. An incidental use may include a gravel pit, a shed or land used to store machinery or equipment used in conjunction with the timber enterprise, and any other use that does not interfere with or indicate that the forest land is no longer primarily being used to grow and harvest timber.

(9) "Local government" means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi-municipal corporation, or other political subdivision authorized to levy special benefit assessments for sanitary or storm sewerage systems, domestic water supply or distribution systems, or road construction or improvement purposes.

(10) "Local improvement district" means any local improvement district, utility local improvement district, local utility district, road improvement district, or any similar unit created by a local government for the purpose of levying special benefit assessments against property specially benefited by improvements relating to the districts.

(11) "Owner" means the party or parties having the fee interest in land, except where land is subject to a real estate contract "owner" means the contract vendee.

(12) "Primarily" or "primary use" means the existing use of the land is so prevalent that when the characteristic use of the land is evaluated any other use appears to be conflicting or nonrelated.

(13) "Short-rotation hardwoods" means hardwood trees, such as but not limited to hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than fifteen years.

(14) "Small harvester" means every person who from his or her own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use in an amount not exceeding two million board feet in a calendar year. When the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in the timber. Small harvester does not include persons performing under contract the necessary labor or mechanical services for a harvester, and it does not include the harvesters of Christmas trees or short-rotation hardwoods.

(15) "Special benefit assessments" means special assessments levied or capable of being levied in any local improvement district or otherwise levied or capable of being levied by a local government to pay for all or part of the costs of a local improvement and which may be levied only for the special benefits to be realized by property by reason of that local improvement.

(16) "Stumpage value of timber" means the appropriate stumpage value shown on tables prepared by the department under RCW 84.33.091, provided that for timber harvested from public land and sold under a competitive bidding process, stumpage value shall mean the actual amount paid to the seller in cash or other consideration. The stumpage value of timber from public land does not include harvesting and marketing costs if the timber from public land is harvested by, or under contract for, the United States or any instrumentality of the United States, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein. Whenever payment for the stumpage includes considerations other than cash, the value shall be the fair market value of the other consideration. If the other consideration is permanent roads, the value of the roads shall be the appraised value as appraised by the seller.

(17) "Timber" means forest trees, standing or down, on privately or publicly owned land, and except as provided in RCW 84.33.170 includes Christmas trees and short-rotation hardwoods.

(18) "Timber assessed value" for a county means a value, calculated by the department before October 1st of each year, equal to the total stumpage value of timber harvested from privately owned land in the county during the most recent four calendar quarters for which the information is available multiplied by a ratio. The numerator of the ratio is the rate of tax imposed by the county under RCW 84.33.051 for the year of the calculation. The denominator of the ratio is the composite property tax rate for the county for taxes due in the year of the calculation, expressed as a percentage of assessed value.

(19) "Timber assessed value" for a taxing district means the timber assessed value for the county multiplied by a ratio. The numerator of the ratio is the total assessed value of forest land in the taxing district. The denominator is the total assessed value of forest land in the county. As used in this section, "assessed value of forest land" means the assessed value of forest land for taxes due in the year the timber assessed value for the county is calculated.

(20) "Timber management plan" means a plan prepared by a trained forester, or any other person with adequate knowledge of timber management practices, concerning the use of the land to grow and harvest timber. Such a plan includes:

- (a) A legal description of the forest land;
- (b) A statement that the forest land is held in contiguous ownership of twenty or more acres and is primarily devoted to and used to grow and harvest timber;
- (c) A brief description of the timber on the forest land or, if the timber on the land has been harvested, the owner's plan to restock the land with timber;
- (d) A statement about whether the forest land is also used to graze livestock;

(e) A statement about whether the land has been used in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW; and

(f) If the land has been recently harvested or supports a growth of brush and noncommercial type timber, a description of the owner's plan to restock the forest land within three years. [2003 c 313 § 12. Prior: 2001 c 249 § 1; 2001 c 97 § 1; 1995 c 165 § 1; 1986 c 315 § 1; 1984 c 204 § 1.]

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Application—1995 c 165: "This act applies to taxes levied in 1995 for collection in 1996 and thereafter." [1995 c 165 § 3.]

Savings—1984 c 204: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1984 c 204 § 48.]

Effective date—1984 c 204: "This act shall take effect July 1, 1984." [1984 c 204 § 49.]

84.33.078 Sale of timber on nonfederally owned public land—Notice of sale or prospectus to indicate tax treatment. When any timber standing on public land, other than federally owned land, is sold separate from the land, the department of natural resources or other governmental unit, as appropriate, shall state in its notice of the sale or prospectus that timber sold separate from the land is subject to property tax and that the amount of the tax paid may be used as a credit against any tax imposed with respect to business of harvesting timber from publicly owned land under RCW 84.33.041. If the timber from public land is harvested by the state, its departments and institutions and political subdivisions, or any municipal corporation therein, the governmental unit, or governmental units, that harvest or market the timber must provide the harvester purchasing the timber with its harvesting and marketing costs as defined in RCW 84.33.035(7). [2003 c 313 § 11; 1986 c 65 § 1; 1984 c 204 § 22; 1983 1st ex.s. c 62 § 9.]

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Short title—Intent—Effective dates—Applicability—1983 1st ex.s. c 62: See notes following RCW 84.36.477.

84.33.088 Reporting requirements on timber purchase. (Expires July 1, 2007.) (1) A purchaser of privately owned timber in an amount in excess of two hundred thousand board feet in a voluntary sale made in the ordinary course of business shall, on or before the last day of the month following the purchase of the timber, report the particulars of the purchase to the department.

(2) The report required in subsection (1) of this section shall contain all information relevant to the value of the timber purchased including, but not limited to, the following, as applicable: Purchaser's name and address, sale date, termination date in sale agreement, total sale price, total acreage involved in the sale, net volume of timber purchased, legal description of the area involved in the sale, road construction or improvements required or completed, timber cruise data, and timber thinning data. A report may be submitted in any

reasonable form or, at the purchaser's option, by submitting relevant excerpts of the timber sales contract. A purchaser may comply by submitting the information in the following form:

- Purchaser's name:
- Purchaser's address:
- Sale date:
- Termination date:
- Total sale price:
- Total acreage involved:
- Net volume of timber purchased:
- Legal description of sale area:
- Property improvements:
- Timber cruise data:
- Timber thinning data:

(3) A purchaser of privately owned timber involved in a purchase described in subsection (1) of this section who fails to report a purchase as required may be liable for a penalty of two hundred fifty dollars for each failure to report, as determined by the department.

(4) This section expires July 1, 2007. [2003 c 315 § 1; 2001 c 320 § 16.]

Effective date—2001 c 320: See note following RCW 11.02.005.

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

84.33.130 Forest land valuation—Application by owner that land be designated and valued as forest land—Hearing—Rules—Approval, denial of application—Appeal. (1) Notwithstanding any other provision of law, lands that were assessed as classified forest land before July 22, 2001, shall be designated forest land for the purposes of this chapter. The owners of previously classified forest land shall not be required to apply for designation under this chapter. As of July 22, 2001, the land and timber on such land shall be assessed and taxed in accordance with the provisions of this chapter.

(2) An owner of land desiring that it be designated as forest land and valued under RCW 84.33.140 as of January 1st of any year shall submit an application to the assessor of the county in which the land is located before January 1st of that year. The application shall be accompanied by a reasonable processing fee when the county legislative authority has established the requirement for such a fee.

(3) No application of designation is required when publicly owned forest land is exchanged for privately owned forest land designated under this chapter. The land exchanged and received by an owner subject to ad valorem taxation shall be automatically granted designation under this chapter if the following conditions are met:

- (a) The land will be used to grow and harvest timber; and
- (b) The owner of the land submits a document to the assessor's office that explains the details of the forest land exchange within sixty days of the closing date of the exchange. However, if the owner fails to submit information regarding the exchange by the end of this sixty-day period, the owner must file an application for designation as forest

land under this chapter and the regular application process will be followed.

(4) The application shall be made upon forms prepared by the department and supplied by the assessor, and shall include the following:

(a) A legal description of, or assessor's parcel numbers for, all land the applicant desires to be designated as forest land;

(b) The date or dates of acquisition of the land;

(c) A brief description of the timber on the land, or if the timber has been harvested, the owner's plan for restocking;

(d) A copy of the timber management plan, if one exists, for the land prepared by a trained forester or any other person with adequate knowledge of timber management practices;

(e) If a timber management plan exists, an explanation of the nature and extent to which the management plan has been implemented;

(f) Whether the land is used for grazing;

(g) Whether the land has been subdivided or a plat has been filed with respect to the land;

(h) Whether the land and the applicant are in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW;

(i) Whether the land is subject to forest fire protection assessments under RCW 76.04.610;

(j) Whether the land is subject to a lease, option, or other right that permits it to be used for any purpose other than growing and harvesting timber;

(k) A summary of the past experience and activity of the applicant in growing and harvesting timber;

(l) A summary of current and continuing activity of the applicant in growing and harvesting timber;

(m) A statement that the applicant is aware of the potential tax liability involved when the land ceases to be designated as forest land;

(n) An affirmation that the statements contained in the application are true and that the land described in the application meets the definition of forest land in RCW 84.33.035; and

(o) A description and/or drawing showing what areas of land for which designation is sought are used for incidental uses compatible with the definition of forest land in RCW 84.33.035.

(5) The assessor shall afford the applicant an opportunity to be heard if the applicant so requests.

(6) The assessor shall act upon the application with due regard to all relevant evidence and without any one or more items of evidence necessarily being determinative, except that the application may be denied for one of the following reasons, without regard to other items:

(a) The land does not contain a "merchantable stand of timber" as defined in chapter 76.09 RCW and applicable rules. This reason shall not alone be sufficient to deny the application (i) if the land has been recently harvested or supports a growth of brush or noncommercial type timber, and the application includes a plan for restocking within three years or a longer period necessitated by unavailability of seed or seedlings, or (ii) if only isolated areas within the land do not meet the minimum standards due to rock outcroppings, swamps, unproductive soil or other natural conditions;

(b) The applicant, with respect to the land, has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(c) The land abuts a body of salt water and lies between the line of ordinary high tide and a line paralleling the ordinary high tide line and two hundred feet horizontally landward from the high tide line. However, if the assessor determines that a higher and better use exists for the land but this use would not be permitted or economically feasible by virtue of any federal, state, or local law or regulation, the land shall be assessed and valued under RCW 84.33.140 without being designated as forest land.

(7) The application shall be deemed to have been approved unless, prior to May 1st of the year after the application was mailed or delivered to the assessor, the assessor notifies the applicant in writing of the extent to which the application is denied.

(8) An owner who receives notice that his or her application has been denied, in whole or in part, may appeal the denial to the county board of equalization in accordance with the provisions of RCW 84.40.038. [2003 c 170 § 4. Prior: 2001 c 249 § 2; 2001 c 185 § 4; 1994 c 301 § 32; 1986 c 100 § 57; 1981 c 148 § 8; 1974 ex.s. c 187 § 6; 1971 ex.s. c 294 § 13.]

Purpose—Intent—2003 c 170: "During the regular session of the 2001 legislature, RCW 84.33.120 was amended by section 3, chapter 185 and by section 1, chapter 305, and repealed by section 16, chapter 249, each without reference to the other. The purpose of sections 4 through 7 of this act is to resolve any uncertainty about the status of RCW 84.33.120 caused by the enactment of three changes involving RCW 84.33.120 during the 2001 regular legislative session.

(1) Chapter 249, Laws of 2001 both repealed RCW 84.33.120 and incorporated pertinent and vital parts of RCW 84.33.120 into RCW 84.33.140. The technical amendments made to RCW 84.33.120 by section 3, chapter 185, Laws of 2001 were also made to RCW 84.33.140 by section 5, chapter 185, Laws of 2001. The amendments made to RCW 84.33.120 by section 1, chapter 305, Laws of 2001 were also made to RCW 84.33.140 by section 2, chapter 305, Laws of 2001. Therefore, RCW 84.33.140 as amended during the 2001 regular legislative session embodies the pertinent and vital parts of RCW 84.33.120 and the 2001 amendments to RCW 84.33.120.

(2) The legislature intends to confirm the repeal of RCW 84.33.120, including the 2001 regular legislative session amendments to that section, as of the effective date of chapters 185, 249, and 305, Laws of 2001." [2003 c 170 § 1.]

Purpose—2003 c 170 § 4: "During the regular session of the 2001 legislature, RCW 84.33.130 was amended by section 4, chapter 185 and by section 2, chapter 249, each without reference to the other. The purpose of section 4 of this act is to reenact and amend RCW 84.33.130 so that it reflects all amendments made by the legislature." [2003 c 170 § 2.]

Application—2001 c 185 §§ 1-12: See note following RCW 84.14.110.

Purpose—1981 c 148: "(1) One of the purposes of this act is to establish the values for ad valorem tax purposes of bare forest land which is primarily devoted to and used for growing and harvesting timber without consideration of other potential uses of the land and to provide a procedure for adjusting the values in future years to reflect economic changes which may affect the value established in this act.

(2) Chapter 294, Laws of 1971 ex. sess., as originally enacted, required the department of revenue annually to analyze forest land transactions to ascertain the market value of bare forest land purchased and used exclusively for growing and harvesting timber. Most transactions involving forest land include mature and immature timber with no segregation by the parties between the amounts paid for timber and bare land. The examination of these transactions by the department to ascertain the prices being paid for

only the bare land has proven to be very difficult, time consuming, and subject to recurring legal challenge. Samples are small in relation to the total acreage of forest land involved and the administrative time and costs required for the annual analyses are excessive in relation to the changes from year to year which have been observed in the value of bare forest land. This act eliminates most of these administrative costs by establishing the current bare forest land values and by providing a procedure for periodic adjustment of the values which does not require continuing and costly analysis of the numerous forest land transactions throughout the state." [1981 c 148 § 11.]

Severability—1981 c 148: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 148 § 15.]

Effective dates—1981 c 148: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [May 14, 1981], except for section 13 of this act which shall take effect September 1, 1981." [1981 c 148 § 16.]

Severability—1974 ex.s. c 187: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 187 § 20.]

84.33.140 Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax. (1) When land has been designated as forest land under RCW 84.33.130, a notation of the designation shall be made each year upon the assessment and tax rolls. A copy of the notice of approval together with the legal description or assessor's parcel numbers for the land shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded.

(2) In preparing the assessment roll as of January 1, 2002, for taxes payable in 2003 and each January 1st thereafter, the assessor shall list each parcel of designated forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (3) of this section. The assessor shall compute the assessed value of the land using the same assessment ratio applied generally in computing the assessed value of other property in the county. Values for the several grades of bare forest land shall be as follows:

LAND GRADE	OPERABILITY CLASS	VALUES PER ACRE
1	1	\$234
	2	229
	3	217
	4	157
2	1	198
	2	190
	3	183
	4	132
3	1	154
	2	149
	3	148
	4	113
4	1	117
	2	114
	3	113

5	4	86
	1	85
	2	78
	3	77
6	4	52
	1	43
	2	39
	3	39
7	4	37
	1	21
	2	21
	3	20
8	4	20
		1

(3) On or before December 31, 2001, the department shall adjust by rule under chapter 34.05 RCW, the forest land values contained in subsection (2) of this section in accordance with this subsection, and shall certify the adjusted values to the assessor who will use these values in preparing the assessment roll as of January 1, 2002. For the adjustment to be made on or before December 31, 2001, for use in the 2002 assessment year, the department shall:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1996, and June 30, 2001, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1995, and June 30, 2000, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(c) Adjust the forest land values contained in subsection (2) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

(4) For the adjustments to be made on or before December 31, 2002, and each succeeding year thereafter, the same procedure described in subsection (3) of this section shall be followed using harvester excise tax returns filed under RCW 84.33.074. However, this adjustment shall be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values shall be successively one year more recent.

(5) Land graded, assessed, and valued as forest land shall continue to be so graded, assessed, and valued until removal of designation by the assessor upon the occurrence of any of the following:

(a) Receipt of notice from the owner to remove the designation;

(b) Sale or transfer to an ownership making the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of forest land designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner, shall not, by

itself, result in removal of designation. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance shall be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated under subsection (11) of this section shall become due and payable by the seller or transferor at time of sale. The auditor shall not accept an instrument of conveyance regarding designated forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (11) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) The land is no longer primarily devoted to and used for growing and harvesting timber. However, land shall not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (13) or (14) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in the designated forest land by means of a transaction that qualifies for an exemption under subsection (13) or (14) of this section. The governmental agency, organization, or recipient shall annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

(6) Land shall not be removed from designation if there is a governmental restriction that prohibits, in whole or in part, the owner from harvesting timber from the owner's designated forest land. If only a portion of the parcel is impacted by governmental restrictions of this nature, the restrictions cannot be used as a basis to remove the remainder of the forest land from designation under this chapter. For the purposes of this section, "governmental restrictions" includes: (a) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or (b) the land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(7) The assessor shall have the option of requiring an owner of forest land to file a timber management plan with the assessor upon the occurrence of one of the following:

(a) An application for designation as forest land is submitted; or

(b) Designated forest land is sold or transferred and a notice of continuance, described in subsection (5)(c) of this section, is signed.

(8) If land is removed from designation because of any of the circumstances listed in subsection (5)(a) through (c) of this section, the removal shall apply only to the land affected. If land is removed from designation because of subsection (5)(d) of this section, the removal shall apply only to the actual area of land that is no longer primarily devoted to the growing and harvesting of timber, without regard to any other land that may have been included in the application and approved for designation, as long as the remaining designated forest land meets the definition of forest land contained in RCW 84.33.035.

(9) Within thirty days after the removal of designation as forest land, the assessor shall notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038.

(10) Unless the removal is reversed on appeal a copy of the notice of removal with a notation of the action, if any, upon appeal, together with the legal description or assessor's parcel numbers for the land removed from designation shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded and a notation of removal from designation shall immediately be made upon the assessment and tax rolls. The assessor shall revalue the land to be removed with reference to its true and fair value as of January 1st of the year of removal from designation. Both the assessed value before and after the removal of designation shall be listed. Taxes based on the value of the land as forest land shall be assessed and payable up until the date of removal and taxes based on the true and fair value of the land shall be assessed and payable from the date of removal from designation.

(11) Except as provided in subsection (5)(c), (13), or (14) of this section, a compensating tax shall be imposed on land removed from designation as forest land. The compensating tax shall be due and payable to the treasurer thirty days after the owner is notified of the amount of this tax. As soon as possible after the land is removed from designation, the assessor shall compute the amount of compensating tax and mail a notice to the owner of the amount of compensating tax owed and the date on which payment of this tax is due. The amount of compensating tax shall be equal to the difference between the amount of tax last levied on the land as designated forest land and an amount equal to the new assessed value of the land multiplied by the dollar rate of the last levy extended against the land, multiplied by a number, in no event greater than nine, equal to the number of years for which the land was designated as forest land, plus compensating taxes on the land at forest land values up until the date of removal and the prorated taxes on the land at true and fair value from the date of removal to the end of the current tax year.

(12) Compensating tax, together with applicable interest thereon, shall become a lien on the land which shall attach at the time the land is removed from designation as forest land

and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(13) The compensating tax specified in subsection (11) of this section shall not be imposed if the removal of designation under subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW. At such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (11) of this section shall be imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes;

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of the land;

(f) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(g) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040;

(h) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under this chapter, or classified under chapter 84.34 RCW continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (13)(h); or

(i) The sale or transfer of land after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under this chapter, or classified under chapter 84.34 RCW continuously since 1993 and the sale or transfer takes place after July 22, 2001, and on or before July 22, 2003, and the death of the owner occurred after January 1, 1991. The date of death shown on a death certificate is the date used for the purposes of this subsection (13)(i).

(14) In a county with a population of more than one million inhabitants, the compensating tax specified in subsection

(11) of this section shall not be imposed if the removal of designation as forest land under subsection (5) of this section resulted solely from:

(a) An action described in subsection (13) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax shall be imposed upon the current owner. [2003 c 170 § 5. Prior: 2001 c 305 § 2; 2001 c 249 § 3; 2001 c 185 § 5; 1999 sp.s. c 4 § 703; 1999 c 233 § 21; 1997 c 299 § 2; 1995 c 330 § 2; 1992 c 69 § 2; 1986 c 238 § 2; 1981 c 148 § 9; 1980 c 134 § 3; 1974 ex.s. c 187 § 7; 1973 1st ex.s. c 195 § 93; 1972 ex.s. c 148 § 6; 1971 ex.s. c 294 § 14.]

Purpose—Intent—2003 c 170: See note following RCW 84.33.130.

Application—2001 c 185 §§ 1-12: See note following RCW 84.14.110.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Effective date—1999 c 233: See note following RCW 4.28.320.

Effective date—1997 c 299: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 1997]." [1997 c 299 § 4.]

Effective date—1995 c 330: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 330 § 3.]

Effective date—1992 c 69: See RCW 84.34.923.

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.130.

Severability—1974 ex.s. c 187: See note following RCW 84.33.130.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

84.33.210 Forest land valuation—Special benefit assessments. (1) Any land that is designated as forest land under this chapter at the earlier of the times the legislative authority of a local government adopts a resolution, ordinance, or legislative act (a) to create a local improvement district, in which the land is included or would have been included but for the designation, or (b) to approve or confirm a final special benefit assessment roll relating to a sanitary or storm sewerage system, domestic water supply or distribution system, or road construction or improvement, which roll would have included the land but for the designation, shall be exempt from special benefit assessments, charges in lieu of assessment, or rates and charges for storm water control facilities under RCW 36.89.080 for such purposes as long as that land remains designated as forest land, except as otherwise provided in RCW 84.33.250.

(2) Whenever a local government creates a local improvement district, the levying, collection, and enforcement of assessments shall be in the manner and subject to the same procedures and limitations as are provided under the law concerning the initiation and formation of local improvement districts for the particular local government. Notice of

the creation of a local improvement district that includes designated forest land shall be filed with the assessor and the legislative authority of the county in which the land is located. The assessor, upon receiving notice of the creation of a local improvement district, shall send a notice to the owners of the designated forest lands listed on the tax rolls of the applicable treasurer of:

(a) The creation of the local improvement district;
 (b) The exemption of that land from special benefit assessments;

(c) The fact that the designated forest land may become subject to the special benefit assessments if the owner waives the exemption by filing a notarized document with the governing body of the local government creating the local improvement district before the confirmation of the final special benefit assessment roll; and

(d) The potential liability, pursuant to RCW 84.33.220, if the exemption is not waived and the land is subsequently removed from designated forest land status.

(3) When a local government approves and confirms a special benefit assessment roll, from which designated forest land has been exempted under this section, it shall file a notice of this action with the assessor and the legislative authority of the county in which the land is located and with the treasurer of that local government. The notice shall describe the action taken, the type of improvement involved, the land exempted, and the amount of the special benefit assessment that would have been levied against the land if it had not been exempted. The filing of the notice with the assessor and the treasurer of that local government shall constitute constructive notice to a purchaser or encumbrancer of the affected land, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded, that the exempt land is subject to the charges provided in RCW 84.33.220 and 84.33.230, if the land is removed from its designation as forest land.

(4) The owner of the land exempted from special benefit assessments under this section may waive that exemption by filing a notarized document to that effect with the legislative authority of the local government upon receiving notice from said local government concerning the assessment roll hearing and before the local government confirms the final special benefit assessment roll. A copy of that waiver shall be filed by the local government with the assessor, but the failure to file this copy shall not affect the waiver.

(5) Except to the extent provided in RCW 84.33.250, the local government shall have no duty to furnish service from the improvement financed by the special benefit assessment to the exempted land. [2003 c 394 § 7; 2001 c 249 § 6; 1992 c 52 § 7.]

Chapter 84.34 RCW

OPEN SPACE, AGRICULTURAL, TIMBER LANDS— CURRENT USE—CONSERVATION FUTURES

Sections

84.34.108 Removal of classification—Factors—Notice of continuance—Additional tax—Lien—Delinquencies—Exemptions.

84.34.108 Removal of classification—Factors— Notice of continuance—Additional tax—Lien—Delin-

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quencies—Exemptions. (1) When land has once been classified under this chapter, a notation of the classification shall be made each year upon the assessment and tax rolls and the land shall be valued pursuant to RCW 84.34.060 or 84.34.065 until removal of all or a portion of the classification by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove all or a portion of the classification;

(b) Sale or transfer to an ownership, except a transfer that resulted from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the property for the same use as before, making all or a portion of the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner shall not, by itself, result in removal of classification. The notice of continuance shall be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes calculated pursuant to subsection (4) of this section shall become due and payable by the seller or transferor at time of sale. The auditor shall not accept an instrument of conveyance regarding classified land for filing or recording unless the new owner has signed the notice of continuance or the additional tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (4) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that all or a portion of the land no longer meets the criteria for classification under this chapter. The criteria for classification pursuant to this chapter continue to apply after classification has been granted.

The granting authority, upon request of an assessor, shall provide reasonable assistance to the assessor in making a determination whether the land continues to meet the qualifications of RCW 84.34.020 (1) or (3). The assistance shall be provided within thirty days of receipt of the request.

(2) Land may not be removed from classification because of:

(a) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(b) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

(3) Within thirty days after such removal of all or a portion of the land from current use classification, the assessor shall notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038.

(4) Unless the removal is reversed on appeal, the assessor shall revalue the affected land with reference to its true and fair value on January 1st of the year of removal from

classification. Both the assessed valuation before and after the removal of classification shall be listed and taxes shall be allocated according to that part of the year to which each assessed valuation applies. Except as provided in subsection (6) of this section, an additional tax, applicable interest, and penalty shall be imposed which shall be due and payable to the treasurer thirty days after the owner is notified of the amount of the additional tax. As soon as possible, the assessor shall compute the amount of additional tax, applicable interest, and penalty and the treasurer shall mail notice to the owner of the amount thereof and the date on which payment is due. The amount of the additional tax, applicable interest, and penalty shall be determined as follows:

(a) The amount of additional tax shall be equal to the difference between the property tax paid as "open space land", "farm and agricultural land", or "timber land" and the amount of property tax otherwise due and payable for the seven years last past had the land not been so classified;

(b) The amount of applicable interest shall be equal to the interest upon the amounts of the additional tax paid at the same statutory rate charged on delinquent property taxes from the dates on which the additional tax could have been paid without penalty if the land had been assessed at a value without regard to this chapter;

(c) The amount of the penalty shall be as provided in RCW 84.34.080. The penalty shall not be imposed if the removal satisfies the conditions of RCW 84.34.070.

(5) Additional tax, applicable interest, and penalty, shall become a lien on the land which shall attach at the time the land is removed from classification under this chapter and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which the land may become charged or liable. This lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050 now or as hereafter amended. Any additional tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(6) The additional tax, applicable interest, and penalty specified in subsection (4) of this section shall not be imposed if the removal of classification pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other land located within the state of Washington;

(b)(i) A taking through the exercise of the power of eminent domain, or (ii) sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power, said entity having manifested its intent in writing or by other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of the property;

(d) Official action by an agency of the state of Washington or by the county or city within which the land is located which disallows the present use of the land;

(e) Transfer of land to a church when the land would qualify for exemption pursuant to RCW 84.36.020;

(f) Acquisition of property interests by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections. At such time as these property interests are not used for the purposes enumerated in RCW 84.34.210 and 64.04.130 the additional tax specified in subsection (4) of this section shall be imposed;

(g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(e);

(h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification;

(i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(j) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040;

(k) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under chapter 84.33 RCW, or classified under this chapter continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (6)(k); or

(l) The sale or transfer of land after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under chapter 84.33 RCW, or classified under this chapter continuously since 1993 and the sale or transfer takes place after July 22, 2001, and on or before July 22, 2003, and the death of the owner occurred after January 1, 1991. The date of death shown on a death certificate is the date used for the purpose of this subsection (6)(l). [2003 c 170 § 6. Prior: 2001 c 305 § 3; 2001 c 249 § 14; 2001 c 185 § 7; prior: 1999 sp.s. c 4 § 706; 1999 c 233 § 22; 1999 c 139 § 2; 1992 c 69 § 12; 1989 c 378 § 35; 1985 c 319 § 1; 1983 c 41 § 1; 1980 c 134 § 5; 1973 1st ex.s. c 212 § 12.]

Purpose—2003 c 170 § 6: "During the regular session of the 2001 legislature, RCW 84.34.108 was amended by section 7, chapter 185, by section 14, chapter 249, and by section 3, chapter 305, each without reference to the other. The purpose of section 6 of this act is to reenact and amend RCW 84.34.108 so that it reflects all amendments made by the legislature and to clarify any misunderstanding as to how the exemption contained in chapter 305, Laws of 2001 is to be applied." [2003 c 170 § 3.]

Purpose—Intent—2003 c 170: See note following RCW 84.33.130.

Application—2001 c 185 §§ 1-12: See note following RCW 84.14.110.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Effective date—1999 c 233: See note following RCW 4.28.320.

Chapter 84.36 RCW

EXEMPTIONS

Sections

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| 84.36.060 | Art, scientific and historical collections and property used to maintain, etc., such collections—Property of associations engaged in production and performance of musical, dance, artistic, etc., works—Fire engines, implements, and buildings of cities, towns, or fire companies—Humane societies. |
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84.36.060 Art, scientific and historical collections and property used to maintain, etc., such collections—Property of associations engaged in production and performance of musical, dance, artistic, etc., works—Fire engines, implements, and buildings of cities, towns, or fire companies—Humane societies. (1) The following property shall be exempt from taxation:

(a) All art, scientific, or historical collections of associations maintaining and exhibiting such collections for the benefit of the general public and not for profit, together with all real and personal property of such associations used exclusively for the safekeeping, maintaining and exhibiting of such collections;

(b) All the real and personal property owned by or leased to associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit, which real and personal property is used exclusively for this production or performance;

(c) All fire engines and other implements used for the extinguishment of fire, and the buildings used exclusively for their safekeeping, and for meetings of fire companies, as long as the property belongs to any city or town or to a fire company; and

(d) All property owned by humane societies in this state in actual use by the societies.

(2) To receive an exemption under subsection (1)(a) or (b) of this section:

(a) An organization must be organized and operated exclusively for artistic, scientific, historical, literary, musical, dance, dramatic, or educational purposes and receive a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its purpose or function) from the United States or any state or any political subdivision thereof or from direct or indirect contributions from the general public.

(b) If the property is not currently being used for an exempt purpose but will be used for an exempt purpose within a reasonable period of time, the nonprofit organization, association, or corporation claiming the exemption must submit proof that a reasonably specific and active program is being carried out to construct, remodel, or otherwise enable the property to be used for an exempt purpose. The property does not qualify for an exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise. Proof of a specific and active program to build or remodel the property so it may be used for an exempt purpose may include, but is not limited to:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation toward an active program of construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling; or

(iv) Building permits.

(3) The use of property exempt under subsection (1)(a) or (b) of this section by entities not eligible for a property tax exemption under this chapter, except as provided in this section, nullifies the exemption otherwise available for the property for the assessment year. The exemption is not nullified if:

(a) The property is used by entities not eligible for a property tax exemption under this chapter for periods of not more than twenty-five days in the calendar year;

(b) The property is not used for pecuniary gain or to promote business activities for more than seven of the twenty-five days in the calendar year;

(c) The property is used for artistic, scientific, or historic purposes, for the production and performance of musical, dance, artistic, dramatic, or literary works, or for community gatherings or assembly, or meetings; and

(d) The amount of any rent or donations is reasonable and does not exceed maintenance and operation expenses created by the user. [2003 c 121 § 1; 1995 c 306 § 1; 1981 c 141 § 1; 1973 2nd ex.s. c 40 § 5; 1961 c 15 § 84.36.060. Prior: 1955 c 196 § 8; prior: 1939 c 206 § 8, part; 1933 ex.s. c 19 § 1, part; 1933 c 115 § 1, part; 1929 c 126 § 1, part; 1925 ex.s. c 130 § 7, part; 1915 c 131 § 1, part; 1903 c 178 § 1, part; 1901 c 176 § 1, part; 1899 c 141 § 2, part; 1897 c 71 §§ 1, 5, part; 1895 c 176 § 2, part; 1893 c 124 §§ 1, 5, part; 1891 c 140 §§ 1, 5, part; 1890 p 532 §§ 1, 5, part; 1886 p 47 § 1, part; Code 1881 § 2829, part; 1871 p 37 § 4, part; 1869 p 176 § 4, part; 1867 p 61 § 2, part; 1854 p 331 § 2, part; RRS § 11111, part. Formerly RCW 84.40.010.]

Applicability—1995 c 306: "The [This] act is effective for taxes levied for collection in 1995 and thereafter." [1995 c 306 § 2.]

Effective date—1995 c 306: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 9, 1995]." [1995 c 306 § 3.]

Applicability, construction—1981 c 141: "This act shall apply to taxes payable in 1982 and in subsequent years and shall be strictly construed." [1981 c 141 § 6.]

84.36.310 Stocks of merchandise, goods, wares or material—Aircraft parts, etc.—Filing requirements. Any person claiming the exemption provided for in RCW 84.36.300 shall file such claim with his or her listing of personal property as provided by RCW 84.40.040. The claim shall be in the form prescribed by the department of revenue, and shall require such information as the department deems necessary to substantiate the claim. [2003 c 302 § 6; 1969 ex.s. c 124 § 2.]

Effective date—Savings—1969 ex.s. c 124: See note following RCW 84.36.300.

84.36.387 Residences—Claimants—Penalty for falsification—Reduction by remainderman. (*Effective July 1,*

2004.) (1) All claims for exemption shall be made and signed by the person entitled to the exemption, by his or her attorney in fact or in the event the residence of such person is under mortgage or purchase contract requiring accumulation of reserves out of which the holder of the mortgage or contract is required to pay real estate taxes, by such holder or by the owner, either before two witnesses or the county assessor or his or her deputy in the county where the real property is located: PROVIDED, That if a claim for exemption is made by a person living in a cooperative housing association, corporation, or partnership, such claim shall be made and signed by the person entitled to the exemption and by the authorized agent of such cooperative.

(2) If the taxpayer is unable to submit his or her own claim, the claim shall be submitted by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(3) All claims for exemption and renewal applications shall be accompanied by such documented verification of income as shall be prescribed by rule adopted by the department of revenue.

(4) Any person signing a false claim with the intent to defraud or evade the payment of any tax is guilty of perjury under chapter 9A.72 RCW.

(5) The tax liability of a cooperative housing association, corporation, or partnership shall be reduced by the amount of tax exemption to which a claimant residing therein is entitled and such cooperative shall reduce any amount owed by the claimant to the cooperative by such exact amount of tax exemption or, if no amount be owed, the cooperative shall make payment to the claimant of such exact amount of exemption.

(6) A remainderman or other person who would have otherwise paid the tax on real property that is the subject of an exemption granted under RCW 84.36.381 for an estate for life shall reduce the amount which would have been payable by the life tenant to the remainderman or other person to the extent of the exemption. If no amount is owed or separately stated as an obligation between these persons, the remainderman or other person shall make payment to the life tenant in the exact amount of the exemption. [2003 c 53 § 408; 1992 c 206 § 14; 1980 c 185 § 6; 1975 1st ex.s. c 291 § 16; 1974 ex.s. c 182 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—1992 c 206: See note following RCW 82.04.170.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

84.36.630 Farming machinery and equipment. (1) All machinery and equipment owned by a farmer that is personal property is exempt from property taxes levied for any state purpose if it is used exclusively in growing and producing agricultural products during the calendar year for which the claim for exemption is made.

(2) "Farmer" has the same meaning as defined in RCW 82.04.213.

(3) A claim for exemption under this section shall be filed with the county assessor together with the statement required under RCW 84.40.190, for exemption from taxes payable the following year. The claim shall be made solely

upon forms as prescribed and furnished by the department of revenue. [2003 c 302 § 7; 2001 2nd sp.s. c 24 § 1.]

Application—2001 2nd sp.s. c 24: "This act applies to taxes levied for collection in 2003 and every year thereafter." [2001 2nd sp.s. c 24 § 3.]

84.36.635 Property used for the manufacture of alcohol fuel or biodiesel fuel. (1) For the purposes of this section:

(a) "Alcohol fuel" means any alcohol made from a product other than petroleum or natural gas, which is used alone or in combination with gasoline or other petroleum products for use as a fuel for motor vehicles, farm implements, and machines or implements of husbandry.

(b) "Biodiesel feedstock" means oil that is produced from an agricultural crop for the sole purpose of ultimately producing biodiesel fuel.

(c) "Biodiesel fuel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

(2)(a) All buildings, machinery, equipment, and other personal property which is used primarily for the manufacturing of alcohol fuel, biodiesel fuel, or biodiesel feedstock, the land upon which this property is located, and land that is reasonably necessary in the manufacturing of alcohol fuel, biodiesel fuel, or biodiesel feedstock, but not land necessary for growing of crops, which together comprise a new manufacturing facility or an addition to an existing manufacturing facility, are exempt from property taxation for the six assessment years following the date on which the facility or the addition to the existing facility becomes operational.

(b) For manufacturing facilities which produce products in addition to alcohol fuel, biodiesel fuel, or biodiesel feedstock, the amount of the property tax exemption shall be based upon the annual percentage of the total value of all products manufactured that is the value of the alcohol fuel, biodiesel fuel, and biodiesel feedstock manufactured.

(3) Claims for exemptions authorized by this section shall be filed with the county assessor on forms prescribed by the department of revenue and furnished by the assessor. Once filed, the exemption is valid for six years and shall not be renewed. The assessor shall verify and approve claims as the assessor determines to be justified and in accordance with this section. No claims may be filed after December 31, 2009.

The department of revenue may promulgate such rules, pursuant to chapter 34.05 RCW, as necessary to properly administer this section. [2003 c 261 § 9.]

Application—2003 c 261 § 9: "Section 9 of this act applies to taxes levied for collection in 2004 and thereafter." [2003 c 261 § 12.]

Effective dates—2003 c 261: See note following RCW 82.68.030.

84.36.640 Property used for the manufacture of wood biomass fuel. (1) For the purposes of this section, "wood biomass fuel" means a pyrolytic liquid fuel or synthesis gas-derived liquid fuel, used in internal combustion engines, and produced from wood, forest, or field residue, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic.

(2)(a) All buildings, machinery, equipment, and other personal property which is used primarily for the manufacturing of wood biomass fuel, the land upon which this property is located, and land that is reasonably necessary in the manufacturing of wood biomass fuel, but not land necessary for growing of crops, which together comprise a new manufacturing facility or an addition to an existing manufacturing facility, are exempt from property taxation for the six assessment years following the date on which the facility or the addition to the existing facility becomes operational.

(b) For manufacturing facilities which produce products in addition to wood biomass fuel, the amount of the property tax exemption shall be based upon the annual percentage of the total value of all products manufactured that is the value of the wood biomass fuel manufactured.

(3) Claims for exemptions authorized by this section shall be filed with the county assessor on forms prescribed by the department of revenue and furnished by the assessor. Once filed, the exemption is valid for six years and shall not be renewed. The assessor shall verify and approve claims as the assessor determines to be justified and in accordance with this section. No claims may be filed after December 31, 2009.

The department of revenue may promulgate such rules, pursuant to chapter 34.05 RCW, as necessary to properly administer this section. [2003 c 339 § 9.]

Application—2003 c 339 § 9: "Section 9 of this act applies to taxes levied for collection in 2004 and thereafter." [2003 c 339 § 15.]

Effective dates—2003 c 339: See note following RCW 82.69.030.

84.36.645 Semiconductor materials. (Contingent effective date; contingent expiration date.) (1) Machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 used in manufacturing semiconductor materials at a building exempt from sales and use tax and in compliance with the employment requirement under RCW 82.08.965 and 82.12.965 are tax exempt from taxation. "Semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person seeking this exemption must make application to the county assessor, on forms prescribed by the department.

(3) A person receiving an exemption under this section must report in the manner prescribed in RCW 82.32.535.

(4) This section is effective for taxes levied for collection one year after *the effective date of this act and thereafter.

(5) This section expires December 31st of the year occurring twelve years after *the effective date of this act, for taxes levied for collection in the following year. [2003 c 149 § 10.]

***Contingent effective date—Findings—Intent—2003 c 149:** See notes following RCW 82.04.426.

84.36.650 Property used by certain nonprofits to solicit or collect money for artists. The real and personal property owned or used by a nonprofit organization is exempt from taxation if the property is used for solicitation or collection of gifts, donations, or grants for the support of individual artists and the organization meets all of the following conditions:

(1) The organization is organized and conducted for non-sectarian purposes.

(2) The organization is qualified for exemption under section 501(c)(3) of the federal internal revenue code.

(3) The organization is governed by a volunteer board of directors of at least eight members.

(4) If the property is leased, the benefit of the exemption inures to the user.

(5) The gifts, donations, and grants are used by the organization for grants, fellowships, information services, and educational resources in support of individual artists engaged in the production or performance of musical, dance, artistic, dramatic, or literary works. [2003 c 344 § 1.]

Application—2003 c 344: "This act applies to taxes levied for collection in 2004 and thereafter." [2003 c 344 § 3.]

84.36.655 Property related to the manufacture of superefficient airplanes. (Contingent effective date; expires July 1, 2024.)

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

(2) In addition to all other requirements under this title, a person taking the exemption under this section must report as required under RCW 82.32.545.

(3) Claims for exemption authorized by this section shall be filed with the county assessor on forms prescribed by the department and furnished by the assessor. The assessor shall verify and approve claims as the assessor determines to be justified and in accordance with this section. No claims may be filed after December 31, 2023. The department may adopt rules, under the provisions of chapter 34.05 RCW, as necessary to properly administer this section.

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

(5) This section expires July 1, 2024. [2003 2nd sp.s. c 1 § 14.]

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

84.36.805 Conditions for obtaining exemptions by nonprofit organizations, associations, or corporations.

(1) In order to qualify for an exemption under this chapter, the nonprofit organizations, associations, or corporations must satisfy the conditions in this section.

(2) The property must be used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose, except:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4), 84.36.037, and 84.36.060(1) (a) and (b), the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising activities does not subject the property to tax if the fund-raising activities are consistent with the purposes for which the exemption is granted.

(3) The property must be irrevocably dedicated to the purpose for which exemption has been granted, and on the liquidation, dissolution, or abandonment by said organization, association, or corporation, said property will not inure directly or indirectly to the benefit of any shareholder or individual, except a nonprofit organization, association, or corporation which too would be entitled to property tax exemption. This property need not be irrevocably dedicated if it is leased or rented to those qualified for exemption under this chapter or RCW 84.36.560 for leased property, but only if under the terms of the lease or rental agreement the nonprofit organization, association, or corporation receives the benefit of the exemption.

(4) The facilities and services must be available to all regardless of race, color, national origin or ancestry.

(5) The organization, association, or corporation must be duly licensed or certified where such licensing or certification is required by law or regulation.

(6) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller shall not qualify for exempt status. This subsection does not apply to property sold to a nonprofit entity, as defined in RCW 84.36.560(7), by:

(a) A nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal internal revenue code;

(b) A governmental entity established under RCW 35.21.660, 35.21.670, or 35.21.730;

(c) A housing authority created under RCW 35.82.030;

(d) A housing authority meeting the definition in RCW 35.82.210(2)(a); or

(e) A housing authority established under RCW 35.82.300.

(7) The department shall have access to its books in order to determine whether the nonprofit organization, association, or corporation is exempt from taxes under this chapter.

(8) This section does not apply to exemptions granted under RCW 84.36.020, 84.36.032, 84.36.250, and 84.36.260. [2003 c 121 § 2; 2001 1st sp.s. c 7 § 2. Prior: 1999 c 203 § 2; 1999 c 139 § 3; prior: 1998 c 311 § 25; 1998 c 202 § 3; 1998 c 184 § 2; prior: 1997 c 156 § 8; 1997 c 143 § 3; 1995 2nd sp.s. c 9 § 2; 1993 c 79 § 3; prior: 1990 c 283 §§ 3 and 7; 1989 c 379 § 4; 1987 c 468 § 1; 1984 c 220 § 7; 1981 c 141 § 4; 1973 2nd ex.s. c 40 § 7.]

Application—1999 c 203: See note following RCW 84.36.560.

Application—1998 c 184: See note following RCW 84.36.045.

Applicability—1997 c 143: See note following RCW 84.36.046.

Applicability—1995 2nd sp.s. c 9 §§ 1 and 2: See note following RCW 84.36.035.

Effective date—1995 2nd sp.s. c 9: See note following RCW 84.36.035.

Applicability—1993 c 79: See note following RCW 84.36.550.

Construction—1990 c 283: See note following RCW 84.36.030.

Severability—Effective date—1989 c 379: See notes following RCW 84.36.040.

Applicability—1987 c 468: "This act shall be effective for taxes levied for collection in 1988 and thereafter." [1987 c 468 § 3.]

Applicability, construction—1981 c 141: See note following RCW 84.36.060.

84.36.810 Cessation of use under which exemption granted—Collection of taxes. (1)(a) Upon cessation of a use under which an exemption has been granted pursuant to RCW 84.36.030, 84.36.037, 84.36.040, 84.36.041, 84.36.042, 84.36.043, 84.36.046, 84.36.050, 84.36.060, 84.36.550, 84.36.650, 84.36.560, and 84.36.570, except as provided in (b) of this subsection, the county treasurer shall collect all taxes which would have been paid had the property not been exempt during the three years preceding, or the life of such exemption, if such be less, together with the interest at the same rate and computed in the same way as that upon delinquent property taxes. If the property has been granted an exemption for more than ten consecutive years, taxes and interest shall not be assessed under this section.

(b) Upon cessation of use by an institution of higher education of property exempt under RCW 84.36.050(2) the county treasurer shall collect all taxes which would have been paid had the property not been exempt during the seven years preceding, or the life of the exemption, whichever is less.

(2) Subsection (1) of this section applies only when ownership of the property is transferred or when fifty-one percent or more of the area of the property loses its exempt status. The additional tax under subsection (1) of this section shall not be imposed if the cessation of use resulted solely from:

(a) Transfer to a nonprofit organization, association, or corporation for a use which also qualifies and is granted exemption under this chapter;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) Official action by an agency of the state of Washington or by the county or city within which the property is located which disallows the present use of such property;

(d) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the organization, association, or corporation changing the use of such property;

(e) Relocation of the activity and use of another location or site except for undeveloped properties of camp facilities exempted under RCW 84.36.030;

(f) Cancellation of a lease on leased property that had been exempt under this chapter; or

(g) A change in the exempt portion of a home for the aging under RCW 84.36.041(3), as long as some portion of the home remains exempt.

(3) Subsections (2)(e) and (f) of this section do not apply to property leased to a state institution of higher education and exempt under RCW 84.36.050(2). [2003 c 344 § 2; 2001 c 126 § 3. Prior: 1999 c 203 § 3; 1999 c 139 § 4; prior: 1998 c 311 § 26; 1998 c 202 § 4; prior: 1997 c 156 § 9; 1997 c 143 § 4; 1994 c 124 § 19; 1993 c 79 § 4; 1990 c 283 § 4; 1989 c

379 § 5; 1987 c 468 § 2; 1984 c 220 § 8; 1983 c 185 § 1; 1981 c 141 § 5; 1977 ex.s. c 209 § 1; 1973 2nd ex.s. c 40 § 8.]

Application—2001 c 126: See note following RCW 84.36.040.

Application—1999 c 203: See note following RCW 84.36.560.

Applicability—1997 c 143: See note following RCW 84.36.046.

Applicability—1993 c 79: See note following RCW 84.36.550.

Severability—Effective date—1989 c 379: See notes following RCW 84.36.040.

Applicability—1987 c 468: See note following RCW 84.36.805.

Applicability, construction—1981 c 141: See note following RCW 84.36.060.

Chapter 84.40 RCW LISTING OF PROPERTY

Sections

84.40.040	Time and manner of listing.
84.40.060	Personal property assessment.
84.40.070	Companies, associations—Listing.
84.40.120	Oaths, who may administer—Criminal penalty for willful false listing. (<i>Effective July 1, 2004.</i>)
84.40.190	Statement of personal property.
84.40.335	Lists, schedules or statements to contain declaration that falsification subject to perjury.
84.40.340	Verification by assessor of any list, statement, or schedule—Confidentiality, penalty. (<i>Effective July 1, 2004.</i>)
84.40.410	Valuation and assessment of certain leasehold interests.

84.40.040 Time and manner of listing. The assessor shall begin the preliminary work for each assessment not later than the first day of December of each year in all counties in the state. The assessor shall also complete the duties of listing and placing valuations on all property by May 31st of each year, except that the listing and valuation of construction and mobile homes under RCW 36.21.080 and 36.21.090 shall be completed by August 31st of each year, and in the following manner, to wit:

The assessor shall actually determine as nearly as practicable the true and fair value of each tract or lot of land listed for taxation and of each improvement located thereon and shall enter one hundred percent of the true and fair value of such land and value of such improvements, together with the total of such one hundred percent valuations, opposite each description of property on the assessment list and tax roll.

The assessor shall make an alphabetical list of the names of all persons in the county liable to assessment of personal property, and require each person to make a correct list and statement of such property according to the standard form prescribed by the department of revenue, which statement and list shall include, if required by the form, the year of acquisition and total original cost of personal property in each category of the prescribed form. However, the assessor may list and value improvements on publicly owned land in the same manner as real property is listed and valued, including conformance with the revaluation program required under chapter 84.41 RCW. Such list and statement shall be filed on or before the last day of April. The assessor shall on or before the 1st day of January of each year mail, or electronically transmit, a notice to all such persons at their last known address that such statement and list is required. This notice must be accompanied by the form on which the statement or list is to be made. The notice mailed, or electronically transmitted, by the assessor to each taxpayer each year

shall, if practicable, include the statement and list of personal property of the taxpayer for the preceding year. Upon receipt of such statement and list the assessor shall thereupon determine the true and fair value of the property included in such statement and enter one hundred percent of the same on the assessment roll opposite the name of the party assessed; and in making such entry in the assessment list, the assessor shall give the name and post office address of the party listing the property, and if the party resides in a city the assessor shall give the street and number or other brief description of the party's residence or place of business. The assessor may, after giving written notice of the action to the person to be assessed, add to the assessment list any taxable property which should be included in such list. [2003 c 302 § 1; 2001 c 187 § 18; 1997 c 3 § 106 (Referendum Bill No. 47, approved November 4, 1997); 1988 c 222 § 15; 1982 1st ex.s. c 46 § 5; 1973 1st ex.s. c 195 § 97; 1967 ex.s. c 149 § 36; 1961 c 15 § 84.40.040. Prior: 1939 c 206 § 16, part; 1925 ex.s. c 130 § 57, part; 1897 c 71 § 46, part; 1895 c 176 § 5, part; 1893 c 124 § 48, part; 1891 c 140 § 48, part; RRS § 11140, part.]

Contingent effective date—2001 c 187: See note following RCW 84.70.010.

Application—2001 c 187: See note following RCW 84.40.020.

Application—Severability—Part headings not law—Referral to electorate—1997 c 3: See notes following RCW 84.40.030.

Effective date—1988 c 222: "Sections 15, 17, 19, 20, 21, 28, and 30 of this act shall take effect January 1, 1989." [1988 c 222 § 35.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.40.060 Personal property assessment. Upon receipt of the statement of personal property, the assessor shall assess the value of such property. If any property is listed or assessed on or after the 31st day of May, the same shall be legal and binding as if listed and assessed before that time. [2003 c 302 § 2; 1988 c 222 § 16; 1967 ex.s. c 149 § 37; 1961 c 15 § 84.40.060. Prior: 1939 c 206 § 17; 1925 ex.s. c 130 § 58; 1897 c 71 § 47; 1893 c 124 § 49; 1891 c 140 § 49; 1890 p 548 § 49; RRS § 11141.]

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.40.070 Companies, associations—Listing. The president, secretary or principal accounting officer or agent of any company or association, whether incorporated or unincorporated, except as otherwise provided for in this title, shall make out and deliver to the assessor a statement of its property, setting forth particularly (1) the name and location of the company or association; (2) the real property of the company or association, and where situated; and (3) the nature and value of its personal property. The real and personal property of such company or association shall be assessed the same as other real and personal property. In all cases of failure or refusal of any person, officer, company, or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best infor-

mation he can obtain. [2003 c 302 § 3; 1961 c 15 § 84.40.070. Prior: 1925 ex.s. c 130 § 27; 1897 c 71 § 20; 1893 c 124 § 20; 1891 c 140 § 20; 1890 p 538 § 21; Code 1881 § 2839; RRS § 11131.]

84.40.120 Oaths, who may administer—Criminal penalty for willful false listing. (Effective July 1, 2004.)

(1) Any oath authorized to be administered under this title may be administered by any assessor or deputy assessor, or by any other officer having authority to administer oaths.

(2) Any person willfully making a false list, schedule, or statement under oath is guilty of perjury under chapter 9A.72 RCW. [2003 c 53 § 409; 1961 c 15 § 84.40.120. Prior: 1925 ex.s. c 130 § 67; 1897 c 71 § 57; 1893 c 124 § 58; 1891 c 140 § 58; 1890 p 553 § 63; RRS § 11150.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

84.40.190 Statement of personal property. Every person required by this title to list property shall make out and deliver to the assessor, or to the department as required by RCW 84.40.065, either in person, by mail, or by electronic transmittal if available, a statement of all the personal property in his or her possession or under his or her control, and which, by the provisions of this title, he or she is required to list for taxation, either as owner or holder thereof. When any list, schedule, or statement is made, the principal required to make out and deliver the same shall be responsible for the contents and the filing thereof and shall be liable for the penalties imposed pursuant to RCW 84.40.130. No person shall be required to list for taxation in his statement to the assessor any share or portion of the capital stock, or of any of the property of any company, association or corporation, which such person may hold in whole or in part, where such company, being required so to do, has listed for assessment and taxation its capital stock and property with the department of revenue, or as otherwise required by law. [2003 c 302 § 4; 2001 c 185 § 13; 1993 c 33 § 4; 1967 ex.s. c 149 § 39; 1961 c 15 § 84.40.190. Prior: 1945 c 56 § 1; 1925 ex.s. c 130 § 22; 1897 c 71 § 15; 1893 c 124 § 15; 1891 c 140 § 15; 1890 p 535 § 15; Code 1881 § 2834; Rem. Supp. 1945 § 11126.]

Effective date—1993 c 33: See note following RCW 82.49.060.

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.40.335 Lists, schedules or statements to contain declaration that falsification subject to perjury. Except for personal property under RCW 84.40.190, any list, schedule or statement required by this chapter shall contain a written declaration that any person signing the same and knowing the same to be false shall be subject to the penalties of perjury. [2003 c 302 § 5; 1967 ex.s. c 149 § 42.]

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.40.340 Verification by assessor of any list, statement, or schedule—Confidentiality, penalty. (Effective July 1, 2004.) (1) For the purpose of verifying any list, state-

ment, or schedule required to be furnished to the assessor by any taxpayer, any assessor or his or her trained and qualified deputy at any reasonable time may visit, investigate and examine any personal property, and for this purpose the records, accounts and inventories also shall be subject to any such visitation, investigation and examination which shall aid in determining the amount and valuation of such property. Such powers and duties may be performed at any office of the taxpayer in this state, and the taxpayer shall furnish or make available all such information pertaining to property in this state to the assessor although the records may be maintained at any office outside this state.

(2) Any information or facts obtained pursuant to this section shall be used by the assessor only for the purpose of determining the assessed valuation of the taxpayer's property: PROVIDED, That such information or facts shall also be made available to the department of revenue upon request for the purpose of determining any sales or use tax liability with respect to personal property, and except in a civil or criminal judicial proceeding or an administrative proceeding in respect to penalties imposed pursuant to RCW 84.40.130, to such sales or use taxes, or to the assessment or valuation for tax purposes of the property to which such information and facts relate, shall not be disclosed by the assessor or the department of revenue without the permission of the taxpayer to any person other than public officers or employees whose duties relate to valuation of property for tax purposes or to the imposition and collection of sales and use taxes, and any violation of this secrecy provision is a gross misdemeanor. [2003 c 53 § 410; 1997 c 239 § 3; 1973 1st ex.s. c 74 § 1; 1967 ex.s. c 149 § 40; 1961 ex.s. c 24 § 6.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

84.40.410 Valuation and assessment of certain leasehold interests. A leasehold interest consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes, together with any improvements thereon, shall be assessed and taxed in the same manner as privately owned real property. The sublessee of each lot, or the lessee if not subleased, is liable for the property tax on the lot and improvements thereon. If property tax for a lot or improvements thereon remains unpaid for more than three years from the date of delinquency, including any property taxes that are delinquent as of July 22, 2001, the county treasurer may proceed to collect the tax in the same manner as for other property, except that the lessor's interest in the property shall not be extinguished as a result of any action for the collection of tax. Collection of property taxes assessed on any such lot shall be enforceable by foreclosure proceedings in accordance with real property foreclosure proceedings authorized in chapter 84.64 RCW. [2003 c 169 § 1; 2001 c 26 § 3.]

Application—2001 c 26 §§ 2 and 3: "Sections 2 and 3 of this act apply to taxes levied for collection in 2002 and thereafter." [2001 c 26 § 5.]

Chapter 84.52 RCW

LEVY OF TAXES

Sections

84.52.010	Taxes levied or voted in specific amounts—Effect of constitutional and statutory limitations—Use of hypothetical levy.
84.52.043	Limitations upon regular property tax levies.
84.52.052	Excess levies authorized—When—Procedure.
84.52.068	State levy—Distribution to school districts.

84.52.010 Taxes levied or voted in specific amounts—Effect of constitutional and statutory limitations—Use of hypothetical levy. Except as is permitted under RCW 84.55.050, all taxes shall be levied or voted in specific amounts.

The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor shall recompute and establish a consolidated levy in the following manner:

(1) The full certified rates of tax levy for state, county, county road district, and city or town purposes shall be extended on the tax rolls in amounts not exceeding the limitations established by law; however any state levy shall take precedence over all other levies and shall not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under RCW 36.54.130, 84.52.069, 84.34.230, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, and 84.52.105, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies shall be reduced as follows: (a) The levy imposed by a ferry district under RCW 36.54.130 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated; (b) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a metropolitan park district that is protected under RCW 84.52.120 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; (c) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, shall be reduced on a pro rata basis until

the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; and (d) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or eliminated.

(2) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property shall be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(a) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, 35.95A.100, and 67.38.130 shall be reduced on a pro rata basis or eliminated;

(b) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts shall be reduced on a pro rata basis or eliminated;

(c) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, shall be reduced on a pro rata basis or eliminated;

(d) Fourth, if the consolidated tax levy rate still exceeds these limitations, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts created on or after January 1, 2002, shall be reduced on a pro rata basis or eliminated;

(e) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 shall be reduced on a pro rata basis or eliminated; and

(f) Sixth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, library districts, metropolitan park districts created before January 1, 2002, under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, shall be reduced on a pro rata basis or eliminated.

In determining whether the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.050, exceeds the limitations provided in that section, the assessor shall use the hypothetical state levy, as apportioned to the county under RCW 84.48.080, that was computed under RCW 84.48.080 without regard to the reduction under RCW 84.55.012. [2003 c 83 § 310. Prior: 2002 c 248 § 15; 2002 c 88 § 7; 1995 2nd sp.s. c 13 § 4; 1995 c 99 § 2; 1994 c 124 § 36; 1993 c 337 § 4; 1990 c 234 § 4; 1988 c 274 § 7; 1987 c 255 § 1; 1973 1st ex.s. c 195 § 101; 1973 1st ex.s. c 195 § 146; 1971 ex.s. c 243 § 6; 1970 ex.s. c 92 § 4; 1961 c 15 § 84.52.010; prior: 1947 c 270 § 1; 1925 ex.s. c

130 § 74; Rem. Supp. 1947 § 11235; prior: 1920 ex.s. c 3 § 1; 1897 c 71 § 62; 1893 c 124 § 63.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Intent—1995 2nd sp.s. c 13: See note following RCW 84.55.012.

Finding—1993 c 337: See note following RCW 84.52.105.

Purpose—1988 c 274: "The legislature finds that, due to statutory and constitutional limitations, the interdependence of the regular property tax levies of the state, counties, county road districts, cities and towns, and junior taxing districts can cause significant reductions in the otherwise authorized levies of those taxing districts, resulting in serious disruptions to essential services provided by those taxing districts. The purpose of this act is to avoid unnecessary reductions in regular property tax revenue without exceeding existing statutory and constitutional tax limitations on cumulative regular property tax levy rates. The legislature declares that it is a purpose of the state, counties, county road districts, cities and towns, public hospital districts, library districts, fire protection districts, metropolitan park districts, and other taxing districts to participate in the methods provided by this act by which revenue levels supporting the services provided by all taxing districts might be maintained." [1988 c 274 § 1.]

Severability—1988 c 274: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 274 § 13.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—1971 ex.s. c 243: See RCW 84.34.920.

Intent—1970 ex.s. c 92: "It is the intent of this 1970 amendatory act to prevent a potential doubling of property taxes that might otherwise result from the enforcement of the constitutionally required fifty percent assessment ratio as of January 1, 1970, and to adjust property tax millage rates for subsequent years to levels which will conform to the requirements of any constitutional amendment imposing a one percent limitation on property taxes. It is the further intent of this 1970 amendatory act that the statutory authority of any taxing district to impose excess levies shall not be impaired by reason of the reduction in millage rates for regular property tax levies. This 1970 amendatory act shall be construed to effectuate the legislative intent expressed in this section." [1970 ex.s. c 92 § 1.]

Effective date—Application—1970 ex.s. c 92: "This act shall take effect July 1, 1970 but shall not affect property taxes levied in 1969 or prior years." [1970 ex.s. c 92 § 11.]

84.52.043 Limitations upon regular property tax levies. Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named shall be as follows:

(1) Levies of the senior taxing districts shall be as follows: (a) The levy by the state shall not exceed three dollars and sixty cents per thousand dollars of assessed value adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; (b) the levy by any county shall not exceed one dollar and eighty cents per thousand dollars of assessed value; (c) the levy by any road district shall not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and (d) the levy by any city or town shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed value. However any county is hereby authorized to increase its levy from one dollar and eighty cents to a rate not to exceed two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes if the total levies for both the county and any road district within the county do not exceed four dollars and five cents per thousand dollars of assessed value, and no other

taxing district has its levy reduced as a result of the increased county levy.

(2) The aggregate levies of junior taxing districts and senior taxing districts, other than the state, shall not exceed five dollars and ninety cents per thousand dollars of assessed valuation. The term "junior taxing districts" includes all taxing districts other than the state, counties, road districts, cities, towns, port districts, and public utility districts. The limitations provided in this subsection shall not apply to: (a) Levies at the rates provided by existing law by or for any port or public utility district; (b) excess property tax levies authorized in Article VII, section 2 of the state Constitution; (c) levies for acquiring conservation futures as authorized under RCW 84.34.230; (d) levies for emergency medical care or emergency medical services imposed under RCW 84.52.069; (e) levies to finance affordable housing for very low-income housing imposed under RCW 84.52.105; (f) the portions of levies by metropolitan park districts that are protected under RCW 84.52.120; and (g) levies imposed by ferry districts under RCW 36.54.130. [2003 c 83 § 311; 1995 c 99 § 3; 1993 c 337 § 3; 1990 c 234 § 1; 1989 c 378 § 36; 1988 c 274 § 5; 1973 1st ex.s. c 195 § 134.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Finding—1993 c 337: See note following RCW 84.52.105.

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

Effective date—1973 2nd ex.s. c 4: "Sections 4 through 6 of this 1973 amendatory act shall be effective on and after January 1, 1974." [1973 2nd ex.s. c 4 § 6.]

Emergency—1973 2nd ex.s. c 4: "Except as otherwise in this 1973 amendatory act provided, this 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1973 2nd ex.s. c 4 § 7.]

Construction—1973 1st ex.s. c 195: "Sections 135 through 152 of this 1973 amendatory act shall apply to tax levies made in 1973 for collection in 1974, and sections 1 through 134 shall apply to tax levies made in 1974 and each year thereafter for collection in 1975 and each year thereafter." [1973 1st ex.s. c 195 § 155.]

Severability—1973 1st ex.s. c 195: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 195 § 153.]

Effective dates and termination dates—1973 1st ex.s. c 195 (as amended by 1973 2nd ex.s. c 4): "This 1973 amendatory act, chapter 195, Laws of 1973, is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That section 9 shall take effect January 1, 1975, and section 133(3) shall take effect on January 31, 1974: PROVIDED, FURTHER, That section 137 shall not be effective until July 1, 1973, at which time section 136 shall be void and of no effect: PROVIDED, FURTHER, That section 138 shall not be effective until January 1, 1974, at which time section 137 shall be void and of no effect: PROVIDED, FURTHER, That section 139 shall not be effective until July 1, 1974 at which time section 138 shall be void and of no effect, and section 139 shall be null and void and of no further effect on and after January 1, 1975: PROVIDED, FURTHER, That sections 1 through 8, sections 10 through 132, section 133(1), (2), (4), and (5), and section 134 shall not take effect until January 1, 1974, at which time sections 135, 136, and sections 140 through 151 shall be void and of no effect: PROVIDED, FURTHER, That section 152 shall be void and of no effect on and after January 1, 1975." [1973 2nd ex.s. c 4 § 3; 1973 1st ex.s. c 195 § 154.]

84.52.052 Excess levies authorized—When—Procedure. The limitations imposed by RCW 84.52.050 through 84.52.056, and RCW 84.52.043 shall not prevent the levy of

additional taxes by any taxing district, except school districts and fire protection districts, in which a larger levy is necessary in order to prevent the impairment of the obligation of contracts. As used in this section, the term "taxing district" means any county, metropolitan park district, park and recreation service area, park and recreation district, water-sewer district, solid waste disposal district, public facilities district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, rural partial-county library district, intercounty rural library district, cemetery district, city, town, transportation benefit district, emergency medical service district with a population density of less than one thousand per square mile, cultural arts, stadium, and convention district, ferry district, or city transportation authority.

Any such taxing district may levy taxes at a rate in excess of the rate specified in RCW 84.52.050 through 84.52.056 and 84.52.043, or 84.55.010 through 84.55.050, when authorized so to do by the voters of such taxing district in the manner set forth in Article VII, section 2(a) of the Constitution of this state at a special or general election to be held in the year in which the levy is made.

A special election may be called and the time therefor fixed by the county legislative authority, or council, board of commissioners, or other governing body of any such taxing district, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no." [2003 c 83 § 312. Prior: 2002 c 248 § 16; 2002 c 180 § 1; 1996 c 230 § 1615; 1993 c 284 § 4; 1991 c 138 § 1; 1989 c 53 § 4; 1988 ex.s. c 1 § 18; prior: 1983 c 315 § 10; 1983 c 303 § 16; 1983 c 130 § 11; 1983 c 2 § 19; prior: 1982 1st ex.s. c 22 § 17; 1982 c 175 § 7; 1982 c 123 § 19; 1981 c 210 § 20; 1977 ex.s. c 325 § 1; 1977 c 4 § 1; 1973 1st ex.s. c 195 § 102; 1973 1st ex.s. c 195 § 147; 1973 c 3 § 1; 1971 ex.s. c 288 § 26; 1965 ex.s. c 113 § 1; 1963 c 112 § 1; 1961 c 15 § 84.52.052; prior: 1959 c 304 § 8; 1959 c 290 § 1; 1957 c 58 § 15; 1957 c 32 § 1; 1955 c 93 § 1; 1953 c 189 § 1; 1951 2nd ex.s. c 23 § 3; prior: 1951 c 255 § 1, part; 1950 ex.s. c 11 § 1, part; 1945 c 253 § 1, part; 1941 c 176 § 1, part; 1939 c 83 § 1, part; 1939 c 2 (Init. Meas. No. 129); 1937 c 1 (Init. Meas. No. 114); 1935 c 2 (Init. Meas. No. 94); 1933 c 4 (Init. Meas. No. 64); Rem. Supp. 1945 § 11238-1e, part.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Contingent effective date—2002 c 180: "This act takes effect January 1, 2003, if the proposed amendment to Article VII, section 2 of the state Constitution authorizing multiyear excess property tax levies is validly submitted to and approved by the voters at the next general election. If the proposed amendment is not approved, this act is void in its entirety." [2002 c 180 § 4.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1989 c 53: See note following RCW 36.73.020.

Severability—1988 ex.s. c 1: See RCW 36.100.900.

Severability—1983 c 315: See note following RCW 90.03.500.

Severability—1983 c 303: See RCW 36.60.905.

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

Severability—1982 1st ex.s. c 22: See RCW 67.38.905.

Severability—1982 c 175: See note following RCW 36.58.100.

Severability—1981 c 210: See note following RCW 36.68.400.

Severability—1977 ex.s. c 325: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 325 § 5.]

Effective date—1977 ex.s. c 325: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1977." [1977 ex.s. c 325 § 6.]

Severability—1977 c 4: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 c 4 § 4.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.52.068 State levy—Distribution to school districts.

(1) A portion of the proceeds of the state property tax levy shall be distributed to school districts in the amounts and in the manner provided in this section.

(2) The amount of the distribution to each school district shall be based upon the average number of full-time equivalent students in the school district during the previous school year, and shall be calculated as follows:

(a) Out of taxes collected in calendar years 2001 through and including 2003, an annual amount equal to one hundred forty dollars per each full-time equivalent student in all school districts shall be deposited in the student achievement fund to be distributed to each school district based on one hundred forty dollars per full-time equivalent student in the school district for each year beginning with the school year 2001-2002 and through the end of the 2003-2004 school year.

(b) For the 2004-2005 school year, an annual amount equal to two hundred fifty-four dollars per full-time equivalent student in all school districts shall be deposited in the student achievement fund to be distributed to each school district based on two hundred fifty-four dollars per full-time equivalent student.

(c) For the 2005-2006 school year, an amount equal to three hundred dollars per full-time equivalent student in all school districts shall be deposited in the student achievement fund to be distributed to each school district based on three hundred dollars per full-time equivalent student.

(d) For the 2006-2007 school year, an amount equal to three hundred seventy-five dollars per full-time equivalent student in all school districts shall be deposited in the student achievement fund to be distributed to each school district based on three hundred seventy-five dollars per full-time equivalent student.

(e) For the 2007-2008 school year, an amount equal to four hundred fifty dollars per full-time equivalent student in all school districts shall be deposited in the student achievement fund to be distributed to each school district based on four hundred fifty dollars per full-time equivalent student.

(f) Each subsequent year following the 2007-2008 school year, the amount deposited and distributed shall be adjusted for inflation as defined in RCW 43.135.025(8).

(3) For the 2001-2002 through 2003-2004 school years, the office of the superintendent of public instruction shall verify the average number of full-time equivalent students in

each school district from the previous school year to the state treasurer by August 1st of each year.

(4) Beginning with the 2004-2005 school year:

(a) The annual distributions to each school district shall be based on the average number of full-time equivalent students in the school district from the previous school year as reported to the office of the superintendent of public instruction by August 31st of the previous school year; and

(b) The school district annual amounts as defined in subsection (2) of this section shall be distributed on the monthly apportionment schedule as defined in RCW 28A.510.250. The office of the superintendent of public instruction shall notify the department of the monthly amounts to be deposited into the student achievement fund to meet the apportionment schedule distributions. [2003 1st sp.s. c 19 § 1; 2001 c 3 § 5 (Initiative Measure No. 728, approved November 7, 2000).]

Application—2001 c 3 § 5 (Initiative Measure No. 728): "Section 5 of this act applies to taxes levied in 2000 for collection in 2001 and thereafter." [2001 c 3 § 6 (Initiative Measure No. 728, approved November 7, 2000).]

Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728): See notes following RCW 28A.505.210.

**Chapter 84.55 RCW
LIMITATIONS UPON REGULAR
PROPERTY TAXES**

Sections

84.55.050 Election to authorize increase in regular property tax levy— Limited propositions—Procedure.

84.55.050 Election to authorize increase in regular property tax levy—Limited propositions—Procedure.

(1) Subject to any otherwise applicable statutory dollar rate limitations, regular property taxes may be levied by or for a taxing district in an amount exceeding the limitations provided for in this chapter if such levy is authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters. Any election held pursuant to this section shall be held not more than twelve months prior to the date on which the proposed levy is to be made, except as provided in subsection (3)(b) of this section. The ballot of the proposition shall state the dollar rate proposed and shall clearly state any conditions which are applicable under subsection (3) of this section.

(2) After a levy authorized pursuant to this section is made, the dollar amount of such levy shall be used for the purpose of computing the limitations for subsequent levies provided for in this chapter, except as provided in subsections (3) and (4) of this section.

(3) A proposition placed before the voters under this section may:

(a) Limit the period for which the increased levy is to be made;

(b) Subject to statutory dollar limitations in RCW 84.52.043, authorize annual increases in levies for any county, city, or town for multiple consecutive years, up to six consecutive years, during which period each year's autho-

rized maximum legal levy shall be used as the base upon which an increased levy limit for the succeeding year is computed, but the ballot proposition must state the dollar rate proposed only for the first year of the consecutive years and must state the limit factor, or a specified index to be used for determining a limit factor, such as the consumer price index, which need not be the same for all years, by which the regular tax levy for the district may be increased in each of the subsequent consecutive years. Elections for this purpose must be held at a primary or general election. The title of each ballot measure must state the specific purposes for which the proposed levy increase shall be used, and funds raised under this levy shall not supplant existing funds used for these purposes;

(c) Limit the purpose for which the increased levy is to be made, but if the limited purpose includes making redemption payments on bonds, the period for which the increased levies are made shall not exceed nine years;

(d) Set the levy at a rate less than the maximum rate allowed for the district;

(e) Provide that the maximum allowable dollar amount of the final annual levy of the period specified in the measure shall be used to compute the limitations provided for in this chapter on levy increases occurring after the expiration of the period; or

(f) Include any combination of the conditions in this subsection.

(4) Except as otherwise provided in an approved ballot measure under this section, after the expiration of a limited period or the satisfaction of a limited purpose, whichever comes first, subsequent levies shall be computed as if:

(a) The limited proposition under subsection (3) of this section had not been approved; and

(b) The taxing district had made levies at the maximum rates which would otherwise have been allowed under this chapter during the years levies were made under the limited proposition. [2003 1st sp.s. c 24 § 4; 1989 c 287 § 1; 1986 c 169 § 1; 1979 ex.s. c 218 § 3; 1973 1st ex.s. c 195 § 109; 1971 ex.s. c 288 § 24.]

Finding—Intent—Effective date—Severability—2003 1st sp.s. c 24: See notes following RCW 82.14.450.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

**Chapter 84.56 RCW
COLLECTION OF TAXES**

Sections

84.56.025 Waiver of interest and penalties—Circumstances—Provision of death certificate and affidavit for certain waivers.
84.56.120 Removal of property from county or state after assessment without paying tax.
84.56.340 Payment on part of parcel or tract or on undivided interest or fractional interest—Division—Certification—Appeal.

84.56.025 Waiver of interest and penalties—Circumstances—Provision of death certificate and affidavit for certain waivers. (1) The interest and penalties for delinquencies on property taxes shall be waived by the county treasurer if the notice for these taxes due, as provided in RCW 84.56.050, was not sent to a taxpayer due to error by

the county. Where waiver of interest and penalties has occurred, the full amount of interest and penalties shall be reinstated if the taxpayer fails to pay the delinquent taxes within thirty days of receiving notice that the taxes are due. Each county treasurer shall, subject to guidelines prepared by the department of revenue, establish administrative procedures to determine if taxpayers are eligible for this waiver.

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

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

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

(3) Before allowing a hardship waiver under subsection (2) of this section, the county treasurer may require a copy of the death certificate along with an affidavit signed by the taxpayer. [2003 c 12 § 1; 1998 c 327 § 1; 1984 c 185 § 1.]

84.56.120 Removal of property from county or state after assessment without paying tax. After personal property has been assessed, it shall be unlawful for any person to remove the personal property subject to priority tax liens created pursuant to RCW 84.60.010 and 84.60.020 from the county in which the property was assessed and from the state until taxes and interest are paid, or until notice has been given to the county treasurer describing the property to be removed and in case of public or private sales of personal property, a list of the property desired to be sold shall be sent to the treasurer, the tax will be computed upon the consolidated tax levy for the previous year. Any taxes owed shall become an automatic lien upon the proceeds of any auction and shall be remitted to the county treasurer before final distribution to any person, as defined in this section. If proceeds are distributed in violation of this section, the seller or agent of the seller shall assume all liability for taxes, interest, and penalties owed to the county treasurer. Any person violating the provisions of this section shall be guilty of a misdemeanor. For the purposes of this section, "person" includes a property owner, mortgagor, creditor, or agent. [2003 c 23 § 2; 1991 c 245 § 20; 1961 c 15 § 84.56.120. Prior: 1925 ex.s. c 130 § 88; RRS § 11249; prior: 1907 c 29 § 2.]

84.56.340 Payment on part of parcel or tract or on undivided interest or fractional interest—Division—Certification—Appeal. Any person desiring to pay taxes upon any part or parts of real property heretofore or hereafter assessed as one parcel, or tract, or upon such person's undivided fractional interest in such a property, may do so by applying to the county assessor, who must carefully investigate and ascertain the relative or proportionate value said part or part interest bears to the whole tract assessed, on which basis the assessment must be divided, and the assessor shall

forthwith certify such proportionate value to the county treasurer: PROVIDED, That excepting when property is being acquired for public use, or where a person or financial institution desires to pay the taxes and any penalties and interest on a mobile home upon which they have a lien by mortgage or otherwise, no segregation of property for tax purposes shall be made under this section unless all current year and delinquent taxes and assessments on the entire tract have been paid in full. The county treasurer, upon receipt of certification, shall duly accept payment and issue receipt on the apportionment certified by the county assessor. In cases where protest is filed to said division appeal shall be made to the county legislative authority at its next regular session for final division, and the county treasurer shall accept and receipt for said taxes as determined and ordered by the county legislative authority. Any person desiring to pay on an undivided interest in any real property may do so by paying to the county treasurer a sum equal to such proportion of the entire taxes charged on the entire tract as interest paid on bears to the whole. [2003 c 23 § 3; 1997 c 393 § 16; 1996 c 153 § 2; 1994 c 301 § 53; 1985 c 395 § 4; 1971 ex.s. c 48 § 1; 1961 c 15 § 84.56.340. Prior: 1939 c 206 § 44; 1933 c 171 § 2; 1925 ex.s. c 130 § 103; RRS § 11264; prior: 1899 c 141 § 11; 1897 c 71 § 82; 1893 c 124 § 87; 1890 p 583 § 134. Formerly RCW 84.56.340 and 84.56.350.]

Applicability—1996 c 153: See note following RCW 84.56.020.

Chapter 84.64 RCW

LIEN FORECLOSURE

(Formerly: Certificates of delinquency)

Sections

84.64.060	Payment by interested person before day of sale.
84.64.080	Foreclosure proceedings—Judgment—Sale—Notice—Form of deed—Recording.

84.64.060 Payment by interested person before day of sale. Any person owning a recorded interest in lands or lots upon which judgment is prayed, as provided in this chapter, may in person or by agent pay the taxes, interest and costs due thereon to the county treasurer of the county in which the same are situated, at any time before the day of the sale; and for the amount so paid he or she shall have a lien on the property liable for taxes, interest and costs for which judgment is prayed; and the person or authority who shall collect or receive the same shall give a receipt for such payment, or issue to such person a certificate showing such payment. If paying by agent, the agent shall provide notarized documentation of the agency relationship. [2003 c 23 § 4; 2002 c 168 § 9; 1963 c 88 § 1; 1961 c 15 § 84.64.060. Prior: 1925 ex.s. c 130 § 118; RRS § 11279; prior: 1897 c 71 § 99.]

84.64.080 Foreclosure proceedings—Judgment—Sale—Notice—Form of deed—Recording. The court shall examine each application for judgment foreclosing tax lien, and if defense (specifying in writing the particular cause of objection) be offered by any person interested in any of the lands or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without other pleadings, and shall pronounce judgment as the right of the case may be; or the court may, in its discre-

tion, continue such individual cases, wherein defense is offered, to such time as may be necessary, in order to secure substantial justice to the contestants therein; but in all other cases the court shall proceed to determine the matter in a summary manner as above specified. In all judicial proceedings of any kind for the collection of taxes, and interest and costs thereon, all amendments which by law can be made in any personal action pending in such court shall be allowed, and no assessments of property or charge for any of the taxes shall be considered illegal on account of any irregularity in the tax list or assessment rolls or on account of the assessment rolls or tax list not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax lists without name, or in any other name than that of the owner, and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, shall vitiate or in any manner affect the tax or the assessment thereof, and any irregularities or informality in the assessment rolls or tax lists or in any of the proceedings connected with the assessment or levy of such taxes or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to the law by the court. The court shall give judgment for such taxes, interest and costs as shall appear to be due upon the several lots or tracts described in the notice of application for judgment or complaint, and such judgment shall be a several judgment against each tract or lot or part of a tract or lot for each kind of tax included therein, including all interest and costs, and the court shall order and direct the clerk to make and enter an order for the sale of such real property against which judgment is made, or vacate and set aside the certificate of delinquency or make such other order or judgment as in the law or equity may be just. The order shall be signed by the judge of the superior court, shall be delivered to the county treasurer, and shall be full and sufficient authority for him or her to proceed to sell the property for the sum as set forth in the order and to take such further steps in the matter as are provided by law. The county treasurer shall immediately after receiving the order and judgment of the court proceed to sell the property as provided in this chapter to the highest and best bidder for cash. The acceptable minimum bid shall be the total amount of taxes, interest, and costs. All sales shall be made at a location in the county on a date and time (except Saturdays, Sundays, or legal holidays) as the county treasurer may direct, and shall continue from day to day (Saturdays, Sundays, and legal holidays excepted) during the same hours until all lots or tracts are sold, after first giving notice of the time, and place where such sale is to take place for ten days successively by posting notice thereof in three public places in the county, one of which shall be in the office of the treasurer. The notice shall be substantially in the following form:

TAX JUDGMENT SALE

Public notice is hereby given that pursuant to real property tax judgment of the superior court of the county of in the state of Washington, and an order of sale duly issued by the court, entered the day of,, in proceedings for foreclosure of tax liens upon real property, as

per provisions of law, I shall on the day of,, at o'clock a.m., at in the city of, and county of, state of Washington, sell the real property to the highest and best bidder for cash, to satisfy the full amount of taxes, interest and costs adjudged to be due.

In witness whereof, I have hereunto affixed my hand and seal this day of,

.
Treasurer of
county

No county officer or employee shall directly or indirectly be a purchaser of such property at such sale.

If any buildings or improvements are upon an area encompassing more than one tract or lot, the same must be advertised and sold as a single unit.

If the highest amount bid for any such separate unit tract or lot is in excess of the minimum bid due upon the whole property included in the certificate of delinquency, the excess shall be refunded following payment of all water-sewer district liens, on application therefor, to the record owner of the property. The record owner of the property is the person who held title on the date of issuance of the certificate of delinquency. Assignments of interests, deeds, or other documents executed or recorded after filing the certificate of delinquency shall not affect the payment of excess funds to the record owner. In the event no claim for the excess is received by the county treasurer within three years after the date of the sale he or she shall at expiration of the three year period deposit such excess in the current expense fund of the county. The county treasurer shall execute to the purchaser of any piece or parcel of land a tax deed. The deed so made by the county treasurer, under the official seal of his or her office, shall be recorded in the same manner as other conveyances of real property, and shall vest in the grantee, his or her heirs and assigns the title to the property therein described, without further acknowledgment or evidence of such conveyance, and shall be substantially in the following form:

State of Washington }
County of } ss.

This indenture, made this day of,, between, as treasurer of county, state of Washington, party of the first part, and, party of the second part:

Witnesseth, that, whereas, at a public sale of real property held on the day of,, pursuant to a real property tax judgment entered in the superior court in the county of on the day of,, in proceedings to foreclose tax liens upon real property and an order of sale duly issued by the court, duly purchased in compliance with the laws of the state of Washington, the following described real property, to wit: (Here place description of real property conveyed) and that the has complied with the laws of the state of Washington necessary to entitle (him, or her or them) to a deed for the real property.

Now, therefore, know ye, that, I, county treasurer of the county of, state of Washington, in consideration

of the premises and by virtue of the statutes of the state of Washington, in such cases provided, do hereby grant and convey unto, his or her heirs and assigns, forever, the real property hereinbefore described.

Given under my hand and seal of office this day of, A.D.

County Treasurer.

[2003 c 23 § 5. Prior: 1999 c 153 § 72; 1999 c 18 § 8; 1991 c 245 § 27; 1981 c 322 § 5; 1965 ex.s. c 23 § 4; 1963 c 8 § 1; 1961 c 15 § 84.64.080; prior: 1951 c 220 § 1; 1939 c 206 § 47; 1937 c 118 § 1; 1925 ex.s. c 130 § 20; RRS § 11281; prior: 1909 c 163 § 1; 1903 c 59 § 5; 1899 c 141 § 18; 1897 c 71 § 103; 1893 c 124 § 105; 1890 p 573 § 112; Code 1881 § 2917. Formerly RCW 84.64.080, 84.64.090, 84.64.100, and 84.64.110.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Validation—1963 c 8: "All rights acquired or any liability or obligation incurred under the provisions of this section prior to February 18, 1963, or any process, proceeding, order, or judgment involving the assessment of any property or the levy or collection of any tax thereunder, or any certificate of delinquency, tax deed or other instrument given or executed thereunder, or any claim or refund thereunder, or any sale or other proceeding thereunder are hereby declared valid and of full force and effect." [1963 c 8 § 2.]

Chapter 84.69 RCW

REFUNDS

Sections

- 84.69.050 Refund with respect to amounts paid state.
- 84.69.070 Refunds with respect to taxing districts—Administrative expenses—Disposition of funds upon expiration of refund orders.

84.69.050 Refund with respect to amounts paid state.

The part of the refund representing amounts paid to the state, including interest as provided in RCW 84.69.100, shall be paid from the county general fund and the department of revenue shall, upon the next succeeding settlement with the county, certify this amount refunded to the county: PROVIDED, That when a refund of tax funds pursuant to state levies is required, the department of revenue shall authorize adjustment procedures whereby counties may deduct from property tax remittances to the state the amount required to cover the state's portion of the refunds. [2003 c 23 § 6; 1988 c 222 § 31; 1973 2nd ex.s. c 5 § 1; 1961 c 15 § 84.69.050. Prior: 1957 c 120 § 5.]

84.69.070 Refunds with respect to taxing districts—Administrative expenses—Disposition of funds upon expiration of refund orders.

Refunds ordered with respect to taxing districts, including interest as provided in RCW 84.69.100, shall be paid by checks drawn by the county treasurer upon such available funds, if any, as the taxing districts may have on deposit in the county treasury, or in the event such funds are insufficient, then out of funds subsequently accruing to such taxing district and on deposit in the county treasury. When such refunds are made as a result of taxes paid under levies or statutes adjudicated to be illegal or unconstitutional all administrative costs including interest paid on the refunds incurred by the county treasurer in mak-

ing such refunds shall be a charge against the funds of such districts and/or the state on a pro rata basis until the county current expense fund is fully reimbursed for the administrative expenses incurred in making such refund: PROVIDED, That whenever orders for refunds of ad valorem taxes promulgated by the county treasurer or county legislative authority and unpaid checks shall expire and become void as provided in RCW 84.69.110, then any moneys remaining in a refund account established by the county treasurer for any taxing district may be transferred by the county treasurer from such refund account to the county current expense fund to reimburse the county for the administrative expense incurred in making refunds as prescribed herein. Any excess then remaining in the taxing district refund account may then be transferred by the county treasurer to the current expense fund of the taxing district for which the tax was originally levied and collected. [2003 c 23 § 7; 1991 c 245 § 38; 1973 2nd ex.s. c 5 § 3; 1963 c 114 § 1; 1961 c 270 § 2; 1961 c 15 § 84.69.070. Prior: 1957 c 120 § 7.]

Title 85

DIKING AND DRAINAGE

Chapters

85.38 Special district creation and operation.

Chapter 85.38 RCW

SPECIAL DISTRICT CREATION AND OPERATION

Sections

- 85.38.180 Special districts—Powers.
- 85.38.280 Cooperative watershed management.

85.38.180 Special districts—Powers. A special district may:

- (1) Engage in flood control activities, and investigate, plan, construct, acquire, repair, maintain, and operate improvements, works, projects, and facilities necessary to prevent inundation or flooding from rivers, streams, tidal waters or other waters. Such facilities include dikes, levees, dams, banks, revetments, channels, canals, drainage ditches, tide gates, flood gates, and other works, appliances, machinery, and equipment.
- (2) Engage in drainage control, storm water control, and surface water control activities, and investigate, plan, construct, acquire, repair, maintain, and operate improvements, works, projects, and facilities necessary to control and treat storm water, surface water, and flood water. Such facilities include drains, flood gates, drainage ditches, tide gates, ditches, canals, nonsanitary sewers, pumps, and other works, appliances, machinery, and equipment.
- (3) Engage in lake or river restoration, aquatic plant control, and water quality enhancement activities.
- (4) Take actions necessary to protect life and property from inundation or flow of flood waters, storm waters, or surface waters.
- (5) Acquire, purchase, condemn by power of eminent domain pursuant to chapters 8.08 and 8.25 RCW, or lease, in its own name, necessary property, property rights, facilities, and equipment.

- (6) Sell or exchange surplus property, property rights, facilities, and equipment.
- (7) Accept funds and property by loan, grant, gift, or otherwise from the United States, the state of Washington, or any other public or private source.
- (8) Hire staff, employees, or services, or use voluntary labor.
- (9) Sue and be sued.
- (10) Cooperate with or join the United States, the state of Washington, or any other public or private entity or person for district purposes.
- (11) Enter into contracts.
- (12) Exercise any of the usual powers of a corporation for public purposes. [2003 c 392 § 1; 1991 c 349 § 17; 1985 c 396 § 19.]

85.38.280 Cooperative watershed management. In addition to the authority provided throughout this title, diking, drainage, sewerage improvement, and similar districts organized pursuant to this title may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 17.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

Title 86

FLOOD CONTROL

Chapters

- 86.09 Flood control districts—1937 act.**
- 86.15 Flood control zone districts.**
- 86.26 State participation in flood control maintenance.**

Chapter 86.09 RCW

FLOOD CONTROL DISTRICTS—1937 ACT

Sections

- 86.09.720 Cooperative watershed management.

86.09.720 Cooperative watershed management. In addition to the authority provided in this chapter, flood control districts may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 18.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

Chapter 86.15 RCW

FLOOD CONTROL ZONE DISTRICTS

Sections

- 86.15.035 Cooperative watershed management.
- 86.15.050 Zones—Supervisors—Election of supervisors.
- 86.15.160 Excess levies, assessments, regular levies, and charges—Local improvement districts.

86.15.035 Cooperative watershed management. In addition to the authority provided in this chapter, flood control zone districts may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 19.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

86.15.050 Zones—Supervisors—Election of supervisors. (1) The board of county commissioners of each county shall be ex officio, by virtue of their office, supervisors of the zones created in each county. In any zone with more than two thousand residents, an election of supervisors other than the board of county commissioners may be held as provided in this section.

(2) When proposed by citizen petition or by resolution of the board of county commissioners, a ballot proposition authorizing election of the supervisors of a zone shall be submitted by ordinance to the voters residing in the zone at any general election, or at any special election which may be called for that purpose.

(3) The ballot proposition shall be submitted (a) if the board of county supervisors enacts an ordinance submitting the proposition after adopting a resolution proposing the election of supervisors of a zone; or (b) if a petition proposing the election of supervisors of a zone is submitted to the county auditor of the county in which the zone is located that is signed by registered voters within the zone, numbering at least fifteen percent of the votes cast in the last county general election by registered voters within the zone.

(4) Upon receipt of a citizen petition under subsection (3)(b) of this section, the county auditor shall determine whether the petition is signed by a sufficient number of registered voters, using the registration records and returns of the preceding general election, and, no later than forty-five days after receipt of the petition, shall attach to the petition the auditor's certificate stating whether or not sufficient signatures have been obtained. If the signatures are found by the auditor to be insufficient, the petition shall be returned to the person filing it.

(5) The ballot proposition authorizing election of supervisors of zones shall appear on the ballot of the next general election or at the next special election date specified under *RCW 29.13.020 occurring sixty or more days after the last resolution proposing election of supervisors or the date the county auditor certifies that the petition proposing such election contains sufficient valid signatures.

(6) The petition proposing the election of zone supervisors, or the ordinance submitting the question to the voters, shall describe the proposed election process. The ballot proposition shall include the following:

- "For the direct election of flood control zone district supervisors."
- "Against the direct election of flood control zone district supervisors."

(7) The ordinance or petition submitting the ballot proposition shall designate the proposed composition of the supervisors of zones, which shall be clearly described in the

ballot proposition. The ballot proposition shall state that the zone supervisors shall thereafter be selected by election, and, at the same election at which the proposition is submitted to the voters as to whether to elect zone supervisors, three zone supervisors shall be elected. The election of zone supervisors is null and void if the voters, by a simple majority, do not approve the direct election of the zone supervisors. Candidates shall run for specific supervisor positions. No primary may be held to nominate candidates. The person receiving the greatest number of votes for each position shall be elected as a supervisor. The staggering of the terms of office shall occur as follows: (a) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (b) the person who is elected receiving the second greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (c) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial supervisors shall take office immediately when they are elected and qualified, and for purposes of computing their terms of office the terms shall be assumed to commence on the first day of January in the year after they are elected. Thereafter, all supervisors shall be elected to six-year terms of office. All supervisors shall serve until their respective successors are elected and qualified and assume office in accordance with **RCW 29.04.170. Vacancies may occur and shall be filled as provided in chapter 42.12 RCW.

(8) The costs and expenses directly related to the election of zone supervisors shall be borne by the zone. [2003 c 304 § 1; 1961 c 153 § 5.]

Reviser's note: *(1) RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

** (2) RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

86.15.160 Excess levies, assessments, regular levies, and charges—Local improvement districts. For the purposes of this chapter the supervisors may authorize:

(1) An annual excess ad valorem tax levy within any zone or participating zones when authorized by the voters of the zone or participating zones under RCW 84.52.052 and 84.52.054;

(2) An assessment upon property, including state property, specially benefited by flood control improvements or storm water control improvements imposed under chapter 86.09 RCW;

(3) Within any zone or participating zones an annual ad valorem property tax levy of not to exceed fifty cents per thousand dollars of assessed value when the levy will not take dollar rates that other taxing districts may lawfully claim and that will not cause the combined levies to exceed the constitutional and/or statutory limitations, and the additional levy, or any portion thereof, may also be made when dollar rates of other taxing units is released therefor by agreement with the other taxing units from their authorized levies;

[2003 RCW Supp—page 1136]

(4) A charge, under RCW 36.89.080, for the furnishing of service to those who are receiving or will receive benefits from storm water control facilities and who are contributing to an increase in surface water runoff. The rate or charge imposed under this section shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested;

(5) Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state and state property, shall be liable for the charges to the same extent a private person and privately owned property is liable for the charges, and in setting these rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property;

(6) The creation of local improvement districts and utility local improvement districts, the issuance of improvement district bonds and warrants, and the imposition, collection, and enforcement of special assessments on all property, including any state-owned or other publicly-owned property, specially benefited from improvements in the same manner as provided for counties by chapter 36.94 RCW. [2003 c 394 § 8; 1986 c 278 § 60; 1983 c 315 § 19; 1973 1st ex.s. c 195 § 131; 1961 c 153 § 16.]

Severability—1986 c 278: See note following RCW 36.01.010.

Severability—1983 c 315: See note following RCW 90.03.500.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Rates and charges for storm water control facilities—Limitations—Definitions: RCW 90.03.500 through 90.03.525. See also RCW 35.67.025, 35.92.021, 36.89.085, and 36.94.145.

Chapter 86.26 RCW

STATE PARTICIPATION IN FLOOD CONTROL MAINTENANCE

Sections

86.26.007 Flood control assistance account—Use.

86.26.007 Flood control assistance account—Use.

The flood control assistance account is hereby established in the state treasury. At the beginning of the 1997-99 fiscal biennium and each biennium thereafter the state treasurer shall transfer four million dollars from the general fund to the flood control assistance account. Moneys in the flood control assistance account may be spent only after appropriation for purposes specified under this chapter. During the 2003-2005 fiscal biennium, the legislature may transfer from the flood control assistance account to the state general fund such amounts as reflect the excess fund balance of the account. [2003 1st sp.s. c 25 § 943; 1997 c 149 § 914; 1996 c 283 § 903; 1995 2nd sp.s. c 18 § 915; 1993 sp.s. c 24 § 928; 1991 sp.s. c 13 § 24; 1986 c 46 § 1; 1985 c 57 § 88; 1984 c 212 § 1.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—1997 c 149: See notes following RCW 43.08.250.

Severability—Effective date—1996 c 283: See notes following RCW 43.08.250.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.165.070.

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

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

Title 87

IRRIGATION

Chapters

87.03 Irrigation districts generally.

87.80 Joint control of irrigation districts.

Chapter 87.03 RCW

IRRIGATION DISTRICTS GENERALLY

Sections

- 87.03.019 Cooperative watershed management.
- 87.03.200 Bonds—Election for—Form and contents—Exchange—Cancellation—Sale and issue—Reissue—Election concerning contract with United States—Penalty. (*Effective July 1, 2004.*)
- 87.03.490 Local improvement districts—Adoption of plan—Bonds—Form and contents—Facsimile signatures, when, procedure—New lands may be included—Penalty. (*Effective July 1, 2004.*)

87.03.019 Cooperative watershed management. In addition to the authority provided throughout this title, an irrigation district, reclamation district, and similar districts organized pursuant to the authority of this title may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 15.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

87.03.200 Bonds—Election for—Form and contents—Exchange—Cancellation—Sale and issue—Reissue—Election concerning contract with United States—Penalty. (*Effective July 1, 2004.*) (1) At the election provided for in RCW 87.03.190, there shall be submitted to the electors of the district possessing the qualifications prescribed by law the question of whether or not the bonds of the district in the amount and of the maturities determined by the board of directors shall be issued. Bonds issued under the provisions of *this act shall be serial bonds payable in legal currency of the United States in such series and amounts as shall be determined and declared by the board of directors in the resolution calling the election: PROVIDED, That the first series shall mature not later than ten years and the last series not later than forty years from the date thereof: PROVIDED FURTHER, That bonds, authorized by a special election held in the district under the provisions of a former statute, which has subsequent to the authorization been amended, but not issued prior to the amendment of the former statute, may be issued in the form provided in the former statute,

and any such bonds heretofore or hereafter so issued and sold are hereby confirmed and validated.

Notice of such bond election must be given by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least two weeks (three times). Such notices must specify the time of holding the election, and the amount and maturities of bonds proposed to be issued; and the election must be held and the results thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of law governing the election of the district officers: PROVIDED, That no informality in conducting such election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds Yes" and "Bonds No," or words equivalent thereto. If a majority of the votes cast are cast "Bonds Yes," the board of directors shall thereupon have authority to cause bonds in such amount and maturities to be issued. If the majority of the votes cast at any bond election are "Bonds No," the result of such election shall be so declared and entered of record; but if contract is made or is to be made with the United States as in RCW 87.03.140 provided, and bonds are not to be deposited with the United States in connection with such contract, the question submitted at such special election shall be whether contract shall be entered into with the United States. The notice of election shall state under the terms of what act or acts of congress contract is proposed to be made, and the maximum amount of money payable to the United States for construction purposes exclusive of penalties and interest. The ballots for such election shall contain the words "Contract with the United States Yes" and "Contract with the United States No," or words equivalent thereto. And whenever thereafter the board, in its judgment, deems it for the best interest of the district that the question of issuance of bonds for such amount, or any amount, or the question of entering into a contract with the United States, shall be submitted to the electors, it shall so declare, by resolution recorded in its minutes, and may thereupon submit such question to the electors in the same manner and with like effect as at such previous election.

(2) All bonds issued under *this act shall bear interest at such rate or rates as the board of directors may determine, payable semiannually on the first day of January and of July of each year. The principal and interest shall be payable at the office of the county treasurer of the county in which the office of the board of directors is situated, or if the board of directors shall so determine at the fiscal agency of the state of Washington in New York City, the place of payment to be designated in the bond. The bonds may be in such denominations as the board of directors may in its discretion determine, except that bonds other than bond number one of any issue shall be in a denomination that is a multiple of one hundred dollars. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. The bonds shall be negotiable in form, signed by the president and secretary, and the seal of the district shall be affixed thereto. The printed, engraved, or lithographed facsimile signatures of the president and secretary of the district's board of directors shall be sufficient signatures on the bonds or any coupons: PROVIDED, That such facsimile signatures on the

bonds may be used only after the filing, by the officer whose facsimile signature is to be used, with the secretary of state of his or her manual signature certified by him or her under oath, whereupon that officer's facsimile signature has the same legal effect as his or her manual signature: PROVIDED, FURTHER, That either the president of the board of directors' or the secretary's signature on the bonds shall be manually subscribed: AND PROVIDED FURTHER, That whenever such facsimile reproduction of the signature of any officer is used in place of the manual signature of such officer, the district's board of directors shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds or any coupons upon which such facsimile signature is to be printed, engraved, or lithographed and the manner of numbering the bonds or any coupons upon which such signature shall be placed. Within ninety days after the completion of the printing, engraving, or lithographing of such bonds or any coupons, the plate or plates used for the purpose of affixing the facsimile signature shall be destroyed, and it shall be the duty of the district's board of directors, within ninety days after receipt of the completed bonds or any coupons, to ascertain that such plate or plates have been destroyed. Every printer, engraver, or lithographer who, with the intent to defraud, prints, engraves, or lithographs a facsimile signature upon any bond or any coupon without written order of the district's board of directors, or fails to destroy such plate or plates containing the facsimile signature upon direction of such issuing authority, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) Whenever the electors shall vote to authorize the issuance of bonds of the district such authorization shall nullify and cancel all unsold bonds previously authorized, and if the question is submitted to and carried by the electors at the bond election, any bond issue may be exchanged in whole or in part, at par, for any or all of a valid outstanding bond issue of the district when mutually agreeable to the owner or owners thereof and the district, and the amount of the last bond issue in excess, if any, of that required for exchange purposes, may be sold as in the case of an original issue. The bonds of any issue authorized to be exchanged in whole or in part for outstanding bonds shall state on their face the amount of such issue so exchanged, and shall contain a certificate of the treasurer of the district as to the amount of the bonds exchanged, and that the outstanding bonds have been surrendered and canceled: PROVIDED FURTHER, That where bonds have been authorized and unsold, the board of directors may submit to the qualified voters of the district the question of canceling the previous authorization, which question shall be submitted upon the same notice and under the same regulations as govern the submission of the original question of authorizing a bond issue. At such election the ballots shall contain the words "Cancellation Yes," and "Cancellation No," or words equivalent thereto. If at such election a majority of the votes are "Cancellation Yes," the issue shall be thereby canceled and no bonds may be issued thereunder. If the majority of ballots are "Cancellation No," the original authorization shall continue in force with like effect as though the cancellation election had not been held: PROVIDED, That bonds deposited with the United States in payment or in pledge may call for the payment of such interest at

such rate or rates, may be of such denominations, and call for the repayment of the principal at such times as may be agreed upon between the board and the secretary of the interior.

(4) Each issue shall be numbered consecutively as issued, and the bonds of each issue shall be numbered consecutively and bear date at the time of their issue. The bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. The bonds shall express upon their face that they were issued by authority of ****this act**, stating its title and date of approval, and shall also state the number of issue of which such bonds are a part. In case the money received by the sale of all bonds issued be insufficient for the completion of plans of the canals and works adopted, and additional bonds be not voted, or a contract calling for additional payment to the United States be not authorized and made, as the case may be, it shall be the duty of the board of directors to provide for the completion of the plans by levy of assessments therefor. It shall be lawful for any irrigation districts which have heretofore issued and sold bonds under the law then in force, to issue in place thereof an amount of bonds not in excess of such previous issue, and to sell the same, or any part thereof, as hereinafter provided, or exchange the same, or any part thereof, with the owners of such previously issued bonds which may be outstanding, upon such terms as may be agreed upon between the board of directors of the district and the holders of such outstanding bonds: PROVIDED, That the question of such reissue of bonds shall have been previously voted upon favorably by the legally qualified electors of such district, in the same manner as required for the issue of original bonds, and the board shall not exchange any such bonds for a less amount in par value of the bonds received; all of such old issue in place of which new bonds are issued shall be destroyed whenever lawfully in possession of the board. Bonds issued under the provisions of this section may, when so authorized by the electors, include a sum sufficient to pay the interest thereon for a period not exceeding the first four years. Whenever an issue of bonds shall have been authorized pursuant to law, and any of the earlier series shall have been sold, and the later series, or a portion thereof, remain unsold, the directors may sell such later series pursuant to law, or such portion thereof as shall be necessary to pay the earlier series, or the directors may exchange the later series for the earlier series at not less than the par value thereof, the sale or exchange to be made not more than six months before the maturity of the earlier series and upon the exchange being made the maturing bonds shall be disposed of as hereinbefore provided in the case of bonds authorized to be exchanged in whole or in part for outstanding bonds.

(5) Notwithstanding subsections (1) through (4) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2003 c 53 § 411; 1983 c 167 § 213; 1977 ex.s. c 119 § 1; 1970 ex.s. c 56 § 95; 1969 ex.s. c 232 § 46; 1963 c 68 § 2; 1923 c 138 § 9; 1921 c 129 § 8; 1917 c 162 § 3A; 1915 c 179 § 7; 1895 c 165 § 5; 1889-90 p 679 § 15; RRS § 7432. Formerly RCW 87.16.020 through 87.16.070.]

Reviser's note: *(1) "This act" appears to refer to 1921 c 129.

***(2) "This act" appears to refer to 1889-90 p. 679.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

87.03.490 Local improvement districts—Adoption of plan—Bonds—Form and contents—Facsimile signatures, when, procedure—New lands may be included—Penalty. (Effective July 1, 2004.) (1) If decision shall be rendered in favor of the improvement, the board shall enter an order establishing the boundaries of the improvement district and shall adopt plans for the proposed improvement and determine the number of annual installments not exceeding fifty in which the cost of the improvement shall be paid. The cost of the improvement shall be provided for by the issuance of local improvement district bonds of the district from time to time, therefor, either directly for the payment of the labor and material or for the securing of funds for such purpose, or by the irrigation district entering into a contract with the United States or the state of Washington, or both, to repay the cost of the improvement. The bonds shall bear interest at a rate or rates determined by the board, payable semiannually, and shall state upon their face that they are issued as bonds of the irrigation district; that all lands within the local improvement district shall be primarily liable to assessment for the principal and interest of the bonds and that the bonds are also a general obligation of the district. The bonds may be in such denominations as the board of directors may in its discretion determine, except that bonds other than bond number one of any issue shall be in a denomination that is a multiple of one hundred dollars, and no bond shall be sold for less than par. Any contract entered into for the local improvement by the district with the United States or the state of Washington, or both although all the lands within the local improvement district shall be primarily liable to assessment for the principal and interest thereon, shall be a general obligation of the irrigation district. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) No election shall be necessary to authorize the issuance of such local improvement bonds or the entering into of such a contract. Such bonds, when issued, shall be signed by the president and secretary of the irrigation district with the seal of the district affixed. The printed, engraved, or lithographed facsimile signatures of the president and secretary of the district's board of directors shall be sufficient signatures on the bonds or any coupons: PROVIDED, That such facsimile signatures on the bonds may be used only after the filing, by the officer whose facsimile signature is to be used, with the secretary of state of his or her manual signature certified by him or her under oath, whereupon that officer's facsimile signature has the same legal effect as his or her manual signature: PROVIDED, FURTHER, That either the president of the board of directors' or the secretary's signature on the bonds shall be manually subscribed: AND PROVIDED FURTHER, That whenever such facsimile reproduction of the signature of any officer is used in place of the manual signature of such officer, the district's board of directors shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds or any coupons

upon which such facsimile signature is to be printed, engraved, or lithographed and the manner of numbering the bonds or any coupons upon which such signature shall be placed. Within ninety days after the completion of the printing, engraving, or lithographing of such bonds or any coupons, the plate or plates used for the purpose of affixing the facsimile signature shall be destroyed, and it shall be the duty of the district's board of directors, within ninety days after receipt of the completed bonds or any coupons, to ascertain that such plate or plates have been destroyed. Every printer, engraver, or lithographer who, with the intent to defraud, prints, engraves, or lithographs a facsimile signature upon any bond or coupon without written order of the district's board of directors, or fails to destroy such plate or plates containing the facsimile signature upon direction of such issuing authority, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) The proceeds from the sale of such bonds shall be deposited with the treasurer of the district, who shall place them in a special fund designated "Construction fund of local improvement district number"

(4) Whenever such improvement district has been organized, the boundaries thereof may be enlarged to include other lands which can be served or will be benefited by the proposed improvement upon petition of the owners thereof and the consent of the United States or the state of Washington, or both, in the event the irrigation district has contracted with the United States or the state of Washington, or both, to repay the cost of the improvement: PROVIDED, That at such time the lands so included shall pay their equitable proportion upon the basis of benefits of the improvement theretofore made by the local improvement district and shall be liable for the indebtedness of the local improvement district in the same proportion and same manner and subject to assessment as if the lands had been incorporated in the improvement district at the beginning of its organization.

(5) Notwithstanding this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2003 c 53 § 412; 1983 c 167 § 223; 1981 c 156 § 30; 1977 ex.s. c 119 § 2; 1970 ex.s. c 70 § 2; 1921 c 129 § 27; 1919 c 180 § 16; 1917 c 162 § 12; RRS § 7462. Formerly RCW 87.36.040.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Chapter 87.80 RCW

JOINT CONTROL OF IRRIGATION DISTRICTS

Sections

- 87.80.005 Definitions.
- 87.80.030 Form and contents of petition—Map.
- 87.80.130 Powers of board of joint control—Limitation.
- 87.80.901 Construction—2003 c 306.

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

(1) "Area of jurisdiction" means all lands within the exterior boundary of the composite area served by the irrigation entities that comprise the board of joint control as the

boundary is represented on the map filed under RCW 87.80.030.

(2) "Irrigation entity" means an irrigation district or an operating entity for a division within a federal reclamation project. For the purposes of this chapter, a water company, a water users' association, a municipality, a water right owner and user of irrigation water, or any other entity that provides irrigation water as a primary purpose, is an irrigation entity when creating or joining a board of joint control with an irrigation district or operating entity for a division within a federal reclamation project.

(3) "Joint use facilities" means those works, including reservoirs, canals, ditches, natural streams in which the irrigation entity has rights of conveyance under RCW 90.03.030, hydroelectric facilities, pumping stations, drainage works, reserved works as may be transferred by contracts with the United States, and system interties that are determined by the board of joint control to provide common benefit to its members.

(4) "Ownership interest" means the irrigation entity holds water rights in its name for the benefit of itself, its water users or, in federal reclamation projects, the irrigation entity has a contractual responsibility for delivery of water to its individual water users.

(5) "Source of water" means a hydrological distinct river and tributary system or aquifer system from which board of joint control member entities appropriate water. [2003 c 306 § 1; 1996 c 320 § 2.]

87.80.030 Form and contents of petition—Map. The petition for the creation of a board of joint control shall be addressed to the board of county commissioners, shall describe generally the relationship, if any, of the irrigation entities to an established federal reclamation project, the primary water works of the entities including reservoirs, main canals, hydroelectric facilities, pumping stations, and drainage facilities, giving them their local names, if any they have, and shall show generally the physical relationship of the lands being watered from the water facilities. However, lands included in any irrigation entity involved need not be described individually but shall be included by stating the name of the irrigation entity and all the irrigable lands in the irrigation entity named shall by that method be deemed to be involved unless otherwise specifically stated in the petition. Further, the petition must propose the formula for board of joint control apportionment of costs among its members, and may propose the composition of the board of joint control as to membership, chair, and voting structure. When a board of joint control includes irrigation entities other than an irrigation district or an operating entity for a division within a federal reclamation project as provided in RCW 87.80.005, the voting structure must be such that the votes apportioned to those entities are less than fifty percent of the total votes.

The petition shall also state generally the reasons for the creation of a board of joint control and any other matter the petitioners deem material, and shall allege that it is in the public interest and to the benefit of all the owners of the lands receiving water within the area of jurisdiction, that the board of joint control be created and request that the board of county commissioners consider the petition and take the necessary steps provided by law for the creation of a board of

joint control. The petition shall be accompanied by a map showing the area of jurisdiction and the general location of the water supply and distribution facilities. [2003 c 306 § 2; 1996 c 320 § 4; 1949 c 56 § 3; Rem. Supp. 1949 § 7505-22.]

87.80.130 Powers of board of joint control—Limitation. (1) A board of joint control created under the provisions of this chapter shall have full authority within its area of jurisdiction to enter into and perform any and all necessary contracts; to accept grants and loans, including, but not limited to, those provided under chapters 43.83B and 43.99E RCW, to appoint and employ and discharge the necessary officers, agents, and employees; to sue and be sued as a board but without personal liability of the members thereof in any and all matters in which all the irrigation entities represented on the board as a whole have a common interest without making the irrigation entities parties to the suit; to represent the entities in all matters of common interest as a whole within the scope of this chapter; and to do any and all lawful acts required and expedient to carry out the purposes of this chapter. A board of joint control may, subject to the same limitations as an irrigation district operating under chapter 87.03 RCW, acquire any property or property rights for use within the board's area of jurisdiction by power of eminent domain; acquire, purchase, or lease in its own name all necessary real or personal property or property rights; and sell, lease, or exchange any surplus real or personal property or property rights. Any transfers of water, however, are limited to transfers authorized under subsection (2) of this section.

(2)(a) A board of joint control is authorized and encouraged to pursue conservation and system efficiency improvements to optimize the use of appropriated waters and to either redistribute the saved water within its area of jurisdiction, or transfer the water to others, or both. A redistribution of saved water as an operational practice internal to the board of joint control's area of jurisdiction, may be authorized if it can be made without detriment or injury to rights existing outside of the board of control's area of jurisdiction, including instream flow water rights established under state or federal law.

(b) Prior to undertaking a water conservation or system efficiency improvement project that will result in a redistribution of saved water, the board of joint control must consult with the department of ecology and, if the board's jurisdiction is within a United States reclamation project, the board must obtain the approval of the bureau of reclamation. The purpose of such consultation is to assure that the proposal will not impair the rights of other water holders or bureau of reclamation contract water users.

(c) A board of joint control does not have the power to authorize a change of any water right that would change the point or points of diversion, purpose of use, or place of use outside the board's area of jurisdiction, without the approval of the department of ecology pursuant to RCW 90.03.380 and, if the board's jurisdiction is within a United States reclamation project, the approval of the bureau of reclamation. Any change in place of use that results from a transfer of water between the individual entities of the board of joint control shall not result in any reduction in the total water supply available in a federal reclamation project. In making the determination of whether a change of place of use in an area covered by a federal reclamation project will result in a

reduction in the total water supply available, the board of joint control shall consult with the bureau of reclamation.

(d) The board of joint control shall notify the department of ecology, and any Indian tribe requesting notice, of transfers of water between the individual entities of the board of joint control. This subsection (2)(d) applies only to a board of joint control created after January 1, 2003.

(3) A board of joint control is authorized to design, construct, and operate either drainage projects, or water quality enhancement projects, or both.

(4) Where the board of joint control area of jurisdiction is totally within a federal reclamation project, the board is authorized to accept operational responsibility for federal reserved works.

(5) Nothing contained in this chapter gives a board of joint control the authority to abridge the existing rights, responsibilities, and authorities of an individual irrigation entity or others within the area of jurisdiction; nor in a case where the board of joint control consists of representatives of two or more divisions of a federal reclamation project shall the board of joint control abridge any powers of an existing board of control created through federal contract; nor shall a board of joint control have any authority to abridge or modify a water right benefiting lands within its area of jurisdiction without consent of the party holding the ownership interest in the water right.

(6) A board of joint control created under this chapter may not use any authority granted to it by this chapter or by RCW 90.03.380 to authorize a transfer of or change in a water right or to authorize a redistribution of saved water before July 1, 1997. [2003 c 306 § 3; 1998 c 84 § 2; 1996 c 320 § 11; 1949 c 56 § 12; Rem. Supp. 1949 § 7505-31.]

87.80.901 Construction—2003 c 306. The provisions of chapter 306, Laws of 2003 shall not be construed or interpreted to authorize the impairment of any existing water rights. [2003 c 306 § 4.]

Title 88

NAVIGATION AND HARBOR IMPROVEMENTS

Chapters

- 88.02** Vessel registration.
- 88.08** Specific acts prohibited.
- 88.16** Pilotage act.
- 88.40** Transport of petroleum products—Financial responsibility.
- 88.46** Vessel oil spill prevention and response.

Chapter 88.02 RCW

VESSEL REGISTRATION

(Formerly: Watercraft registration)

Sections

- 88.02.055 Refund, collection of erroneous amounts—Penalty for false statement. (*Effective July 1, 2004.*)
- 88.02.118 Evasive registration—Penalty. (*Effective July 1, 2004.*)

88.02.055 Refund, collection of erroneous amounts—Penalty for false statement. (*Effective July 1, 2004.*) (1) Whenever any license fee paid under this chapter has been erroneously paid, in whole or in part, the person paying the fee, upon satisfactory proof to the director of licensing, is entitled to a refund of the amount erroneously paid.

(2) A license fee is refundable in one or more of the following circumstances: (a) If the vessel for which the renewal license was purchased was destroyed before the beginning date of the registration period for which the renewal fee was paid; (b) if the vessel for which the renewal license was purchased was permanently removed from the state before the beginning date of the registration period for which the renewal fee was paid; (c) if the vessel license was purchased after the owner has sold the vessel; (d) if the vessel is currently licensed in Washington and is subsequently licensed in another jurisdiction, in which case any full months of Washington fees between the date of license application in the other jurisdiction and the expiration of the Washington license are refundable; or (e) if the vessel for which the renewal license was purchased is sold before the beginning date of the registration period for which the renewal fee was paid, and the payor returns the new, unused, never affixed license renewal decal to the department before the beginning of the registration period for which the registration was purchased.

(3) Upon the refund being certified as correct to the state treasurer by the director and being claimed in the time required by law, the state treasurer shall mail or deliver the amount of each refund to the person entitled to the refund.

(4) A claim for refund shall not be allowed for erroneous payments unless the claim is filed with the director within three years after such payment was made.

(5) If due to error a person has been required to pay a license fee under this chapter and excise tax which amounts to an overpayment of ten dollars or more, the person is entitled to a refund of the entire amount of the overpayment, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect the additional amount as will constitute full payment of the tax and fees.

(6) Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor. [2003 c 53 § 413; 1997 c 22 § 2; 1996 c 31 § 2; 1989 c 68 § 5.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

88.02.118 Evasive registration—Penalty. (*Effective July 1, 2004.*) It is a gross misdemeanor punishable as provided under chapter 9A.20 RCW for any person owning a vessel subject to taxation under chapter 82.49 RCW to register a vessel in another state to avoid Washington state vessel excise tax required under chapter 82.49 RCW or to obtain a vessel dealer's registration for the purpose of evading excise tax on vessels under chapter 82.49 RCW. For a second or subsequent offense, the person convicted is also subject to a fine equal to four times the amount of avoided taxes and fees,

no part of which may be suspended or deferred. Excise taxes owed and fines assessed will be deposited in the manner provided under RCW 46.16.010(4). [2003 c 53 § 414; 2000 c 229 § 6; 1999 c 277 § 10; 1996 c 184 § 4; 1993 c 238 § 4; 1987 c 149 § 7.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2000 c 229: See note following RCW 46.16.010.

Effective date—1996 c 184: See note following RCW 46.16.010.

Effective date—1987 c 149: See note following RCW 88.02.060.

Chapter 88.08 RCW

SPECIFIC ACTS PROHIBITED

Sections

88.08.020 Tampering with lights or signals. (*Effective July 1, 2004.*)
88.08.050 Injury to lighthouses or United States light. (*Effective July 1, 2004.*)

88.08.020 Tampering with lights or signals. (*Effective July 1, 2004.*) Every person who, in such manner as might, if not discovered, endanger a vessel, railway engine, motor, train, or car, shall show, mask, extinguish, alter, or remove any light or signal, or exhibit any false light or signal, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years. [2003 c 53 § 415; 1992 c 7 § 62; 1909 c 249 § 402; RRS § 2654.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

88.08.050 Injury to lighthouses or United States light. (*Effective July 1, 2004.*) Every person who shall willfully break, injure, deface, or destroy any lighthouse station, post, platform, step, lamp, or other structure pertaining to such lighthouse station, or shall extinguish or tamper with any light erected by the United States upon or along the navigable waters of this state to aid in the navigation thereof, in case no punishment is provided therefor by the laws of the United States, shall be punished:

(1) As a class B felony punishable by imprisonment in a state correctional facility for not more than ten years whenever such act may endanger the safety of any vessel navigating such waters, or jeopardize the safety of any person or property in or upon such vessel.

(2) In all other cases by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both. [2003 c 53 § 416; 1992 c 7 § 63; 1909 c 249 § 403; RRS § 2655.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Chapter 88.16 RCW

PILOTAGE ACT

Sections

88.16.010 Board of pilotage commissioners—Created—Chairperson—Members—Terms—Qualifications—Vacancies—Quorum.

88.16.010 Board of pilotage commissioners—Created—Chairperson—Members—Terms—Qualifications—Vacancies—Quorum. (1) The board of pilotage

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commissioners of the state of Washington is hereby created and shall consist of the assistant secretary of marine transportation of the department of transportation of the state of Washington, or the assistant secretary's designee who shall be an employee of the marine division, who shall be chairperson, the director of the department of ecology, or the director's designee, and seven members appointed by the governor and confirmed by the senate. Each of the appointed commissioners shall be appointed for a term of four years from the date of the member's commission. No person shall be eligible for appointment to the board unless that person is at the time of appointment eighteen years of age or over and a citizen of the United States and of the state of Washington. Two of the appointed commissioners shall be pilots licensed under this chapter and actively engaged in piloting upon the waters covered by this chapter for at least three years immediately preceding the time of appointment and while serving on the board. One pilot shall be from the Puget Sound pilotage district and the other pilot shall be from either the Grays Harbor pilotage district or the Puget Sound pilotage district. Two of the appointed commissioners shall be actively engaged in the ownership, operation, or management of deep sea cargo and/or passenger carrying vessels for at least three years immediately preceding the time of appointment and while serving on the board. One of the shipping commissioners shall be a representative of American and one of foreign shipping. One of the commissioners shall be a representative from a recognized environmental organization concerned with marine waters. The remaining commissioners shall be persons interested in and concerned with pilotage, maritime safety, and marine affairs, with broad experience related to the maritime industry exclusive of experience as either a state licensed pilot or as a shipping representative.

(2) Any vacancy in an appointed position on the board shall be filled by the governor for the remainder of the unfilled term, subject to confirmation by the senate.

(3) Five members of the board shall constitute a quorum. At least one pilot, one shipping representative, and one public member must be present at every meeting. All commissioners and the chairperson shall have a vote. [2003 c 58 § 1; 2001 c 36 § 4; 1991 c 200 § 1001; 1987 c 485 § 1; 1979 ex.s. c 207 § 1; 1977 ex.s. c 337 § 2; 1977 ex.s. c 151 § 73; 1971 ex.s. c 292 § 58; 1935 c 18 § 1; RRS § 9871-1. Prior: 1888 p 175 § 1.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

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

Chapter 88.40 RCW

TRANSPORT OF PETROLEUM PRODUCTS— FINANCIAL RESPONSIBILITY

Sections

88.40.011 Definitions.
88.40.020 Evidence of financial responsibility for vessels.
88.40.040 Entry or operation on state waters—Financial responsibility required—Enforcement of federal oil pollution act.

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

(1) "Barge" means a vessel that is not self-propelled.

(2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, fishing vessel, or a passenger vessel, of three hundred or more gross tons.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

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

(6) "Director" means the director of the department of ecology.

(7)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from any vessel with an oil carrying capacity over two hundred fifty barrels or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(8) "Fishing vessel" means a self-propelled commercial vessel of three hundred or more gross tons that is used for catching or processing fish.

(9) "Gross tons" means tonnage as determined by the United States coast guard under 33 C.F.R. section 138.30.

(10) "Hazardous substances" means any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499. The following are not hazardous substances for purposes of this chapter:

(a) Wastes listed as F001 through F028 in Table 302.4; and

(b) Wastes listed as K001 through K136 in Table 302.4.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Oil" or "oils" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 101(14) of the federal comprehensive environmental

response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(18) "Spill" means an unauthorized discharge of oil into the waters of the state.

(19) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(20) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and water-courses within the jurisdiction of the state of Washington. [2003 c 56 § 2; 2000 c 69 § 30; 1992 c 73 § 12; 1991 c 200 § 702.]

Finding—Intent—2003 c 56: "The legislature finds that the current financial responsibility laws for vessels are in need of update and revision. The legislature intends that, whenever possible, the standards set for Washington state provide the highest level of protection consistent with other western states and to ultimately achieve a more uniform system of financial responsibility on the Pacific Coast." [2003 c 56 § 1.]

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.40.020 Evidence of financial responsibility for vessels. (1) Any barge that transports hazardous substances in bulk as cargo, using any port or place in the state of Washington or the navigable waters of the state shall establish evidence of financial responsibility in the amount of the greater of five million dollars, or three hundred dollars per gross ton of such vessel.

(2)(a) Except as provided in (b) or (c) of this subsection, a tank vessel that carries oil as cargo in bulk shall demon-

strate financial responsibility to pay at least five hundred million dollars. The amount of financial responsibility required under this subsection is one billion dollars after January 1, 2004.

(b) The director by rule may establish a lesser standard of financial responsibility for tank vessels of three hundred gross tons or less. The standard shall set the level of financial responsibility based on the quantity of cargo the tank vessel is capable of carrying. The director shall not set the standard for tank vessels of three hundred gross tons or less below that required under federal law.

(c) The owner or operator of a tank vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The director may require the owner or operator of a tank vessel to prove membership in such an organization.

(3)(a) A cargo vessel or passenger vessel that carries oil as fuel shall demonstrate financial responsibility to pay at least three hundred million dollars. However, a passenger vessel that transports passengers and vehicles between Washington state and a foreign country shall demonstrate financial responsibility to pay the greater of at least six hundred dollars per gross ton or five hundred thousand dollars.

(b) The owner or operator of a cargo vessel or passenger vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The director may require the owner or operator of a cargo vessel or passenger vessel to prove membership in such an organization.

(4) A fishing vessel while on the navigable waters of the state must demonstrate financial responsibility in the following amounts: (a) For a fishing vessel carrying predominantly nonpersistent product, one hundred thirty-three dollars and forty cents per incident, for each barrel of total oil storage capacity, persistent and nonpersistent product, on the vessel or one million three hundred thirty-four thousand dollars, whichever is greater; or (b) for a fishing vessel carrying predominantly persistent product, four hundred dollars and twenty cents per incident, for each barrel of total oil storage capacity, persistent product and nonpersistent product, on the vessel or six million six hundred seventy thousand dollars, whichever is greater.

(5) The documentation of financial responsibility shall demonstrate the ability of the document holder to meet state and federal financial liability requirements for the actual costs for removal of oil spills, for natural resource damages, and for necessary expenses.

(6) This section shall not apply to a covered vessel owned or operated by the federal government or by a state or local government. [2003 c 91 § 3; 2003 c 56 § 3; 2000 c 69 § 31; 1992 c 73 § 13; 1991 c 200 § 703; 1990 c 116 § 31; 1989 1st ex.s. c 2 § 3.]

Reviser's note: This section was amended by 2003 c 56 § 3 and by 2003 c 91 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2003 c 56: See note following RCW 88.40.011.

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

88.40.040 Entry or operation on state waters—Financial responsibility required—Enforcement of federal oil pollution act. (1) It is unlawful for any vessel required to have financial responsibility under this chapter to enter or operate on Washington waters without meeting the requirements of this chapter or rules adopted under this chapter, except when necessary to avoid injury to the vessel's crew or passengers. Any vessel owner or operator that does not meet the financial responsibility requirements of this chapter and any rules prescribed thereunder or the federal oil pollution act of 1990 shall be reported by the department to the United States coast guard.

(2) The department shall enforce section 1016 of the federal oil pollution act of 1990 as authorized by section 1019 of the federal act. [2003 c 56 § 4; 2000 c 69 § 33; 1992 c 73 § 14; 1991 c 200 § 706; 1989 1st ex.s. c 2 § 5.]

Finding—Intent—2003 c 56: See note following RCW 88.40.011.

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Chapter 88.46 RCW

VESSEL OIL SPILL PREVENTION AND RESPONSE

Sections

88.46.080 Unlawful operation of a covered vessel—Penalties—Evidence of approved contingency plan or prevention plan. (*Effective July 1, 2004.*)

88.46.080 Unlawful operation of a covered vessel—Penalties—Evidence of approved contingency plan or prevention plan. (*Effective July 1, 2004.*) (1) Except as provided in subsection (3) of this section, it shall be unlawful for the owner or operator to knowingly and intentionally operate in this state or on the waters of this state a covered vessel without an approved contingency plan or an approved prevention plan as required by this chapter, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

(2)(a) The first conviction under this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) A second or subsequent conviction is a class C felony under chapter 9A.20 RCW.

(3) It shall not be unlawful for the owner or operator to operate a covered vessel if:

(a) The covered vessel is not required to have a contingency plan, spill prevention plan, or financial responsibility;

(b) All required plans have been submitted to the department as required by this chapter and rules adopted by the department and the department is reviewing the plan and has not denied approval; or

(c) The covered vessel has entered state waters after the United States coast guard has determined that the vessel is in distress.

(4) A person may rely on a copy of the statement issued by the department pursuant to RCW 88.46.060 as evidence that a vessel has an approved contingency plan and the statement issued pursuant to RCW 88.46.040 that a vessel has an approved prevention plan.

(5) Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of the director or a court in pursuance thereof is guilty of a gross misdemeanor, as provided in chapter 9A.20 RCW, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation. [2003 c 53 § 417; 2000 c 69 § 8; 1992 c 73 § 22; 1991 c 200 § 421.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

Title 89

RECLAMATION, SOIL CONSERVATION, AND LAND SETTLEMENT

Chapters

89.08 Conservation districts.

Chapter 89.08 RCW

CONSERVATION DISTRICTS

Sections

89.08.470 Watershed restoration projects—Consolidated permit application process—Fish habitat enhancement project.

89.08.470 Watershed restoration projects—Consolidated permit application process—Fish habitat enhancement project. (1) By January 1, 1996, the Washington conservation commission shall develop, in consultation with other state agencies, tribes, and local governments, a consolidated application process for permits for a watershed restoration project developed by an agency or sponsored by an agency on behalf of a volunteer organization. The consolidated process shall include a single permit application form for use by all responsible state and local agencies. The commission shall encourage use of the consolidated permit application process by any federal agency responsible for issuance of related permits. The permit application forms to be consolidated shall include, at a minimum, applications for: (a) Approvals related to water quality standards under chapter 90.48 RCW; (b) hydraulic project approvals under chapter 77.55 RCW; and (c) section 401 water quality certifications under 33 U.S.C. Sec. 1341 and chapter 90.48 RCW.

(2) If a watershed restoration project is also a fish habitat enhancement project that meets the criteria of RCW 77.55.290(1), the project sponsor shall instead follow the permit review and approval process established in RCW 77.55.290 with regard to state and local government permitting requirements. The sponsor shall so notify state and local

permitting authorities. [2003 c 39 § 47; 1998 c 249 § 13; 1995 c 378 § 3.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.290.

Title 90

WATER RIGHTS—ENVIRONMENT

Chapters

- 90.03 Water code.**
- 90.42 Water resource management.**
- 90.44 Regulation of public ground waters.**
- 90.46 Reclaimed water use.**
- 90.48 Water pollution control.**
- 90.54 Water resources act of 1971.**
- 90.56 Oil and hazardous substance spill prevention and response.**
- 90.58 Shoreline management act of 1971.**
- 90.64 Dairy nutrient management.**
- 90.82 Watershed planning.**

**Chapter 90.03 RCW
WATER CODE**

Sections

- 90.03.015 Definitions.
- 90.03.247 Minimum flows and levels—Departmental authority exclusive—Other recommendations considered.
- 90.03.260 Appropriation procedure—Application—Contents.
- 90.03.265 Appropriation procedure—Cost-reimbursement agreement for expedited review of application.
- 90.03.330 Appropriation procedure—Water right certificate.
- 90.03.370 Reservoir permits—Secondary permits—Expedited processing—Underground artificial storage and recovery project standards and rules—Exemptions—Report to the legislature.
- 90.03.380 Right to water attaches to land—Transfer or change in point of diversion—Transfer of rights from one district to another—Priority of water rights applications—Exemption for small irrigation impoundments.
- 90.03.386 Coordination of approval procedures for compliance and consistency with approved water system plan.
- 90.03.400 Crimes against water code—Unauthorized use of water.
- 90.03.550 Municipal water supply purposes—Beneficial uses.
- 90.03.560 Municipal water supply purposes—Identification.
- 90.03.570 Change or transfer of an unperfected surface water right for municipal water supply purposes.
- 90.03.580 Failing public water system—Conditions.
- 90.03.590 Municipal water suppliers—Watershed agreement—Pilot project.
- 90.03.591 New watershed agreements prohibited after July 1, 2008.
- 90.03.600 Civil penalties.

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

- (1) "Department" means the department of ecology.
- (2) "Director" means the director of ecology.
- (3) "Municipal water supplier" means an entity that supplies water for municipal water supply purposes.
- (4) "Municipal water supply purposes" means a beneficial use of water: (a) For residential purposes through fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year; (b) for governmental or governmental proprietary purposes by a city, town, public utility district, county, sewer district, or water district; or (c) indirectly for the purposes in (a) or (b) of this subsection through the delivery of treated or

raw water to a public water system for such use. If water is beneficially used under a water right for the purposes listed in (a), (b), or (c) of this subsection, any other beneficial use of water under the right generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes. If a governmental entity holds a water right that is for the purposes listed in (a), (b), or (c) of this subsection, its use of water or its delivery of water for any other beneficial use generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes.

(5) "Person" means any firm, association, water users' association, corporation, irrigation district, or municipal corporation, as well as an individual. [2003 1st sp.s. c 5 § 1; 1987 c 109 § 65.]

Severability—2003 1st sp.s. c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 5 § 19.]

Purpose—Short title—Construction—Rules—Severability—Cap-tions—1987 c 109: See notes following RCW 43.21B.001.

90.03.247 Minimum flows and levels—Departmental authority exclusive—Other recommendations considered. Whenever an application for a permit to make beneficial use of public waters is approved relating to a stream or other water body for which minimum flows or levels have been adopted and are in effect at the time of approval, the permit shall be conditioned to protect the levels or flows. No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to RCW 77.55.100 and chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section. In establishing such minimum flows, levels, or similar restrictions, the department shall, during all stages of development by the department of ecology of minimum flow proposals, consult with, and carefully consider the recommendations of, the department of fish and wildlife, the department of community, trade, and economic development, the department of agriculture, and representatives of the affected Indian tribes. Nothing herein shall preclude the department of fish and wildlife, the department of community, trade, and economic development, or the department of agriculture from presenting its views on minimum flow needs at any public hearing or to any person or agency, and the department of fish and wildlife, the department of community, trade, and economic development, and the department of agriculture are each empowered to participate in proceedings of the federal energy regulatory commission and other agencies to present its views on minimum flow needs. [2003 c 39 § 48; 1996 c 186 § 523; 1994 c 264 § 82.

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Prior: 1987 c 506 § 95; 1987 c 505 § 81; 1980 c 87 § 46; 1979 ex.s. c 166 § 1.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

90.03.260 Appropriation procedure—Application—Contents. (1) Each application for permit to appropriate water shall set forth the name and post office address of the applicant, the source of water supply, the nature and amount of the proposed use, the time during which water will be required each year, the location and description of the proposed ditch, canal, or other work, the time within which the completion of the construction and the time for the complete application of the water to the proposed use.

(2) If for agricultural purposes, the application shall give the legal subdivision of the land and the acreage to be irrigated, as near as may be, and the amount of water expressed in acre feet to be supplied per season. If for power purposes, it shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied.

(3) If for construction of a reservoir, the application shall give the height of the dam, the capacity of the reservoir, and the uses to be made of the impounded waters.

(4) If for community or multiple domestic water supply, the application shall give the projected number of service connections sought to be served. However, for a municipal water supplier that has an approved water system plan under chapter 43.20 RCW or an approval from the department of health to serve a specified number of service connections, the service connection figure in the application or any subsequent water right document is not an attribute limiting exercise of the water right as long as the number of service connections to be served under the right is consistent with the approved water system plan or specified number.

(5) If for municipal water supply, the application shall give the present population to be served, and, as near as may be estimated, the future requirement of the municipality. However, for a municipal water supplier that has an approved water system plan under chapter 43.20 RCW or an approval from the department of health to serve a specified number of service connections, the population figures in the application or any subsequent water right document are not an attribute limiting exercise of the water right as long as the population to be provided water under the right is consistent with the approved water system plan or specified number.

(6) If for mining purposes, the application shall give the nature of the mines to be served and the method of supplying and utilizing the water; also their location by legal subdivisions.

(7) All applications shall be accompanied by such maps and drawings, in duplicate, and such other data, as may be required by the department, and such accompanying data shall be considered as a part of the application. [2003 1st sp.s. c 5 § 4; 1987 c 109 § 84; 1917 c 117 § 28; RRS § 7379. Formerly RCW 90.20.020.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

Purpose—Short title—Construction—Rules—Severability—Cap-tions—1987 c 109: See notes following RCW 43.21B.001.

Height of dams on tributaries of Columbia river: RCW 77.55.160.

90.03.265 Appropriation procedure—Cost-reimbursement agreement for expedited review of application.

Any applicant for a new withdrawal or a change, transfer, or amendment of a water right pending before the department, may initiate a cost-reimbursement agreement with the department to provide expedited review of the application. A cost-reimbursement agreement may only be initiated under this section if the applicant agrees to pay for, or as part of a cooperative effort agrees to pay for, the cost of processing his or her application and all other applications from the same source of supply which must be acted upon before the applicant's request because they were filed prior to the date of when the applicant filed. The department shall use the process established under RCW 43.21A.690 for entering into cost-reimbursement agreements. [2003 c 70 § 6; 2000 c 251 § 7.]

Intent—Captions not law—Effective date—2000 c 251: See notes following RCW 43.21A.690.

90.03.330 Appropriation procedure—Water right certificate.

(1) Upon a showing satisfactory to the department that any appropriation has been perfected in accordance with the provisions of this chapter, it shall be the duty of the department to issue to the applicant a certificate stating such facts in a form to be prescribed by the director, and such certificate shall thereupon be recorded with the department. Any original water right certificate issued, as provided by this chapter, shall be recorded with the department and thereafter, at the expense of the party receiving the same, be transmitted by the department to the county auditor of the county or counties where the distributing system or any part thereof is located, and be recorded in the office of such county auditor, and thereafter be transmitted to the owner thereof.

(2) Except as provided for the issuance of certificates under RCW 90.03.240 and for the issuance of certificates following the approval of a change, transfer, or amendment under RCW 90.03.380 or 90.44.100, the department shall not revoke or diminish a certificate for a surface or ground water right for municipal water supply purposes as defined in RCW 90.03.015 unless the certificate was issued with ministerial errors or was obtained through misrepresentation. The department may adjust such a certificate under this subsection if ministerial errors are discovered, but only to the extent necessary to correct the ministerial errors. The department may diminish the right represented by such a certificate if the certificate was obtained through a misrepresentation on the part of the applicant or permit holder, but only to the extent of the misrepresentation. The authority provided by this subsection does not include revoking, diminishing, or adjusting a certificate based on any change in policy regarding the issuance of such certificates that has occurred since the certificate was issued. This subsection may not be construed as providing any authority to the department to revoke, diminish, or adjust any other water right.

(3) This subsection applies to the water right represented by a water right certificate issued prior to September 9, 2003, for municipal water supply purposes as defined in RCW 90.03.015 where the certificate was issued based on an administrative policy for issuing such certificates once works

for diverting or withdrawing and distributing water for municipal supply purposes were constructed rather than after the water had been placed to actual beneficial use. Such a water right is a right in good standing.

(4) After September 9, 2003, the department must issue a new certificate under subsection (1) of this section for a water right represented by a water right permit only for the perfected portion of a water right as demonstrated through actual beneficial use of water. [2003 1st sp.s. c 5 § 6; 1987 c 109 § 89; 1929 c 122 § 5; 1917 c 117 § 34; RRS § 7386. Formerly RCW 90.20.100.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.370 Reservoir permits—Secondary permits—Expedited processing—Underground artificial storage and recovery project standards and rules—Exemptions—Report to the legislature.

(1)(a) All applications for reservoir permits are subject to the provisions of RCW 90.03.250 through 90.03.320. But the party or parties proposing to apply to a beneficial use the water stored in any such reservoir shall also file an application for a permit, to be known as the secondary permit, which shall be in compliance with the provisions of RCW 90.03.250 through 90.03.320. Such secondary application shall refer to such reservoir as its source of water supply and shall show documentary evidence that an agreement has been entered into with the owners of the reservoir for a permanent and sufficient interest in said reservoir to impound enough water for the purposes set forth in said application. When the beneficial use has been completed and perfected under the secondary permit, the department shall take the proof of the water users under such permit and the final certificate of appropriation shall refer to both the ditch and works described in the secondary permit and the reservoir described in the primary permit. The department may accept for processing a single application form covering both a proposed reservoir and a proposed secondary permit or permits for use of water from that reservoir.

(b) The department shall expedite processing applications for the following types of storage proposals:

(i) Development of storage facilities that will not require a new water right for diversion or withdrawal of the water to be stored;

(ii) Adding or changing one or more purposes of use of stored water;

(iii) Adding to the storage capacity of an existing storage facility; and

(iv) Applications for secondary permits to secure use from existing storage facilities.

(c) A secondary permit for the beneficial use of water shall not be required for use of water stored in a reservoir where the water right for the source of the stored water authorizes the beneficial use.

(2)(a) For the purposes of this section, "reservoir" includes, in addition to any surface reservoir, any naturally occurring underground geological formation where water is collected and stored for subsequent use as part of an underground artificial storage and recovery project. To qualify for issuance of a reservoir permit an underground geological for-

mation must meet standards for review and mitigation of adverse impacts identified, for the following issues:

- (i) Aquifer vulnerability and hydraulic continuity;
- (ii) Potential impairment of existing water rights;
- (iii) Geotechnical impacts and aquifer boundaries and characteristics;
- (iv) Chemical compatibility of surface waters and ground water;
- (v) Recharge and recovery treatment requirements;
- (vi) System operation;
- (vii) Water rights and ownership of water stored for recovery; and
- (viii) Environmental impacts.

(b) Standards for review and standards for mitigation of adverse impacts for an underground artificial storage and recovery project shall be established by the department by rule. Notwithstanding the provisions of RCW 90.03.250 through 90.03.320, analysis of each underground artificial storage and recovery project and each underground geological formation for which an applicant seeks the status of a reservoir shall be through applicant-initiated studies reviewed by the department.

(3) For the purposes of this section, "underground artificial storage and recovery project" means any project in which it is intended to artificially store water in the ground through injection, surface spreading and infiltration, or other department-approved method, and to make subsequent use of the stored water. However, (a) this subsection does not apply to irrigation return flow, or to operational and seepage losses that occur during the irrigation of land, or to water that is artificially stored due to the construction, operation, or maintenance of an irrigation district project, or to projects involving water reclaimed in accordance with chapter 90.46 RCW; and (b) RCW 90.44.130 applies to those instances of claimed artificial recharge occurring due to the construction, operation, or maintenance of an irrigation district project or operational and seepage losses that occur during the irrigation of land, as well as other forms of claimed artificial recharge already existing at the time a ground water subarea is established.

(4) Nothing in chapter 98, Laws of 2000 changes the requirements of existing law governing issuance of permits to appropriate or withdraw the waters of the state.

(5) The department shall report to the legislature by December 31, 2001, on the standards for review and standards for mitigation developed under subsection (3) of this section and on the status of any applications that have been filed with the department for underground artificial storage and recovery projects by that date.

(6) Where needed to ensure that existing storage capacity is effectively and efficiently used to meet multiple purposes, the department may authorize reservoirs to be filled more than once per year or more than once per season of use.

(7) This section does not apply to facilities to recapture and reuse return flow from irrigation operations serving a single farm under an existing water right as long as the acreage irrigated is not increased beyond the acreage allowed to be irrigated under the water right.

(8) In addition to the facilities exempted under subsection (7) of this section, this section does not apply to small irrigation impoundments. For purposes of this section, "small irrigation impoundments" means lined surface storage

ponds less than ten acre feet in volume used to impound irrigation water under an existing water right where use of the impoundment: (a)(i) Facilitates efficient use of water; or (ii) promotes compliance with an approved recovery plan for endangered or threatened species; and (b) does not expand the number of acres irrigated or the annual consumptive quantity of water used. Such ponds must be lined unless a licensed engineer determines that a liner is not needed to retain water in the pond and to prevent ground water contamination. Although it may also be composed of other materials, a properly maintained liner may be composed of bentonite. Water remaining in a small irrigation impoundment at the end of an irrigation season may be carried over for use in the next season. However, the limitations of this subsection (8) apply. Development and use of a small irrigation impoundment does not constitute a change or amendment for purposes of RCW 90.03.380 or 90.44.055. [2003 c 329 § 1; 2002 c 329 § 10; 2000 c 98 § 3; 1987 c 109 § 93; 1917 c 117 § 38; RRS § 7390. Formerly RCW 90.28.080.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.380 Right to water attaches to land—Transfer or change in point of diversion—Transfer of rights from one district to another—Priority of water rights applications—Exemption for small irrigation impoundments.

(1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner

and with the same effect as provided in the original certificate or permit to divert water.

(2) If an application for change proposes to transfer water rights from one irrigation district to another, the department shall, before publication of notice, receive concurrence from each of the irrigation districts that such transfer or change will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of either of the districts.

(3) A change in place of use by an individual water user or users of water provided by an irrigation district need only receive approval for the change from the board of directors of the district if the use of water continues within the irrigation district, and when water is provided by an irrigation entity that is a member of a board of joint control created under chapter 87.80 RCW, approval need only be received from the board of joint control if the use of water continues within the area of jurisdiction of the joint board and the change can be made without detriment or injury to existing rights.

(4) This section shall not apply to trust water rights acquired by the state through the funding of water conservation projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

(5)(a) Pending applications for new water rights are not entitled to protection from impairment, injury, or detriment when an application relating to an existing surface or ground water right is considered.

(b) Applications relating to existing surface or ground water rights may be processed and decisions on them rendered independently of processing and rendering decisions on pending applications for new water rights within the same source of supply without regard to the date of filing of the pending applications for new water rights.

(c) Notwithstanding any other existing authority to process applications, including but not limited to the authority to process applications under WAC 173-152-050 as it existed on January 1, 2001, an application relating to an existing surface or ground water right may be processed ahead of a previously filed application relating to an existing right when sufficient information for a decision on the previously filed application is not available and the applicant for the previously filed application is sent written notice that explains what information is not available and informs the applicant that processing of the next application will begin. The previously filed application does not lose its priority date and if the information is provided by the applicant within sixty days, the previously filed application shall be processed at that time. This subsection (5)(c) does not affect any other existing authority to process applications.

(d) Nothing in this subsection (5) is intended to stop the processing of applications for new water rights.

(6) No applicant for a change, transfer, or amendment of a water right may be required to give up any part of the applicant's valid water right or claim to a state agency, the trust water rights program, or to other persons as a condition of processing the application.

(7) In revising the provisions of this section and adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding,

or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

(8) The development and use of a small irrigation impoundment, as defined in RCW 90.03.370(8), does not constitute a change or amendment for the purposes of this section. The exemption expressly provided by this subsection shall not be construed as requiring a change or transfer of any existing water right to enable the holder of the right to store water governed by the right. [2003 c 329 § 2; 2001 c 237 § 5; 1997 c 442 § 801; 1996 c 320 § 19; 1991 c 347 § 15; 1987 c 109 § 94; 1929 c 122 § 6; 1917 c 117 § 39; RRS § 7391. Formerly RCW 90.28.090.]

Finding—Intent—Severability—Effective date—2001 c 237: See notes following RCW 90.82.040.

Intent—2001 c 237: See note following RCW 90.66.065.

Part headings not law—Severability—1997 c 442: See RCW 90.82.900 and 90.82.901.

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Application to Yakima river basin trust water rights: RCW 90.38.040.

90.03.386 Coordination of approval procedures for compliance and consistency with approved water system plan.

(1) Within service areas established pursuant to chapter 43.20 or 70.116 RCW, the department of ecology and the department of health shall coordinate approval procedures to ensure compliance and consistency with the approved water system plan or small water system management program.

(2) The effect of the department of health's approval of a planning or engineering document that describes a municipal water supplier's service area under chapter 43.20 RCW, or the local legislative authority's approval of service area boundaries in accordance with procedures adopted pursuant to chapter 70.116 RCW, is that the place of use of a surface water right or ground water right used by the supplier includes any portion of the approved service area that was not previously within the place of use for the water right if the supplier is in compliance with the terms of the water system plan or small water system management program, including those regarding water conservation, and the alteration of the place of use is not inconsistent, regarding an area added to the place of use, with: Any comprehensive plans or development regulations adopted under chapter 36.70A RCW; any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county; or any watershed plan approved under chapter 90.82 RCW, or a comprehensive watershed plan adopted under RCW 90.54.040(1) after September 9, 2003, if such a watershed plan has been approved for the area.

(3) A municipal water supplier must implement cost-effective water conservation in accordance with the requirements of RCW 70.119A.180 as part of its approved water system plan or small water system management program. In preparing its regular water system plan update, a municipal water supplier with one thousand or more service connections must describe: (a) The projects, technologies, and other cost-effective measures that comprise its water conservation program; (b) improvements in the efficiency of water system use resulting from implementation of its conservation pro-

gram over the previous six years; and (c) projected effects of delaying the use of existing inchoate rights over the next six years through the addition of further cost-effective water conservation measures before it may divert or withdraw further amounts of its inchoate right for beneficial use. When establishing or extending a surface or ground water right construction schedule under RCW 90.03.320, the department must take into consideration the public water system's use of conserved water. [2003 1st sp.s. c 5 § 5; 1991 c 350 § 2.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

90.03.400 Crimes against water code—Unauthorized use of water. (1)(a) The unauthorized use of water to which another person is entitled or the willful or negligent waste of water to the detriment of another, is a misdemeanor.

(b) For instances of the waste of water under this subsection, the department may alternatively follow the sequence of enforcement actions as provided in RCW 90.03.605.

(2) The possession or use of water without legal right shall be prima facie evidence of the guilt of the person using it.

(3) It is also a misdemeanor to use, store, or divert any water until after the issuance of permit to appropriate such water. [2003 1st sp.s. c 15 § 2; 2003 c 53 § 418; 1917 c 117 § 40; RRS § 7392. Formerly RCW 90.32.010.]

Reviser's note: The effective date of 2003 c 53 § 418 is July 1, 2004. However, 2003 c 53 § 418 was amended by 2003 1st sp.s. c 15 § 2 which has an effective date of September 9, 2003. Consequently, the effective date of this section is September 9, 2003.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Punishment of misdemeanor when not fixed by statute: RCW 9.92.030.

90.03.550 Municipal water supply purposes—Beneficial uses. Beneficial uses of water under a municipal water supply purposes water right may include water withdrawn or diverted under such a right and used for:

(1) Uses that benefit fish and wildlife, water quality, or other instream resources or related habitat values; or

(2) Uses that are needed to implement environmental obligations called for by a watershed plan approved under chapter 90.82 RCW, or a comprehensive watershed plan adopted under RCW 90.54.040(1) after September 9, 2003, a federally approved habitat conservation plan prepared in response to the listing of a species as being endangered or threatened under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq., a hydropower license of the federal energy regulatory commission, or a comprehensive irrigation district management plan. [2003 1st sp.s. c 5 § 2.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

90.03.560 Municipal water supply purposes—Identification. When requested by a municipal water supplier or when processing a change or amendment to the right, the department shall amend the water right documents and related records to ensure that water rights that are for municipal water supply purposes, as defined in RCW 90.03.015, are correctly identified as being for municipal water supply purposes. This section authorizes a water right or portion of a water right held or acquired by a municipal water supplier that is for municipal water supply purposes as defined in

RCW 90.03.015 to be identified as being a water right for municipal water supply purposes. However, it does not authorize any other water right or other portion of a right held or acquired by a municipal water supplier to be so identified without the approval of a change or transfer of the right or portion of the right for such a purpose. [2003 1st sp.s. c 5 § 3.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

90.03.570 Change or transfer of an unperfected surface water right for municipal water supply purposes. (1) An unperfected surface water right for municipal water supply purposes or a portion thereof held by a municipal water supplier may be changed or transferred in the same manner as provided by RCW 90.03.380 for any purpose if:

(a) The supplier is in compliance with the terms of an approved water system plan or small water system management program under chapter 43.20 or 70.116 RCW that applies to the supplier, including those regarding water conservation;

(b) Instream flows have been established by rule for the water resource inventory area, as established in chapter 173-500 WAC as it exists on September 9, 2003, that is the source of the water for the transfer or change;

(c) A watershed plan has been approved for the water resource inventory area referred to in (b) of this subsection under chapter 90.82 RCW and a detailed implementation plan has been completed that satisfies the requirements of RCW 90.82.043 or a watershed plan has been adopted after September 9, 2003, for that water resource inventory area under RCW 90.54.040(1) and a detailed implementation plan has been completed that satisfies the requirements of RCW 90.82.043; and

(d) Stream flows that satisfy the instream flows referred to in (b) of this subsection are met or the milestones for satisfying those instream flows required under (c) of this subsection are being met.

(2) If the criteria listed in subsection (1)(a) through (d) of this section are not satisfied, an unperfected surface water right for municipal water supply purposes or a portion thereof held by a municipal water supplier may nonetheless be changed or transferred in the same manner as provided by RCW 90.03.380 if the change or transfer is:

(a) To provide water for an instream flow requirement that has been established by the department by rule;

(b) Subject to stream flow protection or restoration requirements contained in: A federally approved habitat conservation plan under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq., a hydropower license of the federal energy regulatory commission, or a watershed agreement established under RCW 90.03.590;

(c) For a water right that is subject to instream flow requirements or agreements with the department and the change or transfer is also subject to those instream flow requirements or agreements; or

(d) For resolving or alleviating a public health or safety emergency caused by a failing public water supply system currently providing potable water to existing users, as such a system is described in RCW 90.03.580, and if the change, transfer, or amendment is for correcting the actual or anticipated cause or causes of the public water system failure.

Inadequate water rights for a public water system to serve existing hookups or to accommodate future population growth or other future uses do not constitute a public health or safety emergency.

(3) If the recipient of water under a change or transfer authorized by subsection (1) of this section is a water supply system, the receiving system must also be in compliance with the terms of an approved water system plan or small water system management program under chapter 43.20 or 70.116 RCW that applies to the system, including those regarding water conservation.

(4) The department must provide notice to affected tribes of any transfer or change proposed under this section. [2003 1st sp.s. c 5 § 14.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

90.03.580 Failing public water system—Conditions.

To be considered a failing public water system for the purposes of RCW 90.03.570, the department of health, in consultation with the department and the local health authority, must make a determination that the system meets one or more of the following conditions:

(1) A public water system has failed, or is in danger of failing within two years, to meet state board of health standards for the delivery of potable water to existing users in adequate quantity or quality to meet basic human drinking, cooking, and sanitation needs or to provide adequate fire protection flows;

(2) The current water source has failed or will fail so that the public water system is or will become incapable of exercising its existing water rights to meet existing needs for drinking, cooking, and sanitation purposes after all reasonable conservation efforts have been implemented; or

(3) A change in source is required to meet drinking water quality standards and avoid unreasonable treatment costs, or the state department of health determines that the existing source of supply is unacceptable for human use. [2003 1st sp.s. c 5 § 15.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

90.03.590 Municipal water suppliers—Watershed agreement—Pilot project.

(1) On a pilot project basis, the department may enter into a watershed agreement with one or more municipal water suppliers in water resource inventory area number one to meet the objectives established in a water resource management program approved or being developed under chapter 90.82 RCW with the consent of the initiating governments of the water resource inventory area. The term of an agreement may not exceed ten years, but the agreement may be renewed or amended upon agreement of the parties.

(2) A watershed agreement must be consistent with:

(a) Growth management plans developed under chapter 36.70A RCW where these plans are adopted and in effect;

(b) Water supply plans and small water system management programs approved under chapter 43.20 or 70.116 RCW;

(c) Coordinated water supply plans approved under chapter 70.116 RCW; and

(d) Water use efficiency and conservation requirements and standards established by the state department of health or

such requirements and standards as are provided in an approved watershed plan, whichever are the more stringent.

(3) A watershed agreement must:

(a) Require the public water system operated by the participating municipal water supplier to meet obligations under the watershed plan;

(b) Establish performance measures and timelines for measures to be completed;

(c) Provide for monitoring of stream flows and metering of water use as needed to ensure that the terms of the agreement are met; and

(d) Require annual reports from the water users regarding performance under the agreement.

(4) As needed to implement watershed agreement activities, the department may provide or receive funding, or both, under its existing authorities.

(5) The department must provide opportunity for public review of a proposed agreement before it is executed. The department must make proposed and executed watershed agreements and annual reports available on the department's internet web site.

(6) The department must consult with affected local governments and the state departments of health and fish and wildlife before executing an agreement.

(7) Before executing a watershed agreement, the department must conduct a government-to-government consultation with affected tribal governments. The municipal water suppliers operating the public water systems that are proposing to enter into the agreements must be invited to participate in the consultations. During these consultations, the department and the municipal water suppliers shall explore the potential interest of the tribal governments or governments in participating in the agreement.

(8) Any person aggrieved by the department's failure to satisfy the requirements in subsection (3) of this section as embodied in the department's decision to enter into a watershed agreement under this section may, within thirty days of the execution of such an agreement, appeal the department's decision to the pollution control hearings board under chapter 43.21B RCW.

(9) Any projects implemented by a municipal water system under the terms of an agreement reached under this section may be continued and maintained by the municipal water system after the agreement expires or is terminated as long as the conditions of the agreement under which they were implemented continue to be met.

(10) Before December 31, 2003, and December 31, 2004, the department must report to the appropriate committees of the legislature the results of the pilot project provided for in this section. Based on the experience of the pilot project, the department must offer any suggested changes in law that would improve, facilitate, and maximize the implementation of watershed plans adopted under this chapter. [2003 1st sp.s. c 5 § 16.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

90.03.591 New watershed agreements prohibited after July 1, 2008.

The department may not enter into new watershed agreements under RCW 90.03.590 after July 1, 2008. This section does not apply to the renewal of agreements in effect prior to that date. [2003 1st sp.s. c 5 § 17.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

90.03.600 Civil penalties. In determining the amount of a penalty to be levied, the department shall consider the seriousness of the violation, whether the violation is repeated or continuous after notice of the violation is given, and whether any damage has occurred to the health or property of other persons. Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, the department of ecology may levy civil penalties ranging from one hundred dollars to five thousand dollars per day for violation of any of the provisions of this chapter and chapters 43.83B, 90.22, and 90.44 RCW, and rules, permits, and similar documents and regulatory orders of the department of ecology adopted or issued pursuant to such chapters. The procedures of RCW 90.48.144 shall be applicable to all phases of the levying of a penalty as well as review and appeal of the same. [2003 1st sp.s. c 15 § 3; 1995 c 403 § 635; 1987 c 109 § 157; 1977 ex.s. c 1 § 8. Formerly RCW 43.83B.335.]

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

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

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Chapter 90.42 RCW

WATER RESOURCE MANAGEMENT

Sections

90.42.005	Policy—Findings.
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90.42.120	Water banking—Transfer of water rights—Requirements—Appeals.
90.42.130	Water banking—Input from affected entities—Reports.
90.42.135	Limitations of act—2003 c 144.
90.42.138	Construction—2003 c 144.

90.42.005 Policy—Findings. (1) It is the policy of the state of Washington to recognize and preserve water rights in accordance with RCW 90.03.010.

(2) The legislature finds that:

(a) The state of Washington is faced with a shortage of water with which to meet existing and future needs, particularly during the summer and fall months and in dry years when the demand is greatest;

(b) Consistent with RCW 90.54.180, issuance of new water rights, voluntary water transfers, and conservation and water use efficiency programs, including storage, all are acceptable methods of addressing water uses because they can relieve current critical water situations, provide for presently unmet needs, and assist in meeting future water needs. Presently unmet needs or current needs includes the water required to increase the frequency of occurrence of base or minimum flow levels in streams of the state, the water necessary to satisfy existing water rights, or the water necessary to provide full supplies to existing water systems with current supply deficiencies;

(c) The interests of the state and its citizens will be served by developing programs and regional water resource plans, in cooperation with local governments, federally recognized tribal governments, appropriate federal agencies,

private citizens, and the various water users and water interests in the state, that increase the overall ability to manage the state's waters in order to resolve conflicts and to better satisfy both present and future needs for water; and

(d) Water banking as a function of the trust water [rights] program and as authorized by this chapter can provide an effective means to facilitate the voluntary transfer of water rights established through conservation, purchase, lease, or donation, to preserve water rights and provide water for presently unmet and future needs; and to achieve a variety of water resource management objectives throughout the state, including drought response, improving streamflows on a voluntary basis, providing water mitigation, or reserving water supply for future uses. [2003 c 144 § 1; 1991 c 347 § 1.]

Effective date—2003 c 144: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 144 § 8.]

Purposes—1991 c 347: "The purposes of this act are to:

(1) Improve the ability of the state to work with the United States, local governments, federally recognized tribal governments, water right holders, water users, and various water interests in water conservation and water use efficiency programs designed to satisfy existing rights, presently unmet needs, and future needs, both instream and out-of-stream;

(2) Establish new incentives, enhance existing incentives, and remove disincentives for efficient water use;

(3) Establish improved means to disseminate information to the public and provide technical assistance regarding ways to improve the efficiency of water use;

(4) Create a trust water rights mechanism for the acquisition of water rights on a voluntary basis to be used to meet presently unmet needs and future needs;

(5) Prohibit the sale of nonconforming plumbing fixtures and require the marking and labeling of fixtures meeting state standards;

(6) Reduce tax disincentives to water conservation, reuse, and improved water use efficiency; and

(7) Add achievement of water conservation as a factor to be considered by water supply utilities in setting water rates." [1991 c 347 § 2.]

90.42.100 Water banking. (1) The department is hereby authorized to use the trust water rights program in the Yakima river basin for water banking purposes.

(2) Water banking may be used for one or more of the following purposes:

(a) To authorize the use of trust water rights to mitigate for water resource impacts, future water supply needs, or any beneficial use under chapter 90.03, 90.44, or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users;

(b) To document transfers of water rights to and from the trust water rights program; and

(c) To provide a source of water rights the department can make available to third parties on a temporary or permanent basis for any beneficial use under chapter 90.03, 90.44, or 90.54 RCW.

(3) The department shall not use water banking to:

(a) Cause detriment or injury to existing rights;

(b) Issue temporary water rights or portions thereof for new potable uses requiring an adequate and reliable water supply under RCW 19.27.097;

(c) Administer federal project water rights, including federal storage rights; or

(d) Allow carryover of stored water from one water year to another water year.

(4) For purposes of this section and RCW 90.42.135, "total water supply available" shall be defined as provided in the 1945 consent decree between the United States and water users in the Yakima river basin, and consistent with later interpretation by state and federal courts. [2003 c 144 § 2.]

Effective date—2003 c 144: See note following RCW 90.42.005.

90.42.110 Water banking—Application to transfer water rights. (1) The department, with the consent of the water right holder, may identify trust water rights for administration for water banking purposes, including trust water rights established before May 7, 2003.

(2) An application to transfer a water right to the trust water [rights] program shall be reviewed under RCW 90.03.380 at the time the water right is transferred to the trust water [rights] program for administration for water banking purposes, and notice of the application shall be published by the applicant as provided under RCW 90.03.280. The application must indicate the reach or reaches of the stream where the trust water right will be established before the transfer of the water right or portion thereof from the trust water [rights] program, and identify reasonably foreseeable future temporary or permanent beneficial uses for which the water right or portion thereof may be used by a third party upon transfer from the trust water right[s] program. In the event the future place of use, period of use, or other elements of the water right are not specifically identified at the time of the transfer into the trust water [rights] program, another review under RCW 90.03.380 will be necessary at the time of a proposed transfer from the trust water [rights] program. [2003 c 144 § 3.]

Effective date—2003 c 144: See note following RCW 90.42.005.

90.42.120 Water banking—Transfer of water rights—Requirements—Appeals. (1) The department shall transfer a water right or portion thereof being administered for water banking purposes from the trust water [rights] program to a third party upon occurrence of all of the following:

(a) The department receives a request for transfer of a water right or portion thereof currently administered by the department for water banking purposes;

(b) The request is consistent with any previous review under RCW 90.03.380 of the water right and future temporary or permanent beneficial uses;

(c) The request is consistent with any condition, limitation, or agreement affecting the water right, including but not limited to any trust water right transfer agreement executed at the time the water right was transferred to the trust water rights program; and

(d) The request is accompanied by and is consistent with an assignment of interest or portion thereof from a person or entity retaining an interest in the trust water right or portion thereof to the party requesting transfer of the water right or portion thereof.

(2) The priority date of the water right or portion thereof transferred by the department from the trust water [rights]

program for water banking purposes shall be the priority date of the underlying water right.

(3) The department shall issue documentation for that water right or portion thereof to the new water right holder based on the requirements applicable to the transfer of other water rights from the trust water rights program. Such documentation shall include a description of the property to which the water right will be appurtenant after the water right or portion thereof is transferred from the trust water [rights] program to a third party.

(4) The department's decision on the transfer of a water right or portion thereof from the trust water [rights] program for water banking purposes may be appealed to the pollution control hearings board under RCW 43.21B.230, or to a superior court conducting a general adjudication under RCW 90.03.210. [2003 c 144 § 4.]

Effective date—2003 c 144: See note following RCW 90.42.005.

90.42.130 Water banking—Input from affected entities—Reports. (1) The department shall seek input from agricultural organizations, federal agencies, tribal governments, local governments, watershed groups, conservation groups, and developers on water banking, including water banking procedures and identification of areas in Washington state where water banking could assist in providing water supplies for instream and out-of-stream uses. The department shall summarize any comments received on water banking and submit a report, including any recommendations, to the appropriate committees of the legislature for their consideration in the subsequent legislative session.

(2) By December 31st of every even-numbered year, the department shall submit a report to the appropriate committees of the legislature on water banking activities authorized under RCW 90.42.100. The report shall:

(a) Evaluate the effectiveness of water banking in meeting the policies and objectives of this chapter;

(b) Describe any statutory, regulatory, or other impediments to water banking in other areas of the state; and

(c) Identify other basins or regions that may benefit from authorization for the department to use the trust water [rights] program for water banking purposes. [2003 c 144 § 5.]

Effective date—2003 c 144: See note following RCW 90.42.005.

90.42.135 Limitations of act—2003 c 144. Nothing in chapter 144, Laws of 2003 shall:

(1) Cause detriment or injury to existing rights or to the operation of the federal Yakima project to provide water for irrigation purposes, existing water supply contracts, or existing water rights;

(2) Diminish in any way existing rights or the total water supply available for irrigation and other purposes in the Yakima basin;

(3) Affect or modify the authority of a court conducting a general adjudication pursuant to RCW 90.03.210; or

(4) Affect or modify the rights of any person or entity under a water rights adjudication or under any order of the court conducting a water rights adjudication. [2003 c 144 § 6.]

Effective date—2003 c 144: See note following RCW 90.42.005.

90.42.138 Construction—2003 c 144. Nothing in chapter 144, Laws of 2003 may be construed to:

(1) Affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under state or federal law;

(2) Affect or modify the rights or jurisdictions of the United States, the state of Washington, the Yakama Nation, or other person or entity over waters of any river or stream or over any ground water resource;

(3) Alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the states;

(4) Alter, establish, or impair the respective rights of states, the United States, the Yakama Nation, or any other person or entity with respect to any water or water-related right;

(5) Alter, diminish, or abridge the rights and obligations of any federal, state, or local agency, the Yakama Nation, or other person or entity;

(6) Affect or modify the rights of the Yakama Indian Nation or its successors in interest to, and management and regulation of, those water resources arising or used, within the external boundaries of the Yakama Indian Reservation;

(7) Affect or modify the settlement agreement between the United States and the state of Washington filed in Yakima county superior court with regard to federal reserved water rights other than those rights reserved by the United States for the benefit of the Yakama Indian Nation and its members; or

(8) Affect or modify the rights of any federal, state, or local agency, the Yakama Nation, or any other person or entity, public or private, with respect to any unresolved and unsettled claims in any water right adjudications, or court decisions, including *State v. Acquavella*, or constitute evidence in any such proceeding in which any water or water-related right is adjudicated. [2003 c 144 § 7.]

Effective date—2003 c 144: See note following RCW 90.42.005.

Chapter 90.44 RCW

REGULATION OF PUBLIC GROUND WATERS

Sections

90.44.050	Permit to withdraw.
90.44.052	Whitman county clustered residential developments pilot project—Exemption from permit requirements—Reports.
90.44.100	Amendment to permit or certificate—Replacement or new additional wells—Exemption for small irrigation impoundments.

90.44.050 Permit to withdraw. After June 6, 1945, no withdrawal of public ground waters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public ground waters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW 90.44.052, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to

that established by a permit issued under the provisions of this chapter: PROVIDED, HOWEVER, That the department from time to time may require the person or agency making any such small withdrawal to furnish information as to the means for and the quantity of that withdrawal: PROVIDED, FURTHER, That at the option of the party making withdrawals of ground waters of the state not exceeding five thousand gallons per day, applications under this section or declarations under RCW 90.44.090 may be filed and permits and certificates obtained in the same manner and under the same requirements as is in this chapter provided in the case of withdrawals in excess of five thousand gallons a day. [2003 c 307 § 1; 1987 c 109 § 108; 1947 c 122 § 1; 1945 c 263 § 5; Rem. Supp. 1947 § 7400-5.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.44.052 Whitman county clustered residential developments pilot project—Exemption from permit requirements—Reports.

(1) On a pilot project basis, the use of water for domestic use in clustered residential developments is exempt as described in subsection (2) of this section from the permit requirements of RCW 90.44.050 in Whitman county. The department must review the use of water under this section and its impact on water resources in the county and report to the legislature by December 31st of each even-numbered year through 2016 regarding its review.

(2) For the pilot project, the domestic use of water for a clustered residential development is exempt from the permit requirements of RCW 90.44.050 for an amount of water that is not more than one thousand two hundred gallons a day per residence for a residential development that has an overall density equal to or less than one residence per ten acres and a minimum of six homes.

(3) No new right to use water may be established for a clustered development under this section where the first residential use of water for the development begins after December 31, 2015. [2003 c 307 § 2.]

90.44.100 Amendment to permit or certificate—Replacement or new additional wells—Exemption for small irrigation impoundments.

(1) After an application to, and upon the issuance by the department of an amendment to the appropriate permit or certificate of ground water right, the holder of a valid right to withdraw public ground waters may, without losing the holder's priority of right, construct wells or other means of withdrawal at a new location in substitution for or in addition to those at the original location, or the holder may change the manner or the place of use of the water.

(2) An amendment to construct replacement or a new additional well or wells at a location outside of the location of the original well or wells or to change the manner or place of use of the water shall be issued only after publication of notice of the application and findings as prescribed in the case of an original application. Such amendment shall be issued by the department only on the conditions that: (a) The additional or replacement well or wells shall tap the same body of public ground water as the original well or wells; (b) where a replacement well or wells is approved, the use of the original well or wells shall be discontinued and the original

well or wells shall be properly decommissioned as required under chapter 18.104 RCW; (c) where an additional well or wells is constructed, the original well or wells may continue to be used, but the combined total withdrawal from the original and additional well or wells shall not enlarge the right conveyed by the original permit or certificate; and (d) other existing rights shall not be impaired. The department may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment, as provided in RCW 90.44.080 in the case of an original permit.

(3) The construction of a replacement or new additional well or wells at the location of the original well or wells shall be allowed without application to the department for an amendment. However, the following apply to such a replacement or new additional well: (a) The well shall tap the same body of public ground water as the original well or wells; (b) if a replacement well is constructed, the use of the original well or wells shall be discontinued and the original well or wells shall be properly decommissioned as required under chapter 18.104 RCW; (c) if a new additional well is constructed, the original well or wells may continue to be used, but the combined total withdrawal from the original and additional well or wells shall not enlarge the right conveyed by the original water use permit or certificate; (d) the construction and use of the well shall not interfere with or impair water rights with an earlier date of priority than the water right or rights for the original well or wells; (e) the replacement or additional well shall be located no closer than the original well to a well it might interfere with; (f) the department may specify an approved manner of construction of the well; and (g) the department shall require a showing of compliance with the conditions of this subsection (3).

(4) As used in this section, the "location of the original well or wells" is the area described as the point of withdrawal in the original public notice published for the application for the water right for the well.

(5) The development and use of a small irrigation impoundment, as defined in RCW 90.03.370(8), does not constitute a change or amendment for the purposes of this section. The exemption expressly provided by this subsection shall not be construed as requiring an amendment of any existing water right to enable the holder of the right to store water governed by the right. [2003 c 329 § 3; 1997 c 316 § 2; 1987 c 109 § 113; 1945 c 263 § 10; Rem. Supp. 1945 § 7400-10.]

Intent—1997 c 316: "The legislature intends that the holder of a valid permit or certificate of ground water right be permitted by the department of ecology to amend a valid permit or certificate to allow full and complete development of the valid right by the construction of replacement or additional wells at the original location or new locations." [1997 c 316 § 1.]

Purpose—Short title—Construction—Rules—Severability—Capitions—1987 c 109: See notes following RCW 43.21B.001.

Chapter 90.46 RCW

RECLAIMED WATER USE

Sections

90.46.120 Use of water from wastewater treatment facility—Consideration in regional water supply plan or potable water supply service planning.

90.46.120 Use of water from wastewater treatment facility—Consideration in regional water supply plan or potable water supply service planning. (1) The owner of a wastewater treatment facility that is reclaiming water with a permit issued under this chapter has the exclusive right to any reclaimed water generated by the wastewater treatment facility. Use and distribution of the reclaimed water by the owner of the wastewater treatment facility is exempt from the permit requirements of RCW 90.03.250 and 90.44.060. Revenues derived from the reclaimed water facility shall be used only to offset the cost of operation of the wastewater utility fund or other applicable source of system-wide funding.

(2) If the proposed use or uses of reclaimed water are intended to augment or replace potable water supplies or create the potential for the development of additional potable water supplies, such use or uses shall be considered in the development of the regional water supply plan or plans addressing potable water supply service by multiple water purveyors. The owner of a wastewater treatment facility that proposes to reclaim water shall be included as a participant in the development of such regional water supply plan or plans.

(3) Where opportunities for the use of reclaimed water exist within the period of time addressed by a water supply plan or coordinated water system plan developed under chapter 43.20 or 70.116 RCW, these plans must be developed and coordinated to ensure that opportunities for reclaimed water are evaluated. The requirements of this subsection (3) do not apply to water system plans developed under chapter 43.20 RCW for utilities serving less than one thousand service connections. [2003 1st sp.s. c 5 § 13; 1997 c 444 § 1.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

Severability—1997 c 444: See note following RCW 90.46.010.

Chapter 90.48 RCW

WATER POLLUTION CONTROL

Sections

90.48.112 Plan evaluation—Consideration of reclaimed water.
 90.48.140 Penalty. (*Effective July 1, 2004.*)
 90.48.260 Federal clean water act—Department designated as state agency, authority—Delegation of authority—Powers, duties, and functions.
 90.48.422 Water quality standards—Compliance methods—Department authority.
 90.48.495 Water conservation measures to be considered in sewer plans.
 90.48.530 Construction projects involving fill material—Leaching test.
 90.48.531 Leaching tests—Identification—Report to the legislature.

90.48.112 Plan evaluation—Consideration of reclaimed water. The evaluation of any plans submitted under RCW 90.48.110 must include consideration of opportunities for the use of reclaimed water as defined in RCW 90.46.010. Wastewater plans submitted under RCW 90.48.110 must include a statement describing how applicable reclamation and reuse elements will be coordinated as required under RCW 90.46.120(2). [2003 1st sp.s. c 5 § 12; 1997 c 444 § 9.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

Severability—1997 c 444: See note following RCW 90.46.010.

90.48.140 Penalty. (*Effective July 1, 2004.*) Any person found guilty of willfully violating any of the provisions of this chapter or chapter 90.56 RCW, or any final written

orders or directive of the department or a court in pursuance thereof is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter or chapter 90.56 RCW occurs may be deemed a separate and additional violation. [2003 c 53 § 419; 1992 c 73 § 26; 1973 c 155 § 8; 1945 c 216 § 20; Rem. Supp. 1945 § 10964t.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

90.48.260 Federal clean water act—Department designated as state agency, authority—Delegation of authority—Powers, duties, and functions. The department of ecology is hereby designated as the State Water Pollution Control Agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the *Puget Sound water quality authority. The department of ecology may delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and duties regarding animal feeding operations and concentrated animal feeding operations, to the department of agriculture through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology. Adoption or issuance and implementation shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws. The powers granted herein include, among others, and notwithstanding any other provisions of chapter 90.48 RCW or otherwise, the following:

(1) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to: (a) Effluent treatment and limitation requirements together with timing requirements related thereto; (b) applicable receiving water quality standards requirements; (c) requirements of standards of performance for new sources; (d) pretreatment requirements; (e) termination and modification of permits for cause; (f) requirements for public notices and opportunities for public

hearings; (g) appropriate relationships with the secretary of the army in the administration of his responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of his duties, and with other governmental officials under the federal clean water act; (h) requirements for inspection, monitoring, entry, and reporting; (i) enforcement of the program through penalties, emergency powers, and criminal sanctions; (j) a continuing planning process; and (k) user charges.

(2) The power to establish and administer state programs in a manner which will insure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

(3) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

The governor shall have authority to perform those actions required of him or her by the federal clean water act. [2003 c 325 § 7; 1988 c 220 § 1; 1983 c 270 § 1; 1979 ex.s. c 267 § 1; 1973 c 155 § 4; 1967 c 13 § 24.]

***Reviser's note:** The Puget Sound water quality authority and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1995, and repealed June 30, 1996. See 1990 c 115 §§ 11 and 12. Powers, duties, and functions of the Puget Sound water quality authority pertaining to cleanup and protection of Puget Sound transferred to the Puget Sound action team by 1996 c 138 § 11. See RCW 90.71.903.

Intent—Finding—2003 c 325: See note following RCW 90.64.030.

Severability—1983 c 270: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 270 § 5.]

90.48.422 Water quality standards—Compliance methods—Department authority. (1) The legislature finds that the courts have rendered decisions in *Elkhorn (Public Utility District No. 1 v. Washington Department of Ecology, 511 U.S. 700, 114 S. Ct. 1900, 128 L.Ed. 2d 716 (1994))* and *Sullivan Creek (Public Utility District No. 1 of Pend Oreille County v. Washington Department of Ecology, 146 Wn.2d 778, 51 P.3d 744 (2002))* related to water quality certifications issued under section 401 of the clean water act, 33 U.S.C. 1251 et seq. Enactment of this legislation does not expand or contract the legal holdings of these decisions and does not affect in any way the application of these holdings to any future case or fact pattern related to water quality certifications issued for federally licensed hydropower facilities under section 401 of the clean water act, 33 U.S.C. 1251 et seq.

(2) When a water quality standard cannot be reasonably met through the issuance of permits or regulatory orders issued under the authority of this chapter, the department may use voluntary, incentive-based methods including funding of water conservation projects, lease and purchase of water rights, development of new storage projects, or habitat restoration projects in an attempt to meet water quality standards.

(3) The department may not abrogate, supersede, impair, or condition the ability of a water right holder to fully divert or withdraw water under a water right permit, certificate, statutory exemption, or claim granted or recognized under chap-

ter 90.03, 90.14, or 90.44 RCW through the authority granted to the department in this chapter. However, nothing in chapter 15, Laws of 2003 1st sp. sess. shall be construed to affect the department's authority related to the issuance of certifications under section 401 of the federal clean water act, 33 U.S.C. 1251 et seq., with respect to the application of federally authorized water quality standards, for federal energy regulatory commission licensed hydropower projects as provided under this chapter and chapter 90.74 RCW. With respect to federal energy regulatory commission licensed hydropower projects, the department may only require a person to mitigate or remedy a water quality violation or problem to the extent there is substantial evidence such person has caused such violation or problem. [2003 1st sp.s. c 15 § 1.]

90.48.495 Water conservation measures to be considered in sewer plans. The department of ecology shall require sewer plans to include a discussion of water conservation measures considered or underway that would reduce flows to the sewerage system and an analysis of their anticipated impact on public sewer service and treatment capacity. [2003 1st sp.s. c 5 § 11; 1989 c 348 § 10.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

Severability—1989 c 348: See note following RCW 90.54.020.

Rights not impaired—1989 c 348: See RCW 90.54.920.

90.48.530 Construction projects involving fill material—Leaching test. (1) In order to ensure that construction projects involving the use of fill material do not pose a threat to water quality, the department may require that the suitability of potential fill material be evaluated using a leaching test included in the soil clean-up rules adopted by the department under chapter 70.105D RCW in any water quality certification issued under section 401 of the federal clean water act and in any administrative order issued under this chapter, where such certification or administrative order authorizes the placement of fill material, some or all of which will be placed in waters of the state. Any such requirement imposed by the department in a water quality certification or administrative order issued prior to May 9, 2003, is ratified and approved by the legislature as a valid and reliable method for determining concentrations of chemical constituents that can be present in fill material without posing an unacceptable risk of violating water quality standards, and shall be in effect as imposed by the department for all work not completed by June 1, 2003.

(2) Nothing in this section limits, in any way, the department's authority under this chapter. [2003 c 210 § 1.]

Effective date—2003 c 210: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2003]." [2003 c 210 § 3.]

90.48.531 Leaching tests—Identification—Report to the legislature. The department shall identify the leaching tests utilized for evaluating the potential impacts to water quality in situations where fill material is imported. The tests may include those identified in the soil clean-up rules adopted by the department under chapter 70.105D RCW. Within existing resources, the department shall assess whether this list of leaching tests provides appropriate meth-

ods for analyzing water quality impacts for all types of projects and in all circumstances where fill material is imported. The department shall also identify any gaps in leaching test methodology. The department shall report both the leaching test list and the list of test methodology gaps to the appropriate committees of the legislature by December 31, 2003. [2003 c 210 § 2.]

Effective date—2003 c 210: See note following RCW 90.48.530.

Chapter 90.54 RCW

WATER RESOURCES ACT OF 1971

Sections

90.54.191 Stream flow restoration a priority.

90.54.191 Stream flow restoration a priority. The department shall prioritize the expenditure of funds and other resources for programs related to stream flow restoration in watersheds where the exercise of inchoate water rights may have a larger effect on stream flows and other water uses. [2003 1st sp.s. c 5 § 10.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

Chapter 90.56 RCW

OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION AND RESPONSE

Sections

90.56.300 Unlawful operation of facility—Criminal penalties. (*Effective July 1, 2004.*)

90.56.335 Vessel response account—Dedicated rescue tug. (*Expires July 1, 2008.*)

90.56.300 Unlawful operation of facility—Criminal penalties. (*Effective July 1, 2004.*) (1) Except as provided in subsection (3) of this section, it shall be unlawful for the owner or operator to knowingly and intentionally operate in this state or on the waters of this state an onshore or offshore facility without an approved contingency plan or an approved prevention plan as required by this chapter, or financial responsibility in compliance with chapter 88.40 RCW and the federal oil pollution act of 1990.

(2)(a) The first conviction under this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) A second or subsequent conviction is a class C felony under chapter 9A.20 RCW.

(3) It shall not be unlawful for the owner or operator to operate an onshore or offshore facility if:

(a) The facility is not required to have a contingency plan, spill prevention plan, or financial responsibility; or

(b) All required plans have been submitted to the department as required by RCW 90.56.210 and rules adopted by the department and the department is reviewing the plan and has not denied approval.

(4) A person may rely on a copy of the statement issued by the department pursuant to RCW 90.56.210(7) as evidence that a facility has an approved contingency plan and the statement issued pursuant to RCW 90.56.200(4) that a facility has an approved prevention plan. [2003 c 53 § 420; 1992 c 73 § 34; 1991 c 200 § 301; 1990 c 116 § 8. Formerly RCW 90.48.376.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective dates—1992 c 73: See RCW 82.23B.902.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

90.56.335 Vessel response account—Dedicated rescue tug. (*Expires July 1, 2008.*) The vessel response account is created in the state treasury. Grants, gifts, and federal funds may be deposited into the account. Oil spill penalties assessed against ships under RCW 90.56.330 and 90.48.144 shall also be deposited into the account as well as the money distributed under RCW 46.68.020(2). Moneys in the account may be spent only after appropriation. The department of ecology is authorized to utilize the vessel response account to preposition a dedicated rescue tug at the entrance to the Strait of Juan de Fuca to reduce the risk of major maritime accidents and oil spills on the outer coast and western strait. Prior to authorizing the rescue tug to respond to a distressed vessel, the department shall work with the United States coast guard and industry to determine if another capable, unencumbered commercial tug is available in the area that can respond. If such a tug can respond without increasing the risk of a casualty, it should be deployed as the tug of choice and the state-contracted rescue tug should not be taken off standby duty. The department is also authorized to spot charter tugs as needed during major storms and other high risk periods to protect maritime commerce and the environment anywhere in state waters.

The department shall not proceed with rule making related to emergency towing pursuant to chapter 88.46 RCW, so long as the deposit of the fee into the vessel response account under RCW 46.68.020(2) is continued and is appropriated for the purpose of the dedicated rescue tug. [2003 c 264 § 3.]

Expiration date—2003 c 264 §§ 1 and 3: "Sections 1 and 3 of this act expire July 1, 2008." [2003 c 264 § 9.]

Chapter 90.58 RCW

SHORELINE MANAGEMENT ACT OF 1971

Sections

90.58.030	Definitions and concepts.
90.58.060	Review and adoption of guidelines—Public hearings, notice of—Amendments.
90.58.080	Timetable for local governments to develop or amend master programs—Review of master programs—Grants.
90.58.090	Approval of master program or segments or amendments—Procedure—Departmental alternatives when shorelines of statewide significance—Later adoption of master program supersedes departmental program.
90.58.147	Substantial development permit—Exemption for projects to improve fish or wildlife habitat or fish passage.
90.58.180	Appeals from granting, denying, or rescinding permits—Board to act—Local government appeals to board—Grounds for declaring rule, regulation, or guideline invalid—Appeals to court.
90.58.190	Appeal of department's decision to adopt or amend a master program.
90.58.250	Intent—Department to cooperate with local governments—Grants for development of master programs.

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

(1) Administration:

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

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

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

(e) "Hearing board" means the shoreline hearings board established by this chapter.

(2) Geographical:

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

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

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

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

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

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

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

(A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,

(B) Birch Bay—from Point Whitehorn to Birch Point,

(C) Hood Canal—from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area—from Brown Point to Yokeko Point, and

(E) Padilla Bay—from March Point to William Point;

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

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

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

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

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

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

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

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

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

(g) "Floodway" means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;

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

lands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

(3) Procedural terms:

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

(b) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020;

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

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

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

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

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be consid-

ered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private non-commercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(A) The activity does not interfere with the normal public use of the surface waters;

(B) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(C) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(D) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(E) The activity is not subject to the permit requirements of RCW 90.58.550;

(xii) The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter 43.21C RCW. [2003 c 321 § 2; 2002 c 230 § 2; 1996 c 265 § 1. Prior: 1995 c 382 § 10; 1995 c 255 § 5; 1995 c 237 § 1; 1987 c 474 § 1; 1986 c 292 § 1; 1982 1st ex.s. c 13 § 2; 1980 c 2 § 3; 1979 ex.s. c 84 § 3; 1975 1st ex.s. c 182 § 1; 1973 1st ex.s. c 203 § 1; 1971 ex.s. c 286 § 3.]

Finding—Intent—2003 c 321: "(1) The legislature finds that the final decision and order in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*, Case No. 02-3-0009c, issued on January 9, 2003, by the central Puget Sound growth management hearings board was a case of first impression interpreting the addition of the shoreline management act into the growth management act, and that the board considered the appeal and issued its final order and decision without the benefit of shorelines guidelines to provide guidance on the implementation of the shoreline management act and the adoption of shoreline master programs.

(2) This act is intended to affirm the legislature's intent that:

(a) The shoreline management act be read, interpreted, applied, and implemented as a whole consistent with decisions of the shoreline hearings board and Washington courts prior to the decision of the central Puget Sound growth management hearings board in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*;

(b) The goals of the growth management act, including the goals and policies of the shoreline management act, set forth in RCW 36.70A.020 and included in RCW 36.70A.020 by RCW 36.70A.480, continue to be listed without an order of priority; and

(c) Shorelines of statewide significance may include critical areas as defined by RCW 36.70A.030(5), but that shorelines of statewide significance are not critical areas simply because they are shorelines of statewide significance.

(3) The legislature intends that critical areas within the jurisdiction of the shoreline management act shall be governed by the shoreline management act and that critical areas outside the jurisdiction of the shoreline management act shall be governed by the growth management act. The legislature further intends that the quality of information currently required by the shoreline management act to be applied to the protection of critical areas within shorelines of the state shall not be limited or changed by the provisions of the growth management act." [2003 c 321 § 1.]

Finding—Intent—2002 c 230: "The legislature finds that the dollar threshold for what constitutes substantial development under the shoreline management act has not been changed since 1986. The legislature recognizes that the effects of inflation have brought in many activities under the jurisdiction of chapter 90.58 RCW that would have been exempted under its original provisions. It is the intent of the legislature to modify the current dollar threshold for what constitutes substantial development under the shoreline management act, and to have this threshold readjusted on a five-year basis." [2002 c 230 § 1.]

Severability—Effective date—1995 c 255: See RCW 17.26.900 and 17.26.901.

Severability—1986 c 292: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 292 § 5.]

Intent—1980 c 2; 1979 ex.s. c 84: "The legislature finds that high tides and hurricane force winds on February 13, 1979, caused conditions resulting in the catastrophic destruction of the Hood Canal bridge on state route 104, a state highway on the federal-aid system; and, as a consequence, the state of Washington has sustained a sudden and complete failure of a major segment of highway system with a disastrous impact on transportation services between the counties of Washington's Olympic peninsula and the remainder of the state. The governor has by proclamation found that these conditions constitute an emergency. To minimize the economic loss and hardship to residents of the Puget Sound and Olympic peninsula regions, it is the intent of 1979 ex.s. c 84 to authorize the department of transportation to undertake immediately all necessary actions to restore interim transportation services across Hood Canal and Puget Sound and upon the Kitsap and Olympic peninsulas and to design and reconstruct a permanent bridge at the site of the original Hood Canal bridge. The department of transportation is directed to

proceed with such actions in an environmentally responsible manner that would meet the substantive objectives of the state environmental policy act and the shorelines management act, and shall consult with the department of ecology in the planning process. The exemptions from the state environmental policy act and the shorelines management act contained in RCW 43.21C.032 and 90.58.030 are intended to approve and ratify the timely actions of the department of transportation taken and to be taken to restore interim transportation services and to reconstruct a permanent Hood Canal bridge without procedural delays." [1980 c 2 § 1; 1979 ex.s. c 84 § 1.]

90.58.060 Review and adoption of guidelines—Public hearings, notice of—Amendments. (1) The department shall periodically review and adopt guidelines consistent with RCW 90.58.020, containing the elements specified in RCW 90.58.100 for:

(a) Development of master programs for regulation of the uses of shorelines; and

(b) Development of master programs for regulation of the uses of shorelines of statewide significance.

(2) Before adopting or amending guidelines under this section, the department shall provide an opportunity for public review and comment as follows:

(a) The department shall mail copies of the proposal to all cities, counties, and federally recognized Indian tribes, and to any other person who has requested a copy, and shall publish the proposed guidelines in the Washington state register. Comments shall be submitted in writing to the department within sixty days from the date the proposal has been published in the register.

(b) The department shall hold at least four public hearings on the proposal in different locations throughout the state to provide a reasonable opportunity for residents in all parts of the state to present statements and views on the proposed guidelines. Notice of the hearings shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in each county of the state. If an amendment to the guidelines addresses an issue limited to one geographic area, the number and location of hearings may be adjusted consistent with the intent of this subsection to assure all parties a reasonable opportunity to comment on the proposed amendment. The department shall accept written comments on the proposal during the sixty-day public comment period and for seven days after the final public hearing.

(c) At the conclusion of the public comment period, the department shall review the comments received and modify the proposal consistent with the provisions of this chapter. The proposal shall then be published for adoption pursuant to the provisions of chapter 34.05 RCW.

(3) The department may adopt amendments to the guidelines not more than once each year. Such amendments shall be limited to: (a) Addressing technical or procedural issues that result from the review and adoption of master programs under the guidelines; or (b) issues of guideline compliance with statutory provisions. [2003 c 262 § 1; 1995 c 347 § 304; 1971 ex.s. c 286 § 6.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

90.58.080 Timetable for local governments to develop or amend master programs—Review of master programs—Grants. (1) Local governments shall develop or

amend a master program for regulation of uses of the shorelines of the state consistent with the required elements of the guidelines adopted by the department in accordance with the schedule established by this section.

(2)(a) Subject to the provisions of subsections (5) and (6) of this section, each local government subject to this chapter shall develop or amend its master program for the regulation of uses of shorelines within its jurisdiction according to the following schedule:

(i) On or before December 1, 2005, for the city of Port Townsend, the city of Bellingham, the city of Everett, Snohomish county, and Whatcom county;

(ii) On or before December 1, 2009, for King county and the cities within King county greater in population than ten thousand;

(iii) Except as provided by (a)(i) and (ii) of this subsection, on or before December 1, 2011, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(iv) On or before December 1, 2012, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(v) On or before December 1, 2013, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(vi) On or before December 1, 2014, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(b) Nothing in this subsection (2) shall preclude a local government from developing or amending its master program prior to the dates established by this subsection (2).

(3)(a) Following approval by the department of a new or amended master program, local governments required to develop or amend master programs on or before December 1, 2009, as provided by subsection (2)(a)(i) and (ii) of this section, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) of this section and shall not be required to complete master program amendments until seven years after the applicable dates established by subsection (2)(a)(iii) of this section. Any jurisdiction listed in subsection (2)(a)(i) of this section that has a new or amended master program approved by the department on or after March 1, 2002, but before July 27, 2003, shall not be required to complete master program amendments until seven years after the applicable date provided by subsection (2)(a)(iii) of this section.

(b) Following approval by the department of a new or amended master program, local governments choosing to develop or amend master programs on or before December 1, 2009, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) through (vi) of this section and shall not be required to complete master program amendments until seven years after the applicable dates established by subsection (2)(a)(iii) through (vi) of this section.

(4) Local governments shall conduct a review of their master programs at least once every seven years after the applicable dates established by subsection (2)(a)(iii) through (vi) of this section. Following the review required by this

subsection (4), local governments shall, if necessary, revise their master programs. The purpose of the review is:

(a) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and

(b) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

(5) Local governments are encouraged to begin the process of developing or amending their master programs early and are eligible for grants from the department as provided by RCW 90.58.250, subject to available funding. Except for those local governments listed in subsection (2)(a)(i) and (ii) of this section, the deadline for completion of the new or amended master programs shall be two years after the date the grant is approved by the department. Subsequent master program review dates shall not be altered by the provisions of this subsection.

(6)(a) Grants to local governments for developing and amending master programs pursuant to the schedule established by this section shall be provided at least two years before the adoption dates specified in subsection (2) of this section. To the extent possible, the department shall allocate grants within the amount appropriated for such purposes to provide reasonable and adequate funding to local governments that have indicated their intent to develop or amend master programs during the biennium according to the schedule established by subsection (2) of this section. Any local government that applies for but does not receive funding to comply with the provisions of subsection (2) of this section may delay the development or amendment of its master program until the following biennium.

(b) Local governments with delayed compliance dates as provided in (a) of this subsection shall be the first priority for funding in subsequent biennia, and the development or amendment compliance deadline for those local governments shall be two years after the date of grant approval.

(c) Failure of the local government to apply in a timely manner for a master program development or amendment grant in accordance with the requirements of the department shall not be considered a delay resulting from the provisions of (a) of this subsection.

(7) Notwithstanding the provisions of this section, all local governments subject to the requirements of this chapter that have not developed or amended master programs on or after March 1, 2002, shall, no later than December 1, 2014, develop or amend their master programs to comply with guidelines adopted by the department after January 1, 2003. [2003 c 262 § 2; 1995 c 347 § 305; 1974 ex.s. c 61 § 1; 1971 ex.s. c 286 § 8.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

90.58.090 Approval of master program or segments or amendments—Procedure—Departmental alternatives when shorelines of statewide significance—Later adoption of master program supersedes departmental program. (1) A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the department. Within the time period

provided in RCW 90.58.080, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

(2) Upon receipt of a proposed master program or amendment, the department shall:

(a) Provide notice to and opportunity for written comment by all interested parties of record as a part of the local government review process for the proposal and to all persons, groups, and agencies that have requested in writing notice of proposed master programs or amendments generally or for a specific area, subject matter, or issue. The comment period shall be at least thirty days, unless the department determines that the level of complexity or controversy involved supports a shorter period;

(b) In the department's discretion, conduct a public hearing during the thirty-day comment period in the jurisdiction proposing the master program or amendment;

(c) Within fifteen days after the close of public comment, request the local government to review the issues identified by the public, interested parties, groups, and agencies and provide a written response as to how the proposal addresses the identified issues;

(d) Within thirty days after receipt of the local government response pursuant to (c) of this subsection, make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines, provide a response to the issues identified in (c) of this subsection, and either approve the proposal as submitted, recommend specific changes necessary to make the proposal approvable, or deny approval of the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be provided to the local government, all interested persons, parties, groups, and agencies of record on the proposal;

(e) If the department recommends changes to the proposed master program or amendment, within thirty days after the department mails the written findings and conclusions to the local government, the local government may:

(i) Agree to the proposed changes. The receipt by the department of the written notice of agreement constitutes final action by the department approving the amendment; or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally submitted by the department and with this chapter it shall approve the changes and provide written notice to all recipients of the written findings and conclusions. If the department determines the proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may resubmit the proposal for public and agency review pursuant to this section or reject the proposal.

(3) The department shall approve the segment of a master program relating to shorelines unless it determines that the submitted segments are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.

(4) The department shall approve the segment of a master program relating to critical areas as defined by RCW 36.70A.030(5) provided the master program segment is con-

sistent with RCW 90.58.020 and applicable shoreline guidelines, and if the segment provides a level of protection of critical areas at least equal to that provided by the local government's critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).

(5) The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the statewide interest. If the department does not approve a segment of a local government master program relating to a shoreline of statewide significance, the department may develop and by rule adopt an alternative to the local government's proposal.

(6) In the event a local government has not complied with the requirements of RCW 90.58.070 it may thereafter upon written notice to the department elect to adopt a master program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this chapter for the adoption of a master program for such shorelines.

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines.

(7) A master program or amendment to a master program takes effect when and in such form as approved or adopted by the department. Shoreline master programs that were adopted by the department prior to July 22, 1995, in accordance with the provisions of this section then in effect, shall be deemed approved by the department in accordance with the provisions of this section that became effective on that date. The department shall maintain a record of each master program, the action taken on any proposal for adoption or amendment of the master program, and any appeal of the department's action. The department's approved document of record constitutes the official master program. [2003 c 321 § 3; 1997 c 429 § 50; 1995 c 347 § 306; 1971 ex.s. c 286 § 9.]

Finding—Intent—2003 c 321: See note following RCW 90.58.030.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

90.58.147 Substantial development permit—Exemption for projects to improve fish or wildlife habitat or fish passage. (1) A public or private project that is designed to improve fish or wildlife habitat or fish passage shall be exempt from the substantial development permit requirements of this chapter when all of the following apply:

(a) The project has been approved by the department of fish and wildlife;

(b) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and

(c) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

(2) Fish habitat enhancement projects that conform to the provisions of RCW 77.55.290 are determined to be consistent

with local shoreline master programs. [2003 c 39 § 49; 1998 c 249 § 4; 1995 c 333 § 1.]

Findings—Purpose—Report—Effective date—1998 c 249: See notes following RCW 77.55.290.

90.58.180 Appeals from granting, denying, or rescinding permits—Board to act—Local government appeals to board—Grounds for declaring rule, regulation, or guideline invalid—Appeals to court. (1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may, except as otherwise provided in chapter 43.21L RCW, seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of filing as defined in RCW 90.58.140(6).

Within seven days of the filing of any petition for review with the board as provided in this section pertaining to a final decision of a local government, the petitioner shall serve copies of the petition on the department, the office of the attorney general, and the local government. The department and the attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the petition for review filed pursuant to this section. The shorelines hearings board shall schedule review proceedings on the petition for review without regard as to whether the period for the department or the attorney general to intervene has or has not expired.

(2) The department or the attorney general may obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition with the shorelines hearings board and the appropriate local government within twenty-one days from the date the final decision was filed as provided in RCW 90.58.140(6).

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. Judicial review of such proceedings of the shorelines hearings board is governed by chapter 34.05 RCW. The board shall issue its decision on the appeal authorized under subsections (1) and (2) of this section within one hundred eighty days after the date the petition is filed with the board or a petition to intervene is filed by the department or the attorney general, whichever is later. The time period may be extended by the board for a period of thirty days upon a showing of good cause or may be waived by the parties.

(4) Any person may appeal any rules, regulations, or guidelines adopted or approved by the department within thirty days of the date of the adoption or approval. The board shall make a final decision within sixty days following the hearing held thereon.

(5) The board shall find the rule, regulation, or guideline to be valid and enter a final decision to that effect unless it determines that the rule, regulation, or guideline:

(a) Is clearly erroneous in light of the policy of this chapter; or

(b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or

(c) Is arbitrary and capricious; or

(d) Was developed without fully considering and evaluating all material submitted to the department during public review and comment; or

(e) Was not adopted in accordance with required procedures.

(6) If the board makes a determination under subsection (5)(a) through (e) of this section, it shall enter a final decision declaring the rule, regulation, or guideline invalid, remanding the rule, regulation, or guideline to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government and any other interested party, a new rule, regulation, or guideline consistent with the board's decision.

(7) A decision of the board on the validity of a rule, regulation, or guideline shall be subject to review in superior court, if authorized pursuant to chapter 34.05 RCW. A petition for review of the decision of the shorelines hearings board on a rule, regulation, or guideline shall be filed within thirty days after the date of final decision by the shorelines hearings board. [2003 c 393 § 22; 1997 c 199 § 1; 1995 c 347 § 310; 1994 c 253 § 3; 1989 c 175 § 183; 1986 c 292 § 2; 1975-'76 2nd ex.s. c 51 § 2; 1975 1st ex.s. c 182 § 4; 1973 1st ex.s. c 203 § 2; 1971 ex.s. c 286 § 18.]

Implementation—Effective date—2003 c 393: See RCW 43.21L.900 and 43.21L.901.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

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

Severability—1986 c 292: See note following RCW 90.58.030.

Appeal under this chapter also subject of appeal under state environmental policy act: RCW 43.21C.075.

90.58.190 Appeal of department's decision to adopt or amend a master program. (1) The appeal of the department's decision to adopt a master program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is governed by RCW 34.05.510 through 34.05.598.

(2)(a) The department's decision to approve, reject, or modify a proposed master program or amendment adopted by a local government planning under RCW 36.70A.040 shall be appealed to the growth management hearings board with jurisdiction over the local government. The appeal shall be initiated by filing a petition as provided in RCW 36.70A.250 through 36.70A.320.

(b) If the appeal to the growth management hearings board concerns shorelines, the growth management hearings board shall review the proposed master program or amendment solely for compliance with the requirements of this chapter, the policy of RCW 90.58.020 and the applicable guidelines, the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under chapter 90.58 RCW.

(c) If the appeal to the growth management hearings board concerns a shoreline of statewide significance, the board shall uphold the decision by the department unless the board, by clear and convincing evidence, determines that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) The appellant has the burden of proof in all appeals to the growth management hearings board under this subsection.

(e) Any party aggrieved by a final decision of a growth management hearings board under this subsection may appeal the decision to superior court as provided in RCW 36.70A.300.

(3)(a) The department's decision to approve, reject, or modify a proposed master program or master program amendment by a local government not planning under RCW 36.70A.040 shall be appealed to the shorelines hearings board by filing a petition within thirty days of the date of the department's written notice to the local government of the department's decision to approve, reject, or modify a proposed master program or master program amendment as provided in RCW 90.58.090(2).

(b) In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program amendment and, after full consideration of the presentations of the local government and the department, shall determine the validity of the local government's master program or amendment in light of the policy of RCW 90.58.020 and the applicable guidelines.

(c) In an appeal relating to shorelines of statewide significance, the shorelines hearings board shall uphold the decision by the department unless the board determines, by clear and convincing evidence that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) Review by the shorelines hearings board shall be considered an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act. The aggrieved local government shall have the burden of proof in all such reviews.

(e) Whenever possible, the review by the shorelines hearings board shall be heard within the county where the land subject to the proposed master program or master program amendment is primarily located. The department and any local government aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in chapter 34.05 RCW.

(4) A master program amendment shall become effective after the approval of the department or after the decision of the shorelines hearings board to uphold the master program or master program amendment, provided that the board may remand the master program or master program adjustment to the local government or the department for modification prior to the final adoption of the master program or master program amendment. [2003 c 321 § 4; 1995 c 347 § 311; 1989 c 175 § 184; 1986 c 292 § 3; 1971 ex.s. c 286 § 19.]

Finding—Intent—2003 c 321: See note following RCW 90.58.030.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

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

Severability—1986 c 292: See note following RCW 90.58.030.

90.58.250 Intent—Department to cooperate with local governments—Grants for development of master programs. (1) The legislature intends to eliminate the limits on state funding of shoreline master program development and amendment costs. The legislature further intends that the

state will provide funding to local governments that is reasonable and adequate to accomplish the costs of developing and amending shoreline master programs consistent with the schedule established by RCW 90.58.080. Except as specifically described herein, nothing in chapter 262, Laws of 2003 is intended to alter the existing obligation, duties, and benefits provided by chapter 262, Laws of 2003 to local governments and the department.

(2) The department is directed to cooperate fully with local governments in discharging their responsibilities under this chapter. Funds shall be available for distribution to local governments on the basis of applications for preparation of master programs and the provisions of RCW 90.58.080(7). Such applications shall be submitted in accordance with regulations developed by the department. The department is authorized to make and administer grants within appropriations authorized by the legislature to any local government within the state for the purpose of developing a master shorelines program. [2003 c 262 § 3; 1971 ex.s. c 286 § 25.]

Chapter 90.64 RCW

DAIRY NUTRIENT MANAGEMENT

(Formerly: Dairy waste management)

Sections

90.64.030	Investigation of dairy farms—Report of findings—Corrective action—Violations of water quality laws—Waivers—Penalties.
90.64.120	Department's authority under federal law or chapter 90.48 RCW not affected.
90.64.150	Livestock nutrient management account.
90.64.813	Livestock nutrient management program development and oversight committee. (<i>Expires June 30, 2006.</i>)
90.64.901	Transfer of powers, duties, and functions to the department of agriculture.

90.64.030 Investigation of dairy farms—Report of findings—Corrective action—Violations of water quality laws—Waivers—Penalties. (1) Under the inspection program established in RCW 90.64.023, the department may investigate a dairy farm to determine whether the operation is discharging pollutants or has a record of discharging pollutants into surface or ground waters of the state. Upon concluding an investigation, the department shall make a written report of its findings, including the results of any water quality measurements, photographs, or other pertinent information, and provide a copy of the report to the dairy producer within twenty days of the investigation.

(2) The department shall investigate a written complaint filed with the department within three working days and shall make a written report of its findings including the results of any water quality measurements, photographs, or other pertinent information. Within twenty days of receiving a written complaint, a copy of the findings shall be provided to the dairy producer subject to the complaint, and to the complainant if the person gave his or her name and address to the department at the time the complaint was filed.

(3) The department may consider past complaints against the same dairy farm from the same person and the results of its previous inspections, and has the discretion to decide whether to conduct an inspection if:

(a) The same or a similar complaint or complaints have been filed against the same dairy farm within the immediately preceding six-month period; and

(b) The department made a determination that the activity that was the subject of the prior complaint was not a violation.

(4) If the decision of the department is not to conduct an inspection, it shall document the decision and the reasons for the decision within twenty days. The department shall provide the decision to the complainant if the name and address were provided to the department, and to the dairy producer subject to the complaint, and the department shall place the decision in the department's administrative records.

(5) The report of findings of any inspection conducted as the result of either an oral or a written complaint shall be placed in the department's administrative records. Only findings of violations shall be entered into the data base identified in RCW 90.64.130.

(6) A dairy farm that is determined to be a significant contributor of pollution based on actual water quality tests, photographs, or other pertinent information is subject to the provisions of this chapter and to the enforcement provisions of chapters 43.05 and 90.48 RCW, including civil penalties levied under RCW 90.48.144.

(7) If the department determines that an unresolved water quality problem from a dairy farm requires immediate corrective action, the department shall notify the producer and the district in which the problem is located. When corrective actions are required to address such unresolved water quality problems, the department shall provide copies of all final dairy farm inspection reports and documentation of all formal regulatory and enforcement actions taken by the department against that particular dairy farm to the local conservation district and to the appropriate dairy farm within twenty days.

(8) For a violation of water quality laws that is a first offense for a dairy producer, the penalty may be waived to allow the producer to come into compliance with water quality laws. The department shall record all legitimate violations and subsequent enforcement actions.

(9) A discharge, including a storm water discharge, to surface waters of the state shall not be considered a violation of this chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall therefore not be enforceable by the department of ecology or a third party, if at the time of the discharge, a violation is not occurring under RCW 90.64.010(18). In addition, a dairy producer shall not be held liable for violations of this chapter, chapter 90.48 RCW, chapter 173-201A WAC, or the federal clean water act due to the discharge of dairy nutrients to waters of the state resulting from spreading these materials on lands other than where the nutrients were generated, when the nutrients are spread by persons other than the dairy producer or the dairy producer's agent.

(10) As provided under RCW 7.48.305, agricultural activities associated with the management of dairy nutrients are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity has a substantial adverse effect on public health and safety.

(11) This section specifically acknowledges that if a holder of a general or individual national pollutant discharge

elimination system permit complies with the permit and the dairy nutrient management plan conditions for appropriate land application practices, the permit provides compliance with the federal clean water act and acts as a shield against citizen or agency enforcement for any additions of pollutants to waters of the state or of the United States as authorized by the permit.

(12) A dairy producer who fails to have an approved dairy nutrient management plan by July 1, 2002, or a certified dairy nutrient management plan by December 31, 2003, and for which no appeals have been filed with the pollution control hearings board, is in violation of this chapter. Each month beyond these deadlines that a dairy producer is out of compliance with the requirement for either plan approval or plan certification shall be considered separate violations of chapter 90.64 RCW that may be subject to penalties. Such penalties may not exceed one hundred dollars per month for each violation up to a combined total of five thousand dollars. The department has discretion in imposing penalties for failure to meet deadlines for plan approval or plan certification if the failure to comply is due to lack of state funding for implementation of the program. Failure to register as required in RCW 90.64.017 shall subject a dairy producer to a maximum penalty of one hundred dollars. Penalties shall be levied by the department. [2003 c 325 § 3; 2002 c 327 § 1; 1998 c 262 § 11; 1993 c 221 § 4.]

Intent—Finding—2003 c 325: "A livestock nutrient management program is essential to ensuring a healthy and productive livestock industry in Washington state. The goal of the program must be to provide clear guidance to livestock farms as to their responsibilities under state and federal law to protect water quality while maintaining a healthy business climate for these farms. The program should develop reasonable financial assistance resources, educational and technical assistance to meet these responsibilities, and provide for periodic inspection and enforcement actions to ensure compliance with state and federal water quality laws. The legislature intends that by 2006, there will be a fully functioning state program for concentrated animal feeding operations in the state, and that this program will be a single program for all livestock sectors.

The legislature finds that a livestock nutrient management program is necessary to address the federal rule changes with which livestock operations must comply. Furthermore, budgetary conditions demand efficient and effective governance. In addition, many of the existing requirements and goals for dairy farms will be completed by December 2003, and revisions will be needed." [2003 c 325 § 1.]

90.64.120 Department's authority under federal law or chapter 90.48 RCW not affected. (1) Nothing in this chapter shall affect the department of ecology's authority or responsibility to administer or enforce the national pollutant discharge elimination system permits for operators of concentrated dairy animal feeding operations, where required by federal regulations or to administer the provisions of chapter 90.48 RCW.

(2) Unless the department of ecology delegates its authority under chapter 90.48 RCW to the department of agriculture pursuant to RCW 90.48.260, and until any such delegation of authority receives federal approval, the transfer specified in RCW 90.64.901 shall not preclude the department of ecology from taking action related to animal feeding operations or concentrated animal feeding operations to protect water quality pursuant to its authority in chapter 90.48 RCW. Before taking such actions, the department of ecology shall notify the department of agriculture. [2003 c 325 § 4; 1993 c 221 § 13.]

Intent—Finding—2003 c 325: See note following RCW 90.64.030.

90.64.150 Livestock nutrient management account.

The livestock nutrient management account is created in the custody of the state treasurer. All receipts from monetary penalties levied pursuant to violations of this chapter must be deposited into the account. Expenditures from the account may be used only to provide grants for research or education proposals that assist livestock operations to achieve compliance with state and federal water quality laws. The director of agriculture shall accept and prioritize research proposals and education proposals. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2003 c 325 § 5; 1998 c 262 § 15.]

Intent—Finding—2003 c 325: See note following RCW 90.64.030.

90.64.813 Livestock nutrient management program development and oversight committee. (Expires June 30, 2006.)

(1) A livestock nutrient management program development and oversight committee is created comprised of the following members, appointed as follows:

(a) The director of the department of agriculture, or the director's designee, who shall serve as committee chair;

(b) The director of the department of ecology, or the director's designee;

(c) A representative of the United States environmental protection agency, appointed by the regional director of the agency unless the agency chooses not to be represented on the committee;

(d) A representative of commercial shellfish growers, nominated by an organization representing these growers, appointed by the governor;

(e) A representative of an environmental interest organization with familiarity and expertise in water quality issues, appointed by the governor;

(f) A representative of tribal governments as nominated by an organization representing tribal governments, appointed by the governor;

(g) A representative of Washington State University appointed by the dean of the college of agriculture and home economics;

(h) A representative of the Washington association of conservation districts, appointed by the association's board of officers;

(i) Three representatives of dairy producers nominated by a statewide organization representing dairy producers in the state, appointed by the governor;

(j) Two representatives of beef cattle producers nominated by a statewide organization representing beef cattle producers in the state, appointed by the governor;

(k) One representative of poultry producers nominated by a statewide organization representing poultry producers in the state, appointed by the governor;

(l) One representative of the commercial cattle feedlots nominated by a statewide organization representing commercial cattle feedlots in the state, appointed by the governor; and

(m) A representative of any other segment of the livestock industry determined by the director of agriculture to be

subject to federal rules regulating animal feeding or concentrated animal feeding operations.

(2) The state department of agriculture shall provide staff for the committee. The department of agriculture may request staff assistance be assigned by the United States environmental protection agency to assist the director in staffing the committee.

(3) The committee shall establish a work plan that includes a list of tasks and a projected completion date for each task.

(4) The committee may establish a subcommittee for each of the major industry segments that is covered by the recently adopted federal regulations that pertain to animal feeding operations and concentrated animal feeding operations. The subcommittee shall be composed of selected members of the full committee and additional representatives from that major segment of the livestock industry as determined by the director. The committee shall assign tasks to the subcommittees and shall establish dates for each subcommittee to report back to the full committee.

(5) The committee shall examine the recently adopted federal regulations that provide for the regulation of animal feeding operations and concentrated animal feeding operations and develop a program to be administered by the department of agriculture that meets the requirements and time frames contained in the federal rules. Elements that the committee shall evaluate include:

(a) A process for adopting standards and for developing plans for each operation that meet these standards;

(b) A process for revising current national pollution discharge elimination system permits currently held by livestock operations and to transition these permits into the new system; and

(c) In consultation with the director, a determination of what other work is needed and what other institutional relationships are needed or desirable. The committee shall consult with representatives of the statewide association of conservation districts regarding any functions or activities that are proposed to be provided through local conservation districts.

(6) The committee shall review and comment on proposals for grants from the livestock nutrient management account created in RCW 90.64.150.

(7) The committee shall develop draft proposed legislation that includes:

(a) Statutory changes, including a timeline to achieve the phased-in levels of regulation under federal law, to comply with the minimum requirements under federal law and the minimum requirements under chapter 90.48 RCW. These changes must meet the requirements necessary to enable the department of agriculture and the department of ecology to pursue the United States environmental protection agency's approval of the transfer of the permitting program as it relates to the concentrated animal feeding operations from the department of ecology to the department of agriculture;

(b) Statutory changes necessitated by the transfer of functions under chapter 90.64 RCW from the department of ecology to the department of agriculture;

(c) Continued inspection of dairy operations at least once every two years;

(d) An outreach and education program to inform the various animal feeding operations and concentrated animal feeding operations of the program's elements; and

(e) Annual reporting to the legislature on the progress of the state strategy for implementing the animal feeding operation and concentrated animal feeding operation.

(8) The committee shall provide a report by December 1, 2003, to appropriate committees of the legislature that includes the results of the committee's evaluation under subsection (5) of this section and draft legislation to initiate the program.

(9) This section expires June 30, 2006. [2003 c 325 § 2.]

Effective date—2003 c 325 §§ 2 and 6: "Sections 2 and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2003." [2003 c 325 § 9.]

Intent—Finding—2003 c 325: See note following RCW 90.64.030.

90.64.901 Transfer of powers, duties, and functions to the department of agriculture.

(1) All powers, duties, and functions of the department of ecology pertaining to chapter 90.64 RCW are transferred to the department of agriculture. All references to the director of ecology or the department of ecology in the Revised Code of Washington shall be construed to mean the director of agriculture or the department of agriculture when referring to the functions transferred in this section.

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

(b) Any appropriations made to the department of ecology for carrying out the powers, functions, and duties transferred shall, on July 1, 2003, be transferred and credited to the department of agriculture.

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

(3) All rules and all pending business before the department of ecology pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the department of agriculture. All existing contracts and obligations shall remain in full force and shall be performed by the department of agriculture.

(4) The transfer of the powers, duties, and functions of the department of ecology shall not affect the validity of any act performed before July 1, 2003.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director

of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification. [2003 c 325 § 6.]

Effective date—2003 c 325 §§ 2 and 6: See note following RCW 90.64.813.

Intent—Finding—2003 c 325: See note following RCW 90.64.030.

Chapter 90.82 RCW

WATERSHED PLANNING

(Formerly: Water resource management)

Sections

90.82.040	WRIA planning units—Watershed planning grants—Eligibility criteria—Administrative costs.
90.82.043	Implementation plan.
90.82.048	Implementation plan—Timelines and milestones.
90.82.060	Initiation of watershed planning—Scope of planning—Technical assistance from state agencies.
90.82.080	Instream flow component—Rules—Report.
90.82.130	Plan approval—Public notice and hearing—Revisions.

90.82.040 WRIA planning units—Watershed planning grants—Eligibility criteria—Administrative costs.

(1) Once a WRIA planning unit has been initiated under RCW 90.82.060 and a lead agency has been designated, it shall notify the department and may apply to the department for funding assistance for conducting the planning and implementation. Funds shall be provided from and to the extent of appropriations made by the legislature to the department expressly for this purpose.

(2)(a) Each planning unit that has complied with subsection (1) of this section is eligible to receive watershed planning grants in the following amounts for the first three phases of watershed planning and phase four watershed plan implementation:

(i) Initiating governments may apply for an initial organizing grant of up to fifty thousand dollars for a single WRIA or up to seventy-five thousand dollars for a multi-WRIA management area in accordance with RCW 90.82.060(4);

(ii)(A) A planning unit may apply for up to two hundred thousand dollars for each WRIA in the management area for conducting watershed assessments in accordance with RCW 90.82.070, except that a planning unit that chooses to conduct a detailed assessment or studies under (a)(ii)(B) of this subsection or whose initiating governments choose or have chosen to include an instream flow or water quality component in accordance with RCW 90.82.080 or 90.82.090 may apply for up to one hundred thousand additional dollars for each instream flow and up to one hundred thousand additional dollars for each water quality component included for each WRIA to conduct an assessment on that optional component and for each WRIA in which the assessments or studies under (a)(ii)(B) of this subsection are conducted.

(B) A planning unit may elect to apply for up to one hundred thousand additional dollars to conduct a detailed assessment of multipurpose water storage opportunities or for studies of specific multipurpose storage projects which opportunities or projects are consistent with and support the other

elements of the planning unit's watershed plan developed under this chapter; and

(iii) A planning unit may apply for up to two hundred fifty thousand dollars for each WRIA in the management area for developing a watershed plan and making recommendations for actions by local, state, and federal agencies, tribes, private property owners, private organizations, and individual citizens, including a recommended list of strategies and projects that would further the purpose of the plan in accordance with RCW 90.82.060 through 90.82.100.

(b) A planning unit may request a different amount for phase two or phase three of watershed planning than is specified in (a) of this subsection, provided that the total amount of funds awarded do not exceed the maximum amount the planning unit is eligible for under (a) of this subsection. The department shall approve such an alternative allocation of funds if the planning unit identifies how the proposed alternative will meet the goals of this chapter and provides a proposed timeline for the completion of planning. However, the up to one hundred thousand additional dollars in funding for instream flow and water quality components and for water storage assessments or studies that a planning unit may apply for under (a)(ii)(A) of this subsection may be used only for those instream flow, water quality, and water storage purposes.

(c) By December 1, 2001, or within one year of initiating phase one of watershed planning, whichever occurs later, the initiating governments for each planning unit must inform the department whether they intend to have the planning unit establish or amend instream flows as part of its planning process. If they elect to have the planning unit establish or amend instream flows, the planning unit is eligible to receive one hundred thousand dollars for that purpose in accordance with (a)(ii) of this subsection. If the initiating governments for a planning unit elect not to establish or amend instream flows as part of the unit's planning process, the department shall retain one hundred thousand dollars to carry out an assessment to support establishment of instream flows and to establish such flows in accordance with RCW 90.54.020(3)(a) and chapter 90.22 RCW. The department shall not use these funds to amend an existing instream flow unless requested to do so by the initiating governments for a planning unit.

(d) In administering funds appropriated for supplemental funding for optional plan components under (a)(ii) of this subsection, the department shall give priority in granting the available funds to proposals for setting or amending instream flows.

(e) A planning unit may apply for a matching grant for phase four watershed plan implementation following approval under the provisions of RCW 90.82.130. A match of ten percent is required and may include financial contributions or in-kind goods and services directly related to coordination and oversight functions. The match can be provided by the planning unit or by the combined commitments from federal agencies, tribal governments, local governments, special districts, or other local organizations. The phase four grant may be up to one hundred thousand dollars for each planning unit for each of the first three years of implementation. At the end of the three-year period, a two-year extension may be available for up to fifty thousand dollars each

year. For planning units that cover more than one WRIA, additional matching funds of up to twenty-five thousand dollars may be available for each additional WRIA per year for the first three years of implementation, and up to twelve thousand five hundred dollars per WRIA per year for each of the fourth and fifth years.

(3)(a) The department shall use the eligibility criteria in this subsection (3) instead of rules, policies, or guidelines when evaluating grant applications at each stage of the grants program.

(b) In reviewing grant applications under this subsection (3), the department shall evaluate whether:

(i) The planning unit meets all of the requirements of this chapter;

(ii) The application demonstrates a need for state planning funds to accomplish the objectives of the planning process; and

(iii) The application and supporting information evidences a readiness to proceed.

(c) In ranking grant applications submitted at each stage of the grants program, the department shall give preference to applications in the following order of priority:

(i) Applications from existing planning groups that have been in existence for at least one year;

(ii) Applications that address protection and enhancement of fish habitat in watersheds that have aquatic fish species listed or proposed to be listed as endangered or threatened under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq. and for which there is evidence of an inability to supply adequate water for population and economic growth from:

(A) First, multi-WRIA planning; and

(B) Second, single WRIA planning;

(iii) Applications that address protection and enhancement of fish habitat in watersheds or for which there is evidence of an inability to supply adequate water for population and economic growth from:

(A) First, multi-WRIA planning; and

(B) Second, single WRIA planning.

(d) Except for phase four watershed plan implementation, the department may not impose any local matching fund requirement as a condition for grant eligibility or as a preference for receiving a grant.

(4) The department may retain up to one percent of funds allocated under this section to defray administrative costs.

(5) Planning under this chapter should be completed as expeditiously as possible, with the focus being on local stakeholders cooperating to meet local needs.

(6) Funding provided under this section shall be considered a contractual obligation against the moneys appropriated for this purpose. [2003 1st sp.s. c 4 § 2; 2001 c 237 § 2; 1998 c 247 § 1; 1997 c 442 § 105.]

Findings—2003 1st sp.s. c 4: "The legislature declares and reaffirms that a core principle embodied in chapter 90.82 RCW is that state agencies must work cooperatively with local citizens in a process of planning for future uses of water by giving local citizens and the governments closest to them the ability to determine the management of water in the WRIA or WRIs as being planned.

The legislature further finds that this process of local planning must have all the tools necessary to accomplish this task and that it is essential for the legislature to provide a clear statutory process for implementation so that the locally developed plan will be the adopted and implemented plan to the greatest extent possible." [2003 1st sp.s. c 4 § 1.]

Finding—Intent—2001 c 237: "The legislature is committed to meeting the needs of a growing population and a healthy economy statewide; to meeting the needs of fish and healthy watersheds statewide; and to advancing these two principles together, in increments over time.

The legislature finds that improved management of the state's water resources, clarifying the authorities, requirements, and timelines for establishing instream flows, providing timely decisions on water transfers, clarifying the authority of water conservancy boards, and enhancing the flexibility of our water management system to meet both environmental and economic goals are important steps to providing a better future for our state.

The need for these improvements is particularly urgent as we are faced with drought conditions. The failure to act now will only increase the potential negative effects on both the economy and the environment, including fisheries resources.

Deliberative action over several legislative sessions and interim periods between sessions will be required to address the long-term goal of improving the responsiveness of the state water code to meet the diverse water needs of the state's citizenry. It is the intent of the legislature to begin this work now by providing tools to enable the state to respond to imminent drought conditions and other immediate problems relating to water resources management. It is also the legislature's intent to lay the groundwork for future legislation for addressing the state's long-term water problems." [2001 c 237 § 1.]

Severability—2001 c 237: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 237 § 33.]

Effective date—2001 c 237: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2001]." [2001 c 237 § 34.]

Intent—2001 c 237: See note following RCW 90.66.065.

90.82.043 Implementation plan. (1) Within one year of accepting funding under RCW 90.82.040(2)(e), the planning unit must complete a detailed implementation plan. Submittal of a detailed implementation plan to the department is a condition of receiving grants for the second and all subsequent years of the phase four grant.

(2) Each implementation plan must contain strategies to provide sufficient water for: (a) Production agriculture; (b) commercial, industrial, and residential use; and (c) instream flows. Each implementation plan must contain timelines to achieve these strategies and interim milestones to measure progress.

(3) The implementation plan must clearly define coordination and oversight responsibilities; any needed interlocal agreements, rules, or ordinances; any needed state or local administrative approvals and permits that must be secured; and specific funding mechanisms.

(4) In developing the implementation plan, the planning unit must consult with other entities planning in the watershed management area and identify and seek to eliminate any activities or policies that are duplicative or inconsistent.

(5) By December 1, 2003, and by December 1st of each subsequent year, the director of the department shall report to the appropriate legislative standing committees regarding statutory changes necessary to enable state agency approval or permit decision making needed to implement a plan approved under this chapter. [2003 1st sp.s. c 4 § 3.]

Findings—2003 1st sp.s. c 4: See note following RCW 90.82.040.

90.82.048 Implementation plan—Timelines and milestones. (1) The timelines and interim milestones in a detailed implementation plan required by RCW 90.82.043 must address the planned future use of existing water rights

for municipal water supply purposes, as defined in RCW 90.03.015, that are inchoate, including how these rights will be used to meet the projected future needs identified in the watershed plan, and how the use of these rights will be addressed when implementing instream flow strategies identified in the watershed plan.

(2) The watershed planning unit or other authorized lead agency shall ensure that holders of water rights for municipal water supply purposes not currently in use are asked to participate in defining the timelines and interim milestones to be included in the detailed implementation plan.

(3) The department of health shall annually compile a list of water system plans and plan updates to be reviewed by the department during the coming year and shall consult with the departments of community, trade, and economic development, ecology, and fish and wildlife to: (a) Identify watersheds where further coordination is needed between water system planning and local watershed planning under this chapter; and (b) develop a work plan for conducting the necessary coordination. [2003 1st sp.s. c 5 § 9.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

90.82.060 Initiation of watershed planning—Scope of planning—Technical assistance from state agencies. (1) Planning conducted under this chapter must provide for a process to allow the local citizens within a WRIA or multi-WRIA area to join together in an effort to: (a) Assess the status of the water resources of their WRIA or multi-WRIA area; and (b) determine how best to manage the water resources of the WRIA or multi-WRIA area to balance the competing resource demands for that area within the parameters under RCW 90.82.120.

(2) Watershed planning under this chapter may be initiated for a WRIA only with the concurrence of: (a) All counties within the WRIA; (b) the largest city or town within the WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water from the WRIA or, for a WRIA with lands within the Columbia Basin project, the water supply utility obtaining from the Columbia Basin project the largest quantity of water for the WRIA. To apply for a grant for organizing the planning unit as provided for under RCW 90.82.040(2)(a), these entities shall designate the entity that will serve as the lead agency for the planning effort and indicate how the planning unit will be staffed. For purposes of this chapter, WRIA 40 shall be divided such that the portion of the WRIA located entirely within the Stemilt and Squilchuck subbasins shall be considered WRIA 40a and the remaining portion shall be considered WRIA 40b. Planning may be conducted separately for WRIA 40a and 40b. WRIA 40a shall be eligible for one-fourth of the funding available for a single WRIA, and WRIA 40b shall be eligible for three-fourths of the funding available for a single WRIA.

(3) Watershed planning under this chapter may be initiated for a multi-WRIA area only with the concurrence of: (a) All counties within the multi-WRIA area; (b) the largest city or town in each WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water in each WRIA.

(4) If entities in subsection (2) or (3) of this section decide jointly and unanimously to proceed, they shall invite all tribes with reservation lands within the management area.

(5) The entities in subsection (2) or (3) of this section, including the tribes if they affirmatively accept the invitation, constitute the initiating governments for the purposes of this section.

(6) The organizing grant shall be used to organize the planning unit and to determine the scope of the planning to be conducted. In determining the scope of the planning activities, consideration shall be given to all existing plans and related planning activities. The scope of planning must include water quantity elements as provided in RCW 90.82.070, and may include water quality elements as contained in RCW 90.82.090, habitat elements as contained in RCW 90.82.100, and instream flow elements as contained in RCW 90.82.080. The initiating governments shall work with state government, other local governments within the management area, and affected tribal governments, in developing a planning process. The initiating governments may hold public meetings as deemed necessary to develop a proposed scope of work and a proposed composition of the planning unit. In developing a proposed composition of the planning unit, the initiating governments shall provide for representation of a wide range of water resource interests.

(7) Each state agency with regulatory or other interests in the WRIA or multi-WRIA area to be planned shall assist the local citizens in the planning effort to the greatest extent practicable, recognizing any fiscal limitations. In providing such technical assistance and to facilitate representation on the planning unit, state agencies may organize and agree upon their representation on the planning unit. Such technical assistance must only be at the request of and to the extent desired by the planning unit conducting such planning. The number of state agency representatives on the planning unit shall be determined by the initiating governments in consultation with the governor's office.

(8) As used in this section, "lead agency" means the entity that coordinates staff support of its own or of other local governments and receives grants for developing a watershed plan. [2003 c 328 § 1; 2001 c 229 § 1; 1998 c 247 § 2.]

90.82.080 Instream flow component—Rules—Report. (1)(a) If the initiating governments choose, by majority vote, to include an instream flow component, it shall be accomplished in the following manner:

(i) If minimum instream flows have already been adopted by rule for a stream within the management area, unless the members of the local governments and tribes on the planning unit by a recorded unanimous vote request the department to modify those flows, the minimum instream flows shall not be modified under this chapter. If the members of local governments and tribes request the planning unit to modify instream flows and unanimous approval of the decision to modify such flow is not achieved, then the instream flows shall not be modified under this section;

(ii) If minimum stream flows have not been adopted by rule for a stream within the management area, setting the minimum instream flows shall be a collaborative effort between the department and members of the planning unit.

The department must attempt to achieve consensus and approval among the members of the planning unit regarding the minimum flows to be adopted by the department. Approval is achieved if all government members and tribes that have been invited and accepted on the planning unit present for a recorded vote unanimously vote to support the proposed minimum instream flows, and all nongovernmental members of the planning unit present for the recorded vote, by a majority, vote to support the proposed minimum instream flows.

(b) The department shall undertake rule making to adopt flows under (a) of this subsection. The department may adopt the rules either by the regular rules adoption process provided in chapter 34.05 RCW, the expedited rules adoption process as set forth in RCW 34.05.353, or through a rules adoption process that uses public hearings and notice provided by the county legislative authority to the greatest extent possible. Such rules do not constitute significant legislative rules as defined in RCW 34.05.328, and do not require the preparation of small business economic impact statements.

(c) If approval is not achieved within four years of the date the planning unit first receives funds from the department for conducting watershed assessments under RCW 90.82.040, the department may promptly initiate rule making under chapter 34.05 RCW to establish flows for those streams and shall have two additional years to establish the instream flows for those streams for which approval is not achieved.

(2)(a) Notwithstanding RCW 90.03.345, minimum instream flows set under this section for rivers or streams that do not have existing minimum instream flow levels set by rule of the department shall have a priority date of two years after funding is first received from the department under RCW 90.82.040, unless determined otherwise by a unanimous vote of the members of the planning unit but in no instance may it be later than the effective date of the rule adopting such flow.

(b) Any increase to an existing minimum instream flow set by rule of the department shall have a priority date of two years after funding is first received for planning in the WRIA or multi-WRIA area from the department under RCW 90.82.040 and the priority date of the portion of the minimum instream flow previously established by rule shall retain its priority date as established under RCW 90.03.345.

(c) Any existing minimum instream flow set by rule of the department that is reduced shall retain its original date of priority as established by RCW 90.03.345 for the revised amount of the minimum instream flow level.

(3) Before setting minimum instream flows under this section, the department shall engage in government-to-government consultation with affected tribes in the management area regarding the setting of such flows.

(4) Nothing in this chapter either: (a) Affects the department's authority to establish flow requirements or other conditions under RCW 90.48.260 or the federal clean water act (33 U.S.C. Sec. 1251 et seq.) for the licensing or relicensing of a hydroelectric power project under the federal power act (16 U.S.C. Sec. 791 et seq.); or (b) affects or impairs existing instream flow requirements and other conditions in a current license for a hydroelectric power project licensed under the federal power act.

(5) If the planning unit is unable to obtain unanimity under subsection (1) of this section, the department may adopt rules setting such flows.

(6) The department shall report annually to the appropriate legislative standing committees on the progress of instream flows being set under this chapter, as well as progress toward setting instream flows in those watersheds not being planned under this chapter. The report shall be made by December 1, 2003, and by December 1st of each subsequent year. [2003 1st sp.s. c 4 § 4; 1998 c 247 § 4.]

Findings—2003 1st sp.s. c 4: See note following RCW 90.82.040.

90.82.130 Plan approval—Public notice and hearing—Revisions. (1)(a) Upon completing its proposed watershed plan, the planning unit may approve the proposal by consensus of all of the members of the planning unit or by consensus among the members of the planning unit appointed to represent units of government and a majority vote of the nongovernmental members of the planning unit.

(b) If the proposal is approved by the planning unit, the unit shall submit the proposal to the counties with territory within the management area. If the planning unit has received funding beyond the initial organizing grant under RCW 90.82.040, such a proposal approved by the planning unit shall be submitted to the counties within four years of the date that funds beyond the initial funding are first drawn upon by the planning unit.

(c) If the watershed plan is not approved by the planning unit, the planning unit may submit the components of the plan for which agreement is achieved using the procedure under (a) of this subsection, or the planning unit may terminate the planning process.

(2)(a) With the exception of a county legislative authority that chooses to opt out of watershed planning as provided in (c) of this subsection, the legislative authority of each of the counties with territory in the management area shall provide public notice of and conduct at least one public hearing on the proposed watershed plan submitted under this section. After the public hearings, the legislative authorities of these counties shall convene in joint session to consider the proposal. The counties may approve or reject the proposed watershed plan for the management area, but may not amend it. Approval of such a proposal shall be made by a majority vote of the members of each of the counties with territory in the management area.

(b) If a proposed watershed plan is not approved, it shall be returned to the planning unit with recommendations for revisions. Approval of such a revised proposal by the planning unit and the counties shall be made in the same manner provided for the original watershed plan. If approval of the revised plan is not achieved, the process shall terminate.

(c) A county legislative authority may choose to opt out of watershed planning under this chapter and the public hearing processes under (a) and (b) of this subsection if the county's affected territory within a particular management area is: (i) Less than five percent of the total territory within the management area; or (ii) five percent or more of the total territory within the management area and all other initiating governments within the management area consent. A county meeting these conditions and choosing to opt out shall notify the department and the other initiating governments of that

choice prior to commencement of plan adoption under the provisions of (a) of this subsection. A county choosing to opt out under the provisions of this section shall not be bound by obligations contained in the watershed plan adopted for that management area under this chapter. Even if a county chooses to opt out under the provisions of this section, the other counties within a management area may adopt a proposed watershed plan as provided in this chapter.

(3) The planning unit shall not add an element to its watershed plan that creates an obligation unless each of the governments to be obligated has at least one representative on the planning unit and the respective members appointed to represent those governments agree to adding the element that creates the obligation. A member's agreeing to add an element shall be evidenced by a recorded vote of all members of the planning unit in which the members record support for adding the element. If the watershed plan is approved under subsections (1) and (2) of this section and the plan creates obligations: (a) For agencies of state government, the agencies shall adopt by rule the obligations of both state and county governments and rules implementing the state obligations, or, with the consent of the planning unit, may adopt policies, procedures, or agreements related to the obligations or implementation of the obligations in addition to or in lieu of rules. The obligations on state agencies are binding upon adoption of the obligations, and the agencies shall take other actions to fulfill their obligations as soon as possible, and should annually review implementation needs with respect to budget and staffing; (b) for counties, the obligations are binding on the counties and the counties shall adopt any necessary implementing ordinances and take other actions to fulfill their obligations as soon as possible, and should annually review implementation needs with respect to budget and staffing; or (c) for an organization voluntarily accepting an obligation, the organization must adopt policies, procedures, agreements, rules, or ordinances to implement the plan, and should annually review implementation needs with respect to budget and staffing.

(4) After a plan is adopted in accordance with subsection (3) of this section, and if the department participated in the planning process, the plan shall be deemed to satisfy the watershed planning authority of the department with respect to the components included under the provisions of RCW 90.82.070 through 90.82.100 for the watershed or watersheds included in the plan. The department shall use the plan as the framework for making future water resource decisions for the planned watershed or watersheds. Additionally, the department shall rely upon the plan as a primary consideration in determining the public interest related to such decisions.

(5) Once a WRIA plan has been approved under subsection (2) of this section for a watershed, the department may develop and adopt modifications to the plan or obligations imposed by the plan only through a form of negotiated rule making that uses the same processes that applied in that watershed for developing the plan.

(6) As used in this section, "obligation" means any action required as a result of this chapter that imposes upon a tribal government, county government, or state government, either: A fiscal impact; a redeployment of resources; or a change of existing policy. [2003 1st sp.s. c 4 § 5; 2001 c 237 § 4; 1998 c 247 § 9.]

Findings—2003 1st sp.s. c 4: See note following RCW 90.82.040.

Finding—Intent—Severability—Effective date—2001 c 237: See notes following RCW 90.82.040.

Intent—2001 c 237: See note following RCW 90.66.065.